



# Navigating with a Faulty Map

*Access to Citizenship Documents  
and Citizenship in Myanmar*

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## Field Research:

Field research in Southeast Myanmar was led and conducted by six Burmese researchers. Field research in Rakhine was led and conducted by a Burmese Rohingya researcher. Without their efforts, this report would not have been possible. While their names do not appear in this report, they are its true authors. **Additional field research by Victoria Larroche**

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This October 2021 report is based on legal and qualitative research conducted in Myanmar between 2017 and 2020. The research focuses on experiences of arbitrariness and discrimination in accessing citizenship documents in Myanmar during this period. Since the research was conducted, the situation in Myanmar has changed dramatically. At this critical time in Myanmar, in the aftermath of the February 2021 military coup d'état, important conversations have opened up about equality and inclusion in a future Myanmar. This report presents the findings from the research to invite reflection on the impact of the current citizenship framework on people across Myanmar. It has been drafted with the Myanmar peoples' struggle for peace and justice in mind, in the hope that it will contribute in a small way towards re-imagining a more equal and inclusive future.



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# Executive summary

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## & recommendations

**This report is structured in three parts. The Executive Summary and Recommendations provides an overview of the report as a whole offering recommendations which have been drafted with the objective of supporting efforts to reform and improve law, policy and practice. Part one provides the reader with an overview of the issues and research process, as well as the context and historical background of the situation covered. It also provides an overview of profiles most at risk of discrimination and exclusion and looks at some of the fundamental challenges related to citizenship and access to documentation. Part Two provides an overview of the legal framework – the law and policy context as well as relevant international obligations of Myanmar. Part Three, which is the core of the report, presents the field research findings, providing a deeper overview of the manner in which discrimination, and the intersection of different types of discrimination, impacts those who possess certain characteristics. In doing so, it takes a closer look at the specific challenges to accessing documentation and citizenship, which were identified through the research. This part also looks at the impact and mutually reinforcing relationship between lack of documentation and/or citizenship, and access to other human rights.**

This report analyses the administrative challenges of accessing citizenship documents in Myanmar, in particular for minority groups. In Myanmar, a significant proportion of the population lack access to the documents that would facilitate access to the services and rights they should be entitled to. As such, they suffer from a deficit of rights and are at risk of statelessness. The research findings indicate that people who fit specific demographic profiles were more likely to face challenges in accessing documentation. They point to significant issues of discrimination, arbitrariness and corruption within the administrative system.

This report assesses Myanmar's 1982 Citizenship Law, and the manner in which it has been implemented, against international standards. It finds it to be discriminatory and unnecessarily complex in the multi-tiered and hierarchical citizenship scheme it offers. As it stands, the law privileges recognised ethnic groups, disadvantages unrecognised groups and racially discriminates in the acquisition of nationality; it falls short of Myanmar's obligations under the Convention on the Rights of the Child; it considers being 'of unsound mind' an adequate basis for the denial of citizenship; and, while not directly discriminating on the grounds of gender, it has a gender discriminatory-

impact in its implementation. Further, the category of 'naturalised' citizen is applied to people who should acquire citizenship by right, resulting in discrimination and exclusion of large sections of the population of the country. The law encourages reactionary and arbitrary decision making by penalising decision makers for wrongfully attributing citizenship, but not for wrongfully denying citizenship. The Law also fails to impose time limits for decision making and lacks a mechanism for the review or appeal of administrative decisions.

The research identifies groups of people who are at heightened risk of discrimination and exclusion. These include ethnic and religious minorities, internally displaced persons (IDPs) and former IDPs, returning refugees, those who have migrated within the country, people living in conflict areas, the children of mixed marriages, persons whose parents or grandparents lack documentation and disabled persons. The research found that those who have one or more of these characteristics are at increased risk of discrimination, exclusion and in extreme cases, even statelessness.

This report identifies the following as the main challenges faced by persons in accessing documentation: discrimination in the implementation of the law; arbitrariness and lack of effective oversight; the abuse of discretion, excessive evidentiary requirements; lack of accessibility, data entry problems; bribery and delayed decision making. Importantly, these challenges are interlinked and overlapping, with discrimination and arbitrariness being a constant and underlying theme. Of particular relevance is intersectional discrimination, where an individual suffers increased discrimination due to a variety of interconnected discriminatory factors such as eth-

nicity, gender, disability etc. The report briefly looks at the impact of the arbitrary and discriminatory denial of documentation on individuals, families and communities. It finds that the disadvantages faced by affected persons impact many aspects of their lives, including education, livelihood, ownership of property, travel and healthcare. Many interviewees spoke of a significant emotional and psychological impact, both because of the lack of documentation itself and the lack of clarity and closure relating to the uncertainty and indefiniteness of the documentation procedures.

Based on the research findings, which point to a system which is unfair, ineffective and inefficient, the research team puts forward the following recommendations for consideration. These recommendations are made with full cognisance of the current political crisis in Myanmar, as a result of the military coup of February 2021. We stand in solidarity with the people of Myanmar and do not recognise the legitimacy of the military as the government of Myanmar. Our research is shared and recommendations are made with a future Myanmar in mind, in which the National Unity Government or a civilian government are in a position to make changes to the citizenship framework and civil registration and documentation procedures. We hope that the recommendations will offer some guidance on the devastating impact of Myanmar's current civil documentation system, and the steps that can be taken to replace it with a fairer, more inclusive system. Some recommendations also apply to international actors, states in which refugees from Myanmar currently live, donor states and relevant UN and international organisations, who have protection and human rights obligations towards the people of Myanmar.

## Recommendations

**1 In order to achieve a modern, fair and efficient citizenship and civil documentation system which complies with international standards, a civilian government of Myanmar should repeal and replace the 1982 Citizenship Law and its procedures. A new citizenship framework should be developed through a consultation process which is genuinely inclusive and reflects Myanmar's diverse population. In particular:**

**A.** A new law should reflect the prohibition of discrimination on all grounds including ethnicity, disability and gender.

