

Myanmar's 1982 Citizenship Law in Context

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Myanmar's¹ 1982 Citizenship Law² has been widely and reasonably criticized for creating a discriminatory citizenship system and causing statelessness.³ It has also been suggested that it intentionally discriminated against, and forms part of a genocidal policy targeting, the Muslims in northern Rakhine State, many of whom identify as Rohingya.⁴ Without wishing to diminish the problematic character of the law, this policy brief aims to take a broader look at the context in which it was developed and the objectives it may have had. The intention is not to defend or excuse the Citizenship Law, but to understand it, with a particular view to considering how it may best be reformed to create a citizenship system that is fit for Myanmar in 2020 and will promote integration rather than discrimination.

1. Myanmar in 1982

Ne Win's Burma Socialist Programme Party had been in power since 1962. It had followed an isolationist policy, which resulted in very limited international contact both at the state and population levels. The economy was in poor shape and black markets were flourishing. Peace talks with two major insurgent groups – the Chinese-backed Communist Party of Burma ('CPB') and the Kachin Independence Organization – had broken down in 1981, and insurgent groups continued to hold considerable territory in border areas. There had also been anti-government demonstrations in Yangon in 1974.

A new constitution was adopted the same year. It provided that the child of two ethnic nationals was a citizen and those who were already citizens should retain citizenship.⁵ Three years later, the government launched Op-

eration Naga Min, which aimed to identify and deport illegal immigrants. Although overall relatively few illegal residents were found, in Rakhine State it caused the flight of 200,000 Muslims to Bangladesh. It was in this context that the 1982 Citizenship Law was introduced.

2. Changes Introduced by the 1982 Citizenship Law

The 1982 Citizenship Law introduced two far-reaching changes: the creation of multiple categories of citizenship and a narrowing of the grounds on which citizenship could be acquired.⁶

Under previous laws there was a single citizenship status with a consistent set of rights, irrespective of the mode by which citizenship had been acquired. The 1982 Citizenship Law defines three categories of citizens: 'citizens', 'associate citizens', and 'naturalized citizens'.⁷ 'Citizens' are further subdivided into 'citizens by birth' and 'others'. These categories are treated differently with regard to the transmission of citizenship to children and grounds for deprivation of citizenship. Moreover, the government is explicitly authorized to limit the rights of 'associate' and 'naturalized citizens'.⁸ A new documentation system was introduced alongside and in support of these divisions (although it was not until the late 1980s that it began to be implemented). The previous identity document regularly held by citizens – the National Registration Card – was replaced by new citizenship cards, color-coded to reflect the category of citizenship.

The 1948 Union Citizenship Act allowed for naturalisation based on five years residence in Myanmar, three years' service in the armed forces, or (for women) marriage to a citizen.⁹ Citizenship was automatically acquired by a child born in Myanmar, both of whose parents were also born in Myanmar, and whose grand-parents were permanent residents.¹⁰ In 1982, all of these means of acquiring citizenship were removed. Under the current law from 1982, a child born after 1982 can only acquire citizenship by descent from citizen parents. For those alive in 1982, eligibility for citizenship depends on their status in and connection with Myanmar as of 1982. With the single exception of an extraordinary grant of citizenship by the Government or President,¹¹ there is no grounds on which a connection between the individual and the state formed after 1982 can give rise to citizenship.

Even before 1982, descent from a citizen parent was the primary means

¹ For the sake of simplicity, place names are throughout given in their current form (thus 'Myanmar' rather than 'Burma' and 'Rakhine' rather than 'Arakan'), rather than reflecting historical usage, except in quotations and citations where the original text or title uses a previous name.

² Myanmar, Pyithu Hluttaw Law No. 4 of 1982 (Burma Citizenship Law) ('1982 Citizenship Law') (<https://www.legal-tools.org/doc/d3e586/>). The text of the citizenship law used throughout the article is the English translation.

³ See, for example, José-María Arraiza and Olivier Vonk, "Report on Citizenship Law: Myanmar", *Global Citizenship Observatory*, Country Report 2017/14, 2017 ('GLOBALCIT Report'); United Nations High Commissioner for Refugees, "Citizenship and Statelessness in Myanmar: An analysis of international standards and the Myanmar citizenship legal framework", 2018 ('UNHCR, 2018') which analyses the law's compliance with relevant international standards.