**B.** The multi-tiered and discriminatory system of citizenship envisaged by the 1982 law should be dismantled and replaced with a fair and inclusive system that adheres to international standards (including the right to nationality and prohibition of discrimination and arbitrariness) and reflects the diversity of Myanmar. Further, there should be no difference in the quality and security of citizenship on the basis of how citizenship was acquired.

**C.** Naturalisation should be made available to foreigners and stateless persons who demonstrate genuine linkages to the country through residence, marriage, adoption or protection status, through a fair and transparent procedure that adheres to international standards.



## 2 A civilian government of Myanmar should address the multiple challenges related to the discriminatory and arbitrary implementation of the law, which undermines the rule of law, public faith in the legal system and social cohesion. In particular:

## 3 A civilian government of Myanmar should strengthen its adherence with international standards. In particular:

**D.** Clear safeguards against statelessness should be introduced, ensuring that all children born in the territory who would otherwise be stateless are recognised as citizens of Myanmar.

**E.** The law should guarantee due process, impose reasonable time limits for decision making and ensure the right of review and appeal of administrative decisions. The law should incentivise good decision making, and decision makers should be obligated to provide written reasons for their decisions.

**F.** The grounds for loss and revocation of citizenship should be revised to protect against discrimination and arbitrariness and to bring them in line with international standards.<sup>1</sup> In no circumstances should children lose their citizenship because their parents' citizenship is lost or revoked.

**A.** All administrative procedures should be published and made available in languages understood by the applicants, to ensure that the requirements are known to all applicants, and to protect against discrepancies in the evidence required of different applicants.

**B.** All public servants should receive training and ongoing professional development and support in maintaining administrative and procedural practices and standards, including in relation to non-discrimination, transparency, accountability and anti-corruption.

**C.** The evidentiary burden on applicants should be reduced and shared with the state. Authorities should have greater discretion to accept alternative evidence in the absence of the listed documents, but less discretion to increase the evidentiary burden on applicants.

**D.** Civil registration should be more accessible and streamlined, including through minimising the number of visits to government offices and operating mobile clinics in remote areas.

**E.** Public servants should adhere to the highest professional standards when inputting data into official forms and applicants should not be penalised for administrative errors in data entry or translation.

**A.** Myanmar should implement all relevant recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination Against Women.

**B.** Myanmar should accede to the core human rights treaties (including the International Covenant on Civil and Political Rights) as well as the 1954 Convention Relating to the Status of Stateless Persons (CRSSP) and the 1961 Convention on the Reduction of Statelessness.

**C.** Myanmar should accept and implement recommendations on protecting the right to nationality and eradicating statelessness, of relevant UN Special Rapporteurs, Independent Commissions and Mechanisms and human rights organisations.

<sup>1</sup> Institute on Statelessness and Inclusion, 'Principles on Deprivation of Nationality as a National Security Measure,' (2020), available at: <https://files.institutesi.org/PRINCIPLES.pdf>.



**4 A civilian government of Myanmar should take special measures to address the needs and vulnerabilities of disadvantaged groups. In particular:**



**5 All relevant international actors should support Myanmar's civilian government and act to protect Myanmar's people from the arbitrary and discriminatory actions of the Military regime. This requires *inter alia*:**



**A.** Ethnic and religious data should be removed from all ID and registration documents to avoid discriminatory treatment. Ethnic and religious data in state registration processes should be provided on a voluntary basis that allows for self-identification.

**B.** Returning refugees and IDPs should be assisted in the acquisition of citizenship and civil documents. In particular, any civil documentation obtained by returning refugees and migrants in their previous countries of residence (or birth), should be recognised by Myanmar and serve as the basis for their civil documentation in Myanmar.

**C.** The current system of providing National Verification Cards to refugee returnees has proved coercive and divisive and should be abandoned. ID documents on return for refugees should be provided on a voluntary basis and in consultation with returnee communities.

**D.** Steps should be taken to facilitate access to documentation for all disabled persons. This includes increasing the accessibility of procedures and engaging in awareness-raising to counter negative stereotypes and encourage families to document disabled persons.

**E.** In conflict areas and areas that are not under the full authority of the central state, efforts should be made to ensure documents and evidence provided by local leaders and authorities are recognised in future applications for citizenship documents.

**A.** Recognise that the arbitrary and discriminatory deprivation of citizenship has been part of a wider strategy of persecution adopted by the military regime, and accordingly, make allowances to protect and provide legal status to undocumented refugees and migrants from Myanmar.

**B.** Providing legal status and civil documentation to all refugees and migrants from Myanmar, both to counter the discriminatory deprivation of documents and legal status, and to facilitate their dignified return when the situation allows. This will help to guarantee the right to nationality and other rights of returning refugees.

**C.** Desist from providing technical or monetary support to the military regime to implement digital ID systems, or in furtherance of the current, discriminatory and arbitrary civil documentation system until a fairer system is in place.

**D.** Recognise the civil documents issued by different actors in Myanmar, including the military regime and authorities that are not aligned with military Junta in autonomous zones, to minimise the risk of statelessness going forward.



# Part 1

## INTRODUCTION

**We are citizens of Myanmar.  
We were born in Myanmar.  
All people should be equal.<sup>2</sup>**

This report analyses the administrative challenges minorities face in accessing citizenship documents and citizenship. The main challenges found through the research were the discriminatory and arbitrary implementation of the law, a lack of effective administrative and judicial remedial avenues, excessive evidentiary requirements being imposed on applicants, challenges linked to inaccurate data entry, difficulties in accessing the documentation procedure, corruption and undue delays in decision making.

Those who were interviewed about their struggles to obtain citizenship documents for this research included some who had been explicitly excluded by the citizenship framework, and others who were excluded despite meeting the citizenship criteria under Myanmar's current nationality law. In practice, both groups and their families were facing significant challenges in obtaining national identity documents and being recognised as citizens. Their experiences revealed how various disadvantages and barriers combined to undermine their equal access to citizenship documentation.

### Profiles at Risk

Some people are more vulnerable than others to being arbitrarily denied documentation, thus heightening their risk of statelessness. These include:

- Ethno-religious minority groups who are not included in the list of 135 national ethnic groups.
- Non-combatants and members of Ethnic Armed Organisations (EAOs) living in conflict areas and cease-fire areas.
- IDPs and IDP returnees.
- Former refugees who have returned to Myanmar from Thailand, Bangladesh and elsewhere.
- The children of inter-ethnic marriages and inter-religious marriages
- Persons who do not possess all required supporting documents to apply for nationality (including those whose parents do/did not have the required identity documents and those who do not have access to household lists.)
- Disabled persons including those with mental disabilities
- Women and girls in situations of vulnerability.

<sup>2</sup> Quotes from participants at Focus Group Discussion in Tanintharyi, August 2017.

<sup>3</sup> In 1989, the ruling military changed the name of the country from 'Burma' to 'Myanmar' and in turn many place names. These place names continue to be used interchangeably within Myanmar. For the purposes of this report, the official government terminology will be used.



The lack of civil documentation is a widescale and systemic problem in Myanmar. According to the 2014 Union of Myanmar census, at least 11,000,207 persons over the age of ten did not have a valid identification document (this amounts to 27.3% of the total population over the age of ten).<sup>4</sup> This must not be interpreted to mean that the citizenship of all these people is under question. However, such large-scale lack of documentation inevitably has an impact on the citizenship rights of some – particularly those belonging to minorities, and/or who are likely to face discrimination on multiple grounds such as disability, socio-economic disadvantage, displacement and gender. While the lack of resources and administrative reach to the most remote areas are contributing factors to the lack of documents, this situation is also indicative of the discrepancy between the current legal framework (and its implementation) and society's needs in modern Myanmar. Myanmar is a multi-ethnic, multi-religious society. The country has a long history of large-scale migration (within the country and to and from the country), including forced migration and, in some cases, return. This demographic reality is neither reflected in nor catered to by the inadequate existing law and

policy framework. For example, Myanmar does not recognise the birth certificates of the children of Myanmar refugees born in Thailand, undermining their access to citizenship upon 'return' to Myanmar.<sup>5</sup> Since 2017, more than three quarters of a million Rohingyas from Myanmar have been forced across the border into Bangladesh, their citizenship status on return remains uncertain. In addition, since 2021, people from Myanmar fleeing conflict and political persecution in the struggle against military rule have been forced out into neighbouring countries, leaving further uncertainties regarding their futures in Myanmar.

The consensus of existing research, and the findings from the field research undertaken for this report all point to a system based on complex, confusing, arbitrary and discriminatory rules. This system has been implemented with varying degrees of arbitrariness, inefficiency, corruption and discrimination. One of the most extreme and harmful consequences of the failings of the system is statelessness, which impacts an unknown number of individuals across different ethnic groups in the country.

## 1.1 Methodology

This report draws on desk research, assessment of available data, information provided by counselling and paralegal service providers in Myanmar, and interviews with affected persons. Additionally, interviews and focus group discussions were held with key stakeholders including NGO staff, government officials and researchers. Interviews and focus groups were conducted by in-country researchers working on these issues at the community level in Myanmar, or were from the affected communities themselves. In all, 34 individuals were interviewed, and a further 34 persons participated in discussions. Due to the sensitivities of issues relating to citizenship access in Myanmar, the researchers and interviewees who were invaluable in guiding and developing this research remain anonymous. Interviews were conducted between 2017 and 2020. They were conducted in Kayah State, Mon State, Yangon and Tanintharyi Regions to provide a snapshot of access to citizenship documentation amongst mixed majority/minority populations in both urban and rural settings. These areas were selected as they

were broadly indicative of the situation in other parts of Myanmar. Further interviews were conducted in the Sittwe region of Rakhine State. This area was selected since populations there affected by forced internal displacement are amongst those with the lowest levels of access to citizenship documents in Myanmar. Hence, the Sittwe research provides a snapshot of a situation at the more extreme end of the spectrum of exclusions. Together these areas provide a rounded but not complete picture of the civil documentation landscape in Myanmar. Further research may find different patterns of discrimination based on the local conditions and prevalent challenges at the time of research.

In order to capture a range of experiences, interviewees were selected from a range of demographic profiles. These included various religious backgrounds: Buddhists, Christian, Hindus and Muslims; and various ethnic backgrounds: including Chinese, Gurkha, Kayah, Kayin, Mon, Pa'O, Pathi, Rohingya, Shan, Tamil and persons of mixed ethnic backgrounds. Finally,

<sup>4</sup> 2014 Myanmar Housing and Population Census, The Union Report, 207, available at: <https://reliefweb.int/report/myanmar/2014-myanmar-population-and-housing-census-union-report-census-report-volume-2-enmy>.

<sup>5</sup> Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, 'A Gender Analysis of the Right to Nationality in Myanmar', (2018), available at <https://www.nrc.no/resources/reports/a-gender-analysis-of-the-right-to-a-nationality-in-myanmar/>.

a few Bamar individuals were interviewed, who, despite being from the majority ethnic group, also faced some challenges in accessing documentation. Here we have used the ethnic terms that were used by interviewees to describe themselves. Sometimes they were recorded on state documents under terms imposed by the state authorities. This included the derogatory term “Bengali” which has been applied to Rohingyas, Muslims and persons of mixed ethnic backgrounds. Further interviews were conducted with IDPs, refugee returnees, internal migrants and persons with disabilities.

There were various limitations to the field research. The sample group was relatively small and involved in-depth interviews. In-depth interviews can establish a clear picture of the barriers to accessing citizenship documents. They can also provide rich insights into different forms of discrimination. However, they are unable to fully establish broad patterns of discrimination across the country. Further, since the interviews were carried out in a complex and sensitive environment, the selection of interviewees had to incorporate a number of pragmatic factors including defensive responses from government officials, risks to interviewees and limited access to persons who fitted some at risk profiles. For ethical reasons, some groups affected by a lack of access to citizenship documents could not be interviewed. This included children and persons with other vulnerabilities, such as those with mental disabilities.