⁴ Nurul Islam, "Facts about the Rohingya Muslims of Arakan", 2006 (available on the *Rohingya.org* web site), Abu Aneen, "Towards Understanding Arakan History: A Study on the Issue of Ethnicity in Arakan", *Kaladan Press*, 2007. M.S. Anwar, "1982 Citizenship Law of Burma: Is or Isn't It Applicable Today?," *Rohingya Vision*, 2013; Md. Mahbulul Haque, "1982 Citizenship Law in Burma and the Arbitrary Deprivation of Rohingyas' Nationality", *South Asian Journal of Policy and Governance*, 2014, vol. 35, no. 2. It is not only Rohingya scholars who have put forward such arguments. For a recent example of non-governmental organizations taking the same line, see, Fortify Rights, "Tools of Genocide: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar", 2019.

⁵ Myanmar, The Constitution of the Union of Burma, 1974, Article 145 ('1974 Constitution') (<https://www.legal-tools.org/doc/669058/>).

⁶ A number of reports on the 1982 Citizenship Law provide useful summaries of its provisions and the ways these differ from previous laws, as well as analysis. See, for example, UNHCR, 2018, see *supra* note 3; Center for Diversity and National Harmony ('CDNH'), "Myanmar's 1982 Citizenship Law: An Analysis", 2017; GLOBALCIT Report, see *supra* note 3.

⁷ Terms are placed in inverted commas to indicate that they are used in the specific sense and with the scope defined in the 1982 Citizenship Law, see *supra* note 2.

⁸ 1982 Citizenship Law, Articles 30(c) and 53(c), see *supra* note 2.

⁹ Myanmar, The Union Citizenship Act, Act No. LXVI of 1948, Articles 7, 13, and 11 ('1948 Union Citizenship Act') (<https://www.legal-tools.org/doc/f63770/>).

¹⁰ *Ibid.*, Article 4(2).

¹¹ 1982 Citizenship Law, Article 8(a), see *supra* note 2.

by which citizenship was acquired at birth.¹² In this respect, the 1982 law maintains continuity with the previous system. However, the introduction of different rules for the three categories of citizenship give the post-1982 system a distinct character. Similarly, the use of race as a basis for citizenship shows both continuity with and evolution from the previous laws. Article 3 of the 1982 Citizenship Law provides that:

Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period prior to 1185 B.E., 1823 A.D. are Burma citizens.

The definition is almost identical to that in Article 3(1) of the 1948 Union Citizenship Act. In that context it refers back to the provisions of the 1947 Constitution on eligibility for citizenship at the time of independence. The 1948 Act reaffirms the citizenship acquired through these provisions, but makes no further use of race as a basis of citizenship. Children born after the law came into force acquired citizenship based on descent and not by virtue of race. Article 3 of the 1982 Law, on the other hand, positions *taing-yin-tha*¹³ identity as an ongoing basis for recognition of citizenship.¹⁴ Moreover, these citizens are given a special status as ‘citizens by birth’.¹⁵ Combined with the reduction in other grounds for the acquisition of citizenship, this gives new prominence to race as a basis for citizenship.

3. The Objectives of the 1982 Citizenship Law

On 8 October 1982, one week before the citizenship law entered into force, Ne Win made a public speech setting out what may be considered the official position on the objectives and rationale of the law.¹⁶ A large part of the speech focuses on the reasons for creating different categories of citizenship. This emerges as primarily a means of distinguishing ‘pure blooded nationals’ from those who entered Myanmar during the colonial period, their descendants, and ‘mixed bloods’ (that is, the children of marriages between the two groups). The idea sketched in the speech is that ‘pure blooded nationals’ should be ‘citizens’, while the others became ‘associate citizens’ or ‘naturalized citizens’.¹⁷ This explanation and the use of the terms ‘pure blooded citizens’ and ‘mixed bloods’ emphasises the racial dimension of the division between ‘citizens’ and ‘associate’ or ‘naturalised citizens’.¹⁸ However, the law itself, and even parts of Ne Win’s speech, suggest a less rigid divide. Under Article 6 of the Citizenship Law those already citizens in 1982 are ‘citizens’.¹⁹ Secondly, the law provides for access to ‘citizenship’ for the third generation of ‘associate’ or ‘naturalised citizens’.²⁰ The inclusion of these

¹² 1948 Union Citizenship Act, Article 5, see *supra* note 9, sets out the relevant rules on acquisition of citizenship at birth.