## 1.2 Background and Context

Myanmar is an extremely diverse country, home to many ethnic, linguistic and religious identities, and is geographically located at the meeting point of South Asia, Southeast Asia and East Asia.<sup>6</sup> The majority ethnic group in Myanmar are the Bamar, who historically inhabited the central regions of the country. Additionally, there are mixed populations and hundreds of minority groups across the country. Groups recognised by the state fall under eight broad categories: Bamar, Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan. Some of the larger groups, make up majority populations in border and highland areas. Not all minorities are recognised by the state as

‘ethnic nationalities’ belonging to Myanmar and thus not all are entitled to automatic citizenship. In total there are 135 recognised groups that were listed by the state in 1990. This list does not provide and a full or accurate picture of the demographic make-up of self-identified groups or the mixed and heterogeneous populations in Myanmar.

Since obtaining independence in 1948, Myanmar has increasingly linked ethnic identity with citizenship. The military seized power in 1962, and entrenched exclusive and hierarchical forms of citizenship. Military rule lasted more than 50 years and was characterised by ongoing conflict, and the oppression of minorities and political opposition. Refugees have crossed all of Myanmar’s borders over decades, fleeing to Bangladesh, China, India, Malaysia and Thailand. Many have also been internally displaced.

In 2008, a new constitution was enacted as part of the military’s ‘Roadmap to Democracy.’ The military government embarked on a process of transition towards sharing power with an ostensibly civilian government.<sup>7</sup> The Constitution ensured the military would retain 25% of parliamentary seats, the ability to block constitutional reforms and the power to appoint certain ministers.<sup>8</sup> In 2015, the National League for Democracy (NLD) headed by Aung San Suu Kyi, won by a landslide in parliamentary elections. Aung San Suu Kyi, constitutionally barred from being President, was appointed as the country’s de facto leader.<sup>9</sup> Violations of human rights and humanitarian law remained widespread during this “transitional” period.<sup>10</sup> Military campaigns continued to be waged against ethnic and religious minorities. Between 2012 and 2018 more than one million Rohingya, Kaman and other ethnic groups from Rakhine State, were expelled from their lands and resulted in situations of protracted displacement within Myanmar, in neighbouring Bangladesh and beyond. Meanwhile, violent conflict and military abuses forcibly displaced populations in Kachin State and Northern Shan State.

In the parliamentary elections of 2020, the NLD won another landslide victory.<sup>11</sup> Then, on 1 February 2021, a group of leading generals, alleging fraudulent elections, seized power in a *coup d’état* and the country reverted to absolute military rule under the ‘State Administrative Council’ (SAC). Civilian political leaders were detained, and martial law was instated. Curfews and restrictions on the internet and other communications were imposed.<sup>12</sup> In response to the coup, a Civil Disobedience Movement (CDM)

<sup>6</sup> Global Citizenship Observatory, ‘Report on Citizenship Law: Myanmar,’ (2017), available at: [http://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS\\_GLOBALCIT\\_CR\\_2017\\_14.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS_GLOBALCIT_CR_2017_14.pdf?sequence=1).

<sup>7</sup> Human Rights Watch, ‘Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar,’ (2019), available at: [https://www.hrw.org/sites/default/files/report\\_pdf/myanmar0119\\_web3.pdf](https://www.hrw.org/sites/default/files/report_pdf/myanmar0119_web3.pdf).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Amnesty International and International Federation for Human Rights, ‘Myanmar: UN General Assembly resolution still needed in light of ongoing serious human rights situation,’ (2015), available at: <https://www.amnesty.org/download/Documents/ASA1628742015ENGLISH.pdf>.

<sup>11</sup> Russell Goldman, ‘Myanmar’s Coup and Violence, Explained,’ New York Times, (29 May 2021), available at: <https://www.nytimes.com/article/myanmar-news-protests-coup.html>.

<sup>12</sup> *Ibid.*

gained momentum across the country and conflicts between Ethnic Armed Organisations (EAOs) and the Myanmar military were reignited. New armed groups were also formed.<sup>13</sup> Resistance has been met with harsh repression. Thousands of protesters, journalists and elected officials have been detained or killed.<sup>14</sup> In late July 2021, the Assistance Association for Political Prisoners (AAPP) reported over 900 confirmed deaths and over 5000 people detained. 65 people have been sentenced to death, including two children and 39 people sentenced in absentia.<sup>15</sup> Many people have fled their homes. According to the UN, about 175,000 people had been displaced as of June 2021.<sup>16</sup> In response to the seizure of power by SAC, a group of ousted elected law makers formed the National Unity Government (NUG) – a government in exile. The NUG has sought international recognition as the government of Myanmar.

Against this background of military rule, persecution, conflict and forced displacement, many people across Myanmar have struggled to access citizenship documents or maintain proof of their right to citizenship. Others have been deliberately excluded from citizenship as part of a broader process of persecution that began under Ne Win's military Junta. The stated aim of Ne Win's 1982 Citizenship Law was to create a multi-tiered system, which denied the full benefits of citizenship to persons whose ancestors were deemed to have settled in Myanmar after the First Anglo-Burmese War (1824–26).<sup>17</sup> The idea behind this was the notion that only pre-colonial communities were authentic Burmese citizens. This approach did not reflect the demographic make-up of the population and did not effectively incorporate the historically mixed borderland communities. The 1982 Citizenship Law contains a rigid entrenchment of ethnic identities, adopting an essentialist understanding of race and ethnicity in Myanmar, which fails to capture the demographic reality of Myanmar's mixed and heterogeneous

communities. The citizenship framework has instead been characterised by the "othering" and exclusion of specific ethnic and religious groups (particularly persons of South Asian or Chinese descent, who are Hindu, Muslim, Sikh etc.)<sup>19</sup> They are considered, often wrongly, to be an inheritance of Burma's colonial past as a province of British India.<sup>20</sup>

Religious discrimination in Myanmar intersects and occurs alongside ethnic, racial and gender discrimination. Those aligned with a minority religion have, in different contexts, been subjected to discrimination and harassment.<sup>20</sup> Likewise, Myanmar Muslims across the country have faced discrimination and face some of the most significant barriers to securing citizenship. The historic systematic division, discrimination and abuse of minority groups in Myanmar have included the destruction of religious buildings, forced relocation, land confiscation, prohibitive rules and orders, displacement, direct threats, killing, and the denial of the right to citizenship.<sup>21</sup> The citizenship framework has contributed to stymying a more inclusive civic national identity, which would better reflect the fluid ethnic, linguistic and religious diversity of Myanmar,<sup>22</sup> and would better adhere to international law principles of equality and non-discrimination.

In 2012, the Ministry of Labour Immigration and Population (MoLIP) proposed the establishment of an e-ID system to replace the current paper-based system.<sup>23</sup> There has been very little transparency around this process, which is concerning given the potential for digital registration to have significant negative impacts on marginalised groups. In May 2020, the Myanmar parliament approved a €33 million, 27-year and interest free loan from Austria's Unicredit Bank<sup>24</sup> to build the e-ID system, projected to be completed within two years.<sup>25</sup> To carry out the project MoLIP collaborated with Austrian company 'OeSD', and French company 'Thales', specialists in

<sup>13</sup> Rebecca Ratcliffe, 'Rise of armed civilian groups in Myanmar fuels fears of civil war,' The Guardian, (1 June 2021), available at: <https://www.theguardian.com/world/2021/jun/01/rise-of-armed-civilian-groups-in-myanmar-fuels-fears-of-civil-war>.

<sup>14</sup> Rebecca Ratcliffe, 'Myanmar junta frees more than 2,000 anti-coup protesters,' The Guardian, (30 June 2021), available at: <https://www.theguardian.com/world/2021/jun/30/myanmar-junta-frees-more-than-2000-anti-coup-protesters>.

<sup>15</sup> Assistance Association for Political Prisoners, 'Daily Briefing in Relation to the Military Coup,' (29 July 2021), available at: <https://aappb.org/?p=16821>.

<sup>16</sup> UN News, 'Myanmar: Timely support and action by Security Council 'really paramount', says UN Special Envoy,' (18 June 2021), available at: <https://news.un.org/en/story/2021/06/1094322>.

<sup>17</sup> While presenting the law on 8 October 1982 General Ne Win stated that, "[w]e will therefore not give them full citizenship and full rights. Nevertheless, we will extend those rights to a certain extent. We will give them the right to earn according to their work and live a decent life. No more".

<sup>18</sup> Note that the 1982 Law does not establish any nexus between religious affiliation and citizenship. Moreover Article 362 of the 2008 Constitution recognises Islam, Hinduism, Buddhism, Christianity and Animism as existing religions in Myanmar.

<sup>19</sup> Global Citizenship Observatory, 'Report on Citizenship Law: Myanmar,' (2017), available at: [http://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS\\_GLOALCIT\\_CR\\_2017\\_14.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS_GLOALCIT_CR_2017_14.pdf?sequence=1). - Note that the 1982 Law does not establish any nexus between religious affiliation and citizenship. Moreover Article 362 of the 2008 Constitution recognises Islam, Hinduism, Buddhism, Christianity and Animism as existing religions in Myanmar.

<sup>20</sup> Amnesty International, 'The Repression of Ethnic Minority Activists in Myanmar,' (2010), available at: <https://www.amnesty.org/download/Documents/36000/as160012010en.pdf>.

<sup>21</sup> Karen Human Rights Group, 'Foundation of Fear: 25 years of villagers' voices from southeast Myanmar,' (2017), available at: [http://khrg.org/sites/default/files/khrg\\_foundation\\_of\\_fear\\_english\\_full\\_report\\_october\\_2017\\_w2.pdf](http://khrg.org/sites/default/files/khrg_foundation_of_fear_english_full_report_october_2017_w2.pdf).

<sup>22</sup> Thant Myint-U, *The Making of Modern Burma*, (Cambridge University Press 2001).

<sup>23</sup> The World Bank, 'Project Information Document/Integrated Safeguards Data Sheet (PID/ISDS) MM: Digital Myanmar Project (P167978),' (2018), available at: <http://documents1.worldbank.org/curated/pt/393851542862936421/pdf/Concept-Project-Information-Documents-Integrated-Safeguards-Data-Sheet-MM-Digital-Myanmar-Project-P167978.pdf>.

<sup>24</sup> Chan Mya Htwe, 'Myanmar to Receive Austrian Loan for National e-ID System,' Myanmar Times, (28 May 2020), available at: <https://www.mmimes.com/news/myanmar-receive-austrian-loan-national-e-id-system.html>.

<sup>25</sup> The Institute on Statelessness and Inclusion, 'Locked In and Locked Out: the Impact of Digital Identity Systems on Rohingya Populations,' (2020), available at: [https://files.institutesi.org/Locked\\_In\\_Locked\\_Out\\_The\\_Rohingya\\_Briefing\\_Paper.pdf](https://files.institutesi.org/Locked_In_Locked_Out_The_Rohingya_Briefing_Paper.pdf).

digital ID systems, have also engaged with MoLIP, organising workshops with them.<sup>26</sup> The proposed e-ID system would replace all paper-based ID's with e-ID's. One of the key steps to this is the collection of citizen's biometric information, for which a pilot project began in 2016 in Naypyidaw and Mandalay with foreign migrant workers.

In 2020 ISI, in collaboration with the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, published a report which looks at the impact of digital identity systems on Rohingya populations.<sup>27</sup> That report looks at the potential negative implications of digital identification systems implemented under the current citizenship framework. This includes considering: the lack of effective legislative and policy structures in place prior to digitisation to ensure the provision of legal identity is not discriminatory or arbitrary; the danger in having unique identifiers linked to a centralised database / a Single Source of Truth (SSOT) which can make the lives of the stateless and undocumented precarious; and the lack of regulatory frameworks with the private sector dominating the digital ID sector. All these factors make it difficult to ensure 'do no harm' is effectively implemented without significant changes to framework and infrastructure relating to citizenship documentation.<sup>28</sup>

Lack of documentation is not the same as statelessness. There are many citizens in many countries who lack identity documentation. But the lack of documentation can create a risk of statelessness due to the inability to prove eligibility for citizenship. This risk is heightened for visible minorities and displaced persons, whose belonging is more likely to be questioned.