¹³ The Burmese term *taing-yin-tha*, which encompasses those groups understood as falling within the definition of Article 3 of the 1982 Citizenship Law might be approximately translated as ‘indigenous races’. However, the particular significance that the term has taken on in Myanmar make it preferable to leave it untranslated. On the ambiguities and evolution of the term see Nick Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya”, *Journal of Contemporary Asia*, 2017, vol. 47, no. 3.

¹⁴ Cheesman discusses in more detail the increased importance of *taing-yin-tha* as a basis for citizenship and its increased importance in the 1982 Citizenship Law in Cheesman, 2017, see *supra* note 13.

¹⁵ 1982 Citizenship Law, Article 5, see *supra* note 2.

¹⁶ “Speech by General Ne Win at the Meeting held in the Central Meeting Hall, President House, Ahlone Road, 8 October 1982”, *The Working People’s Daily*, 9 October 1982.

¹⁷ Who exactly were expected to be ‘associated citizens’ is a somewhat complex question to which the 1982 Citizenship Law and associated procedures do not provide a clear answer. Ne Win’s speech suggests that those who had already acquired citizenship under previous laws would hold this status, although under Article 6 such people should have retained ‘citizenship’ and in practice this seems to have been the case. For a more detailed discussion of this problem, see CDNH, 2017, see *supra* note 6.

¹⁸ The distinction between ‘race’ and ‘ethnicity’ used here reflects the use of these terms in cultural anthropology. In essence ‘race’ is seen as a fixed identifier based primarily on physical appearance and descent, while ‘ethnicity’ includes elements of language and culture. ‘Ethnicity’ is therefore a more mutable category, allowing movement between groups.

¹⁹ It is telling in this respect that debates over whether or not Muslims in northern Rakhine who identify themselves as Rohingya should be ‘citizens’ as a result of this provision focus on their ability to prove that they were citizens before 1982; that Article 6 would assure them of ‘citizenship’ is not called into question.

²⁰ That is, a child both of whose parents are ‘associate’ or ‘naturalized citizens’ and both of whose grand-parents on one side are also ‘associate’ or ‘naturalised

two groups among ‘citizens’ help transform it (at least partially) into an ethnic rather than racial category.

The reasons given for distinguishing ‘associate’ and ‘naturalized citizens’ from ‘citizens’ reinforce this point. In a key passage Ne Win states:

[W]e accept them as citizens, say. But leniency on humanitarian ground cannot be such as to endanger ourselves. We can leniently give them the right to live in this country and to carry on a livelihood in the legitimate way. But we will have to leave them out in matters involving the affairs of the country and the destiny of the State. This is not because we hate them. If we were to allow them to get into positions where they can decide the destiny of the State and if they were to betray us we would be in trouble.

The objective then is to exclude these people from power, as their loyalty is seen as suspect. The speech goes on to suggest that this is not due to loyalty to other states *per se*, but to links with family members in other countries and the desire for economic gain. Thus, the third generation are to be permitted to acquire ‘citizenship’ contingent on their and their ancestors’ good behaviour and on the assumption that over time these foreign links will dissipate. In other words, subsequent generations are expected to integrate and, on that basis, may become ‘citizens’.

A second reason put forward in Ne Win’s speech for reforming the law is the need to resolve the citizenship status of people who had entered the country before independence but never acquired citizenship status. The existence of such populations is framed as a legacy of colonial-era population movements, which existing laws had proved unable to resolve. The proposed solution is to grant these people ‘naturalized citizenship’ and provide a route (through the possibility of acquiring ‘citizenship’ in the third generation) for their full integration into the citizen body. The approach taken suggests an uneasy balance between distrust of this population (and so a desire to exclude them from power), and a recognition of their established residence and connection with the state. The grant of ‘naturalized citizenship’ is framed as a humanitarian gesture, recognizing that they are unlikely to be eligible for citizenship in another country, but downplaying their connection with Myanmar despite over 30 years residence.