This relates strongly to the reality in Myanmar, with its complex demographic makeup, historical conflicts, legal framework, extensive poverty and low rate of documentation. There are general obstacles faced by the entire population who all encounter delays, corruption and unnecessarily long bureaucratic procedures. However, these general problems are heightened, and new challenges are created, for those who are either from a minority ethnicity or religion and/or of a particular profile. Importantly, the lack of documentation or statelessness of one generation is often inherited by the next generation, creating a situation of intergenerational statelessness.

## 1.3 Statelessness

A stateless person is "not considered as a national by any state under the operation of its law."<sup>29</sup> There are many widely recognised causes of statelessness, including: state succession; lack of documentation; poor administrative procedures; conflicts in laws and the inheritance of statelessness. A closer look at each of them reveals that discrimination often plays a role.<sup>30</sup> So strong is the link between statelessness and discrimination that it has been argued that "statelessness cannot be eradicated unless discriminatory societal attitudes which view some people as less worthy of inclusion than others are comprehensively tackled."<sup>31</sup>

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<sup>26</sup> Ministry of Information (Myanmar), 'E-IDs fundamental to e-governance: U Thein Shwe,' (23 January 2020), available at: <https://www.moi.gov.mm/moi:eng/news/362>.

<sup>27</sup> Institute on Statelessness and Inclusion and E. Tendayi Achiume, 'Locked in and Locked Out: The Impact of Digital Identity Systems on Rohingya Populations,' (2020), available at: [https://files.institutesi.org/Locked\\_In\\_Locked\\_Out\\_The\\_Rohingya\\_Briefing\\_Paper.pdf](https://files.institutesi.org/Locked_In_Locked_Out_The_Rohingya_Briefing_Paper.pdf).

<sup>28</sup> For more information see Institute on Statelessness and Inclusion and E. Tendayi Achiume, 'Locked in and Locked Out: The Impact of Digital Identity Systems on Rohingya Populations,' (2020), available at: [https://files.institutesi.org/Locked\\_In\\_Locked\\_Out\\_The\\_Rohingya\\_Briefing\\_Paper.pdf](https://files.institutesi.org/Locked_In_Locked_Out_The_Rohingya_Briefing_Paper.pdf).

<sup>29</sup> Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 06 June 1960) 360 UNTS 117, available at: [https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf).

<sup>30</sup> Institute on Statelessness and Inclusion, 'The World's Stateless,' (2014), available at: <http://www.institutesi.org/worldsstateless.pdf>.

<sup>31</sup> De Chickera A and Whiteman J, Addressing statelessness through the rights to equality and non-discrimination, in van Waas L and Khanna M (eds), Solving Statelessness, (Wolf Legal Publishers 2016); See also, Minority Rights Group International 'Denial and Denigration: How Racism Feeds Statelessness,' (2017), available at: <http://stories.minorityrights.org/statelessness/>.



## Case study: Excessive Evidentiary Requirements

Hpa-An Township, Kayin or Karen State, has been affected by conflict for decades, becoming a hotspot in 1997, as a result of the war between the Karen National Liberation Army (KNLA) and the Tatmadaw. Researchers, came across four siblings who had all been denied ID cards by the authorities on the basis of them not belonging to one of the 135 national ethnic groups. As a result, MoLIP contended that they should apply at the Township Immigration Office as an immigration officer would need to check and verify their personal data and may require them to submit additional supporting documents.

The siblings, who are now all adults, were the children of a mixed marriage. Their father belongs to the Kayin ethnic group and holds an ID card. Their maternal grandmother was Mon, whereas their maternal grandfather had migrated from India. He was registered as 'Bengali' and held a Foreigner Registration Card (FRC). Their mother was born in Myanmar, is fluent in the Burmese and Karen languages and held a National Registration Card. In the 1990s, when the mother was travelling to Yangon to see one of her daughters, her National Registration Card was ripped apart by a police officer at a checkpoint. She had no copy of her card. However, her younger brother (the uncle of the four siblings) still has his National Registration Card.

One of the siblings has had her application for an ID card pending before the Immigration Township Office since 2016. At the time the immigration officer issued her with a National Verification Card (NVC) – which is issued to those who need to apply for citizenship. Her application was not progressing because of her inability to produce her mother's National Registration Card (which was destroyed at the checkpoint). The siblings have been advised that to receive their own ID cards, their mother will first have to obtain her own. The excessive requirement of documentary evidence, in this case, leaves her stuck in limbo and places her at risk of statelessness.

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<sup>32</sup> 'Tatmadaw' is the official name of the Myanmar Armed Forces.



# Part 2

## LEGAL FRAMEWORK

This part of the report provides an overview of the legal framework relating to nationality and statelessness in Myanmar. It primarily focuses on the current framework under the 1982 Citizenship Law. However, it begins with a look at the previous framework under the 1947 Constitution and 1948 Union Citizenship Acts. This section is based on a direct textual analysis of the law as well as a wider literature review and interviews with relevant experts.

### 2.1 Legal History: The 1947/48 Framework

The 1947 Constitution of the Union of Burma recognised citizenship based on a mixed system of descent (*jus sanguinis*) and birth on the territory (*jus soli*). According to Article 11 of the Constitution, the following were citizens of the newly independent Burma:

PROVISIONS	ANALYSIS
<p><b>"1.</b> Every person, both of whose parents belong or belonged to any of the indigenous races of Burma;"</p>	<p><i>If both parents are 'Indigenous', the child is a citizen, regardless of where he or she is born.</i></p>
<p><b>"2.</b> Every person born in any of the territories included within the Union, at least one of whose grandparents belong or belonged to any of the indigenous races of Burma;"</p>	<p><i>If at least one grandparent is Indigenous, the child is a citizen, if born in Burma.</i></p>
<p><b>"3.</b> Every person born in any of the territories included within the Union, of parents both of whom are, or if they had been alive at the commencement of this Constitution would have been, citizens of the Union;"</p>	<p><i>If the child has no Indigenous parents or grandparents, but if the parents would be considered citizens, the child is a citizen, if born in Burma. This provision therefore, in effect, retroactively applies the jus sanguinis principle to those born before Independence.</i></p>
<p><b>"4.</b> Every person who was born in any of the territories which at the time of his birth was included within His Britannic Majesty's dominions and who has resided in any of the territories included within the Union for a period of not less than eight years in the ten years immediately preceding the 1st January 1942 and who intends to reside permanently therein and who signifies his election of citizenship of the Union in the manner and within the time prescribed by law."</p>	<p><i>A child born anywhere in the British empire, who has lived in Burma for eight years, in the 10 years preceding 1942, and who elects to be a citizen in compliance with the law.</i></p>

The 1948 Union Citizenship Act and 1948 Union Citizenship Election Act provide a more detailed framework to the above Constitutional Provisions. Accordingly, Section 4 of the 1948 Union Citizenship Act recognises the citizenship of anyone who:

- a. Is a citizen according to Sections 11 (i, ii & iii) of the 1947 Constitution;
- b. According to Section 11(iv) of the 1947 Constitution elected to be a citizen (in compliance with the 1948 Union Citizenship Election Act);
- c. Has been naturalised; or
- d. Has otherwise been granted citizenship under the 1947 Union Citizenship Act.

Section 4(2) also states that *“any person descended from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home and whose parents and himself were born in any of such territories shall be deemed to be a citizen of the Union.”*

Section 5 sets out that the following people, born after the commencement of the 1947 Constitution, automatically acquire citizenship at birth:

- a. *“A child born in the Union one of whose parents is a citizen”*; (if the father is a foreigner, the child must declare single citizenship of Burma by the time he or she is 19);
- b. *“A child born outside the Union of a father who is a citizen”*; (but the birth must be registered as prescribed by the Act); and
- c. *“A child born outside the Union of a parent who, being a citizen, was at the time of child’s birth in the service of the Union”* (with the same proviso as applies to section 5.a).

Section 3 of the 1948 Union Citizenship Act defined the term *“indigenous races”* which appears in the 1947 Constitution. Accordingly, the *“Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A.D. (1185 B.E.)”* were indigenous to the country.<sup>33</sup> Thus, the 1948 Union Citizenship Act specified eight main ethnic groups (or “national races”) in the country but did not provide further guidance (other than the requirement of permanent residence prior to 1823) on which other ethnic groups, or sub-ethnic groups, would be considered as indigenous. The 1948 Union Citizenship Act also provided for naturalisation on

the basis of five years of residence in the country (three years for those who served in the armed forces) and other criteria such as marriage.<sup>34</sup>

The 1948 nationality framework was similar to the nationality laws of many other countries in the same period. While it had some shortcomings, it was largely inclusive in its attempt to strike a balance between:

- a. Recognising the place of indigenous groups in the country;
- b. Protecting the right to automatic acquisition of nationality of all persons who were not considered to be indigenous, but were able to demonstrate sufficient links to the country; and
- c. Implementing a discretionary naturalisation process for all non-nationals who fulfilled certain criteria (such as marriage to a citizen or residence on the territory).

## 2.2 The 1982 Citizenship Law

The 1982 Citizenship Law and its procedures,<sup>35</sup> passed during entrenched military rule in Myanmar under General Ne Win, repealed the 1948 Union Citizenship Act and the 1948 Union Citizenship Election Act.

Most significantly:

- a. The 1982 Citizenship Law further entrenched and privileged the place of recognised ethnic groups as the foremost citizens of the country. As such, members of state-recognised indigenous ethnic groups enjoy automatic acquisition of citizenship, a higher quality of citizenship with more rights attached and a more secure citizenship status, with fewer grounds for loss or revocation.
- b. By contrast, the citizenship of groups who were not considered to be indigenous, but who nonetheless were able to demonstrate sufficient links to the country, was downgraded from automatic acquisition under the previous framework to a discretionary ‘naturalisation’ process. The quality and security of citizenship of this group was also made inferior to that of the recognised ethnic groups.

<sup>33</sup> The 1948 Union Citizenship Act was written before the official renaming of various areas in Myanmar. In this quote from the Act, ‘Arakanese’ refers to the officially re-named Rakhine ethnic group and ‘Karen’ refers to the officially re-named Kayin ethnic group.

<sup>34</sup> Union Citizenship Act (No. LXVI of 1948) Articles 7(1) and 13, available at: <https://data.globalcit.eu/NationalDB/docs/1948%20Union%20Citizenship%20Act%20%5BENG%5D.pdf>.

<sup>35</sup> The 1982 Law is supplemented by three procedural documents: The Socialist Republic of the Union of Myanmar Councils of Ministers, Procedures Relating to Myanmar Citizenship Law: Procedures Relating to Citizenship, Notification 13/83, September 20, 1983; The Socialist Republic of the Union of Myanmar Councils of Ministers, Procedures Relating to Myanmar Citizenship Law: Procedures Relating to Associate Citizenship, Notification 14/83, September 20, 1983; and The Socialist Republic of the Union of Myanmar Councils of Ministers, Procedures Relating to Myanmar Citizenship Law: Procedures Relating to Naturalised Citizenship, Notification 15/83, September 20, 1983.



- c. Foreigners who can or could demonstrate a connection to Myanmar through residence or marriage no longer had a pathway to naturalisation.

The 1982 Citizenship Law does also state that those who were citizens when it came into force shall remain citizens.<sup>36</sup> This is qualified with the statement that *"action however, shall, be taken under section 18 for infringement of the provisions of that section."*<sup>37</sup> It is thus evident that the drafters of the law viewed the claim to citizenship by certain sections of society with suspicion. Resultantly, this provision, which should have mitigated some of the negative impacts of the narrowing down of the law and avenues for citizenship, was never fully implemented. Due to lack of documentation in the decades following independence, amongst other factors, the new identity documents and documentation processes based on the 1982 Citizenship Law, which were rolled out by the State Law and Order Restoration Council (SLORC) military junta from 1989 onwards, resulted in many people who were entitled to citizenship under the 1948 framework not being recognised as citizens under the 1982 Citizenship Law.<sup>38</sup>