4. The Citizenship Law as a Response to Colonialism and a Nation-Building Tool

The framing of the 1982 Citizenship Law discussed above suggests that it was deeply concerned with the legacies of colonialism. The presence of distinct populations of colonial-era immigrants is seen as a problem and a challenge to the security of the state. The law proposes resolving this problem by providing a route to assimilation into the ‘citizen’ body, but in the interim keeping these people from exercising power.

The loss of both economic and political control under colonialism helps explain this fear of allowing colonial-era immigrants access to power. Re-asserting native control was an important part of decolonization and of establishing independence. In the context of Myanmar, it is also important to remember that the British had a policy of favouring Indians (understood broadly as those from the Indian sub-continent) over Burmese natives for positions in the civil service and police. An association between these immigrants and the colonial power was not therefore unreasonable and the ongoing involvement of those of Indian descent in positions of power after independence²¹ could be framed as a legacy of colonialism, compounding its injustice by continuing to deny control of their own destiny to the native population. Economically immigrants from the Indian sub-continent were associated with the widely disliked *chettians*. These moneylenders had gained a bad reputation for exploiting native farmers and taking their lands as payment for loans.²² By no means all of the immigrants from the Indian sub-continent were civil servants or *chettians*, but the existence of these two groups provided a basis for identifying this population with colonial-era wrongs.

citizens’. The eligibility of these children for citizenship is set out in Article 7 of the 1982 Citizenship Law.

²¹ Rohingya scholars in particular have documented the considerable roles played by Muslims in both politics and other parts of the administration in the years after independence. See, for example, Md. Mahbul Haque, “Political Transition in Burma/Myanmar: Status of Rohingya Muslim Minority”, *South Asian Journal of Policy and Governance*, 2017, vol. 41, no. 2.

²² Sean Turnell, “The Chettians in Burma”, Macquarie Economics Research Paper no. 12/2005, 2005, provides a discussion of the history of this group.

A second group who were affected by the changes in the citizenship law were the Chinese. In Myanmar there are both *taing-yin-tha* who are ethnically related to the Chinese and Chinese immigrants who have acquired citizenship. Although China has never colonised Myanmar, there are long-standing tensions around China's political and economic influence that have impacted how citizens of Chinese origin or appearance are perceived. Economically, both the success of individual Chinese businessmen and the development of state-backed projects have led to concerns about the exploitation of locals and of Myanmar's natural resources by the Chinese. Politically, China has long seen Myanmar as falling within its sphere of influence, and has provided support on the international stage. For Myanmar, the challenge has been to benefit from this support and avoid antagonising a more powerful neighbour, without ceding control. In the 1980s, relations were further complicated by Myanmar's status as a socialist but not communist state, while the Chinese Communist Party had a policy of exporting communism. Moreover, China provided direct, if not always open, support to the Communist Party of Burma and, through them, to other insurgent groups. Suspicions that China was trying to intervene or influence Myanmar's political system were not, therefore, unfounded, and provide additional context for the 1982 Citizenship Law's concern to limit access to power to those it considers fully loyal, and the distrust of those with connections to other countries.

A possible corollary of thinking about the citizenship law as a response to colonial wrongs, is to see it as a nation-building tool.²³ The ethnic diversity of Myanmar poses a challenge to the development of a shared national identity. Both in 1982 and since, this has been further complicated by the existence of ethnic insurgent groups. These groups assert the existence of distinct ethnic identities, histories, and political ambitions, which challenge the idea of a single shared national identity. The categories of citizenship created by the 1982 Citizenship Law work to create such a shared identity through opposition. By positioning 'associate' and 'naturalised citizens' as colonial-era immigrants who do not fully belong, it creates a single contrasting group, 'citizens' who do belong. The prominence of *taing-yin-tha* within the 'citizens' group further strengthens the implicit identity of this group as the native (pre-colonial) population, despite the presence of non-*taing-yin-tha* 'citizens'. The invocation of *taing-yin-tha* and the division between native (pre-colonial) and (colonial-era) immigrant populations provide a further link to nation-building narratives based on the idea of *taing-yin-tha* unity, a shared suffering under colonialism, and the struggle for independence.²⁴ 'Associate' and 'naturalized citizens' are excluded from this shared history due to the date of their immigration and perceived links to the colonial power.

A second division is drawn between citizens (of all categories) and foreigners. The Law creates a closed citizen body: anyone becoming a citizen after 1982 must have a connection with the state dating back to that year, or be descended from someone who was a citizen in 1982. There is no provision for someone immigrating to Myanmar after 1982 to become a citizen.²⁵ This further entrenches the idea that the key division is between locals and foreigners. However, in this instance 'associate' and 'naturalised citizens' are brought into the category of locals. They are given a stake in the nation-building process, even as the distinctions in citizenship category work to exclude them from full belonging.

The interpretation and implementation of the 1982 Citizenship Law, including as a nation-building tool, underwent a change after 1988. Under the military government, *taing-yin-tha* took on new importance as the primary identifier of belonging.²⁶ At the same time, the understanding of

taing-yin-tha as a concept narrowed. The 1982 Citizenship Law explicitly provides for the possibility of recognizing different groups as *taing-yin-tha* rather than setting out a finite list,²⁷ but after 1988 the idea that there was a fixed list of 135 *taing-yin-tha* came to be accepted. Moreover, in this period, understandings of the character of the different groups became increasingly rigid. For example, Bamar Muslims who had not previously faced challenges to their identity, were told implicitly and explicitly – including through the ways in which identity was recorded on citizenship cards – that they could be Bamar or Muslim, but not both.

This increased importance of *taing-yin-tha* is reflected in the 2008 Constitution which grants these groups specific rights of representation.²⁸ Since the 1982 Citizenship Law already recognized *taing-yin-tha* and granted them a special status 'citizen by birth', it could easily be fitted into this new paradigm of belonging. However, this meant a shift in how the citizenship categories were seen. The key distinction became the one between 'citizens by birth' (that is, *taing-yin-tha*) and all other citizens, including non-*taing-yin-tha* 'citizens', rather than between 'citizens' and 'associate' or 'naturalized citizens'. This change has two effects on the role of the 1982 Citizenship Law as a nation-building tool. The division between those included and those excluded continues to function as a way of reinforcing the shared identity of those included. However, the focus becomes the shared history and identity of *taing-yin-tha*, excluding all others. It is worth briefly noting the artificiality of the definition of *taing-yin-tha* as used in the Citizenship Law and the nation-building narrative. The definition imagines the existence of a citizen body before colonisation from which the present citizens have descended. However, in doing so, it projects back in time both borders and understandings of racial identity which had evolved since that date. For example, not all parts of modern Myanmar underwent a change of status with the start of colonisation in 1823, or necessarily saw the colonisation of Rakhine and Tanintharyi following the first Anglo-Burmese war as developments directly affecting them.²⁹

The second impact of the shift to seeing *taing-yin-tha* and non-*taing-yin-tha* as the key categories of citizenship is to undermine the potential of the Citizenship Law as a tool for integration. Although it is possible for non-*taing-yin-tha* to be 'citizens', they are permanently excluded from 'citizenship by birth', and under the 2008 Constitution therefore from certain rights and full participation in the polity. For example, only *taing-yin-tha* can be President. The change therefore reinforced the exclusive and divisive character of the Citizenship Law and a reliance on race as the key determiner of belonging.

5. The Problems With the 1982 Citizenship Law in 2020

Much has been written criticising the 1982 Citizenship Law.³⁰ Without entering into the details of all such criticism it is worth briefly noting a few points. The vision put forward in Ne Win's speech that over time 'associate' and 'naturalized citizenship' would disappear, and there would only be 'citizens' has proven to be optimistic. Instead 'associate' and 'naturalized citizenship' have become permanent statuses, and ones which exclude some citizens from full participation. It has been well-documented that these distinctions fall along predominantly ethnic and religious lines, creating minorities whose exclusion and discrimination is institutionalized through their citizenship status.³¹ Moreover, there is anecdotal evidence that the

Myanmar and the problems this has caused.

²⁷ 1982 Citizenship Law, Article 4, see *supra* note 2, grants the President or Union government power to determine whether or not groups are *taing-yin-tha*. Although Article 3 lists eight groups, the text is clear that these others fulfilling the relevant criteria could also be included.

²⁸ For example, the possibility of establishing Self-Administered Areas or of election Ethnic Affairs Ministers. Cheesman, 2017, see *supra* note 13, notes the emphasis on *taing-yin-tha* over citizenship in this context, reflected in the fact that the preamble uses the term *taing-yin-tha* seven times, but does not once refer to citizens.

²⁹ For a fuller discussion of the artificiality of the definition, see CDNH, 2017, see *supra* note 6. More generally on the evolution and growing importance of *taing-yin-tha* in political thought and practice in Myanmar see Cheesman, 2017, see *supra* note 13.

³⁰ See *supra* notes 3, 4 for some examples.

³¹ Recent research highlighting the ethnic and religious dimension of the distinctions, including the use of administrative discretion in this respect, includes The Seagull, "Report for Religious Discrimination & Conflict in Myanmar: National Registration Cards", 2016; Smile Education and Development Foundation ("SEDF"), "Assessing the Risks of Statelessness for Religious Minorities

²³ GLOBALCIT, 2017, see *supra* note 3.

²⁴ For example, in the 1947 Constitution, the Preamble begins with: "We, the people residing in the Socialist Republic of the Union of Burma have throughout history lived in harmony and unity sharing joys and sorrows in weal or woe. The people of the land have endeavoured with perseverance and undaunted courage, for the attainment of independence, displaying throughout their struggles for national liberation against imperialism an intense patriotism, spirit of mutual help and sacrifice and have aspired to Democracy and Socialism".

²⁵ The one possible exception is Article 8(a) which gives the President or Union Government unlimited power to grant citizenship if this is seen as in the interests of the State.

²⁶ International Crisis Group, "Identity Crisis: Ethnicity and Conflict in Myanmar", 2020, provides a useful discussion of the centrality of racial identity in

requirement to renew documentation on a regular basis is used to review citizenship status and can result in members of marginalized groups having their status changed from 'citizen' to 'associate' or to 'naturalised citizen'.³²

If the intention of the 1982 Citizenship Law was to resolve ambiguities around citizenship or avoid statelessness, it has failed. In Rakhine State, the Citizenship Law and its implementation have directly contributed to problematizing the status of the Muslim population. Because of the different categories of citizenship, the question of whether or not this population has a history in Myanmar pre-dating the colonial period and can claim *taing-yin-tha* status has become a matter of vital importance in determining their status.³³ Rather than resolving their situation, recognising the existence of a connection with Myanmar and building on their pre-1982 participation in society to promote integration, the law and successive documentation procedures have contributed to keeping this population in an indeterminate status and fuelled inter-communal violence.

At the individual level, omissions in the law have also led to problems with accessing citizenship. In particular, the law and associated procedures assume that the identity and citizenship status of both parents will always be known and documented. This assumption creates problems in cases where one or both parents are unknown or undocumented.³⁴ The documentation system has also proved unwieldy when it comes to dealing with migrants and children born abroad.³⁵

6. Conclusion and Proposed Changes

Discussions of the situation of the Muslims in northern Rakhine who identify as Rohingya often highlight the key role that the Citizenship Law has played in their marginalization. Such observations have led to the accusation that the intent of the citizenship law was discriminatory and even genocidal. The forgoing sections have attempted to suggest some alternative ways of thinking about the purposes of the Citizenship Law, in particular the ways that it fits into nation-building narratives and engages discussions of (real and perceived) colonial wrongs. It is not necessary to assume that the law had a sinister purpose in order to acknowledge its unfortunate effects, including the institutionalization of discrimination, the creation and perpetuation of statelessness, and facilitating the rise of ethnic nationalism. On the other hand, thinking critically about the purposes of the law and the ways in which it has contributed to shaping popular attitudes and ideas of national identity may be helpful when considering reform. The emotional and ideological resistance to changing the citizenship system, and especially to pressure from international actors to change the law, makes more sense when the law is seen as part of process of nation-building and as a response to colonialism. Defending the law becomes a matter of national sovereignty and evidence of political intervention. This approach may also suggest commonalities between Myanmar's response and those of other countries which similarly experienced colonialism. On this basis, Myanmar could draw inspiration from other countries that have found ways to

in Myanmar", 2016; SEDF and Justice Base, "Access to Documentation and Risk of Statelessness", 2017.

³² SEDF, 2017; SEDF and Justice Base, 2016, see *supra* note 31.

³³ On why *taing-yin-tha* status has become the key debate and the problems with determining such status, which go beyond questions of historical evidence, see Cheesman, 2017 see *supra* note 13.

³⁴ Norwegian Refugee Council *et al.*, "A Gender Analysis of the Right to a Nationality in Myanmar", 2018 discusses this issue in the context of the specific impact it has on women.

³⁵ This issue has not received much attention in research, although it is sometimes briefly mentioned for example in Norwegian Refugee Council *et al.*, 2018, *ibid*. However, in 2017 the issue was raised in the Pyithu Hluttaw. Htoo Thant, "Illegal Migrants' Children to Get Birth Certificates", *The Myanmar Times*, 22 June 2017; "This Week in Parliament (June 19-23)", *The Irrawaddy*, 24 June 2017.

strike a balance between reasserting native control and inclusiveness.

Whatever its original purpose, strong arguments can and should be made in favour of reforming Myanmar's Citizenship Law. In the nearly 40 years since the 1982 Citizenship Law was adopted, the political and social situation in both Myanmar and the world have changed dramatically. Ideas and assumptions about citizenship and belonging, the relationship between citizen and state, national, sub-national, and personal identities and how these may relate and overlap, which seemed reasonable in 1982, do not necessarily make sense in 2020. To take only one example, in 1982 Myanmar was isolated internationally, and this was reflected in an inward-looking Citizenship Law which sought to create a closed citizen body and anticipated the withering away of ties between Myanmar citizens and their relations in other countries. In 2020, isolation is no longer seen as either necessary or desirable. Both outward and inward migration are more common, and developments in communications technology have made maintaining contact with friends, family and business connections around the world an easier prospect. It is only to be expected in this environment that the number of marriages between Myanmar citizens and non-citizens would increase, along with the number of children born abroad, who may have mixed identities. The current Citizenship Law is ill-equipped to handle such a population and defaults to excluding or marginalizing them.

With this in mind, the following are suggested as urgent reforms of the 1982 Law. The proposals aim to take a pragmatic approach, recognising both the problematic character of the Law and the ongoing resonance of certain provisions. These reforms would benefit not a particular community, but all those who identify as part of Myanmar's community.

- 1) Remove distinctions between 'citizens', 'associate citizens', and 'naturalized citizens' with regard to rights, the transmission of citizenship, and (ideally) grounds for deprivation of citizenship. This would involve: deleting Articles 30(c) and 53(c), which permit the President or Union Government to restrict the rights of 'associate' and 'naturalized citizens'; amend existing laws that make distinctions based on citizenship status; amending Articles 7 and 43 on transmission of citizenship; and deleting Articles 35 and 58, which provide additional grounds for deprivation of 'associate' and 'naturalized citizenship'.
- 2) Reintroduce a right to naturalisation after a fixed period of residence. This would reflect the move away from isolationism and could help promote openness to the idea of an evolving national identity and citizen body. It could also be a tool for reducing statelessness by providing a route by which stateless persons can acquire citizenship.
- 3) Provide explicitly that a child one of whose parents is a citizen of any category is a 'citizen', even if the identity or citizenship status of the other parent is unknown or they are stateless. This change would not allow any child who is not already eligible for citizenship of some category to acquire citizenship. However, it ensures that children are not excluded simply because of documentation issues or because the identity or citizenship status of one parent is unknown or uncertain. At the same time, by providing these children with 'citizenship', the reform would speed up the move towards creating a single citizenship status.

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