In addition to narrowing down the avenues to citizenship, the 1982 Citizenship Law also established a multi-tiered, hierarchical citizenship structure. Section 2 of the 1982 Citizenship Law defines three categories of citizens: 'citizens', 'associate citizens' and 'naturalised citizens'. 'Citizens by birth' - a sub-category of 'citizens' and the group with the greatest rights and security of status - are referred to in three places: sections 5 (acquisition of nationality), 8(b) and 17 (revocation of nationality). Different rules apply to each category with regard to the transmission of citizenship to a child and the circumstances in which citizenship can be revoked, with naturalised citizens being the most disadvantaged. The 1982 Citizenship Law gives overly broad powers to the state to revoke citizenship from those with 'associate' and 'naturalised' citizenship (Section 8b). The law lists wide-ranging circumstances in which citizenship can be revoked including communicating with a member of an organisation hostile to the state and serving more than one year in prison for an act of 'moral turpitude' (section 35). Under the law, no consideration is given as to whether revocation of citizenship will lead to statelessness. Further, since dual nationality is not permitted (section 13), there is an increased likelihood that the revocation of citizenship will result in statelessness. These rules are discriminatory and arbitrary and contravene basic principles of international law.

The 1982 Citizenship Law also provides that the President or Union Government may exclude 'associate citizens' and 'naturalised citizens' from the enjoyment of rights generally ascribed to citizens.<sup>39</sup> As a result, the consequences of the different citizenship statuses extend beyond the provisions of the 1982 Citizenship Law itself. These provisions appear to contradict Article 21(a) of the 2008 Constitution of the Republic of the Union of Myanmar, which sets out that *"every citizen shall enjoy the right to equality."*

One man in his 50s, living in an IDP camp in Rakhine State currently without access to citizenship documents, explained the impact of the changes of the citizenship law since 1982:

*NRC/three-fold cards were issued to everyone from Rakhine - including Rohingyas- from 1955 under the Union Government plan. People who were alive (at that time) had NRC/three-fold cards. In the citizenship rules of 1947/8, it was stated that people born in Myanmar were citizens. They needed one grandparent who was a Myanmar citizen. People with NRCs lived as equal citizens like others...The 1982 law has slowly destroyed lives. This law finally makes Rohingya people stateless. ...They give us rights to apply for ID cards, but naturalized citizenship card/green card is issued to us only by recording us as "Bengali" even if we could submit evidence of six of our family members (parents and grandparents).*

<sup>36</sup> Myanmar Citizenship Law, (1982), Section 6, available at: <https://www.refworld.org/docid/3ae6b4f71b.html>.

<sup>37</sup> Ibid, Section 18 relates to the revocation of citizenship and punishment of those who fraudulently acquire citizenship.

<sup>38</sup> For more information, see Institute on Statelessness and Inclusion, 'Principles on Deprivation of Nationality as a National Security Measure', (2020), available at: <https://files.institutesi.org/PRINCIPLES.pdf>.

<sup>39</sup> Ibid, Sections 30(c) and 53(c).



The table below presents an overview of how the 1982 law envisages the three categories of citizenship (full, naturalised and associate).

## WHO IS...

### A FULL CITIZEN?

#### Citizens by birth

- Members of the 135 recognised ethnic groups (this full list was published in 1990), which are categorised under the eight main ethnic groups - Kachin, Kayah, Kayin, Chin, Burman, Mon, Rakhine or Shan.
- Descended from those who were settled in Myanmar before 1823.
- Both parents must be of a recognised ethnic group, and thus recognised nationals.

#### Other full citizen

- Those who do not belong to a national ethnic group, but who were already citizens when the Law came into force.

*This should in theory (but does not in practice) include all previous bearers of National Registration Cards.*

- The children of two citizens (who are not both nationals of a recognised ethnic group);
- The children of one citizen and one associate or naturalised citizen;
- Children of one associate or naturalised citizen, and one child of two associate and/or naturalised citizens.

*The law intends therefore, that within three generations, the descendants of 'associate' and 'naturalised' citizens will all be full citizens. However, they will not be "citizens by birth", and therefore will always be disadvantaged.*

*In practice, this has not been the case, due to poor and discriminatory implementation and defects in the law.*

### A NATURALISED CITIZEN?

- Those who do not belong to a 'national ethnic group', but who lived in Myanmar prior to 4 January 1948, and their children born within the State may **apply** for naturalised citizenship.
- The following persons, may also apply:
  - the child of one citizen, associate citizen or naturalised citizen and one foreigner;
  - the child of one associate & one naturalised citizen;
  - the child of two naturalised citizens;
  - the spouse of a citizen, associate citizen or naturalised citizen, who holds a Foreigner Registration Card (FRC), where the marriage predates the law.

*An applicant for naturalised citizenship shall:*

- (a) Be **over eighteen** years;
- (b) Speak **one of the national languages** well;
- (c) Be of **good character**;
- (d) Be of **sound mind**.

### AN ASSOCIATE CITIZEN?

*An associate citizen is a limited and timebound category, for those who do not belong to a national ethnic group, and whose applications for citizenship under the 1948 Citizenship Act were pending when the 1982 law came into force. The Central Body has the discretion to determine such persons as associate citizens.*

- Associate and naturalised citizens must make an affirmation of allegiance to the state (this is not required of full citizens).
- The children of associate and naturalised citizens may be included in an application, and children born after the application has been made may be included – at the discretion of the Central Body.
- An associate citizen shall not acquire 'citizenship' by marriage to a 'full citizen', and a naturalised citizen shall not acquire full or associate citizenship merely by marriage to a full or associate citizen.

***In addition to these provisions, the President or Union Government may, in the interest of the State, confer citizenship, associate citizenship or naturalised citizenship on any person***

Several United Nations (UN) experts have stated that the 1982 Citizenship Law discriminates on grounds of ethnicity.<sup>40</sup> Commenting on the existence of different categories of citizenship, the Annan Commission Report stated:

***Although Myanmar is not the only country that has different categories of citizenship, in other countries more than one category is only allowed for very specific circumstances. Having just one citizenship category is generally preferable. It meets the important objective of equal rights for all citizens.***<sup>41</sup>

## 2.2.1 'Naturalisation' Under the 1982 Citizenship Law

Below is a generally accepted definition of naturalisation – as applied in most countries:

***Any mode of acquisition after birth of a nationality not previously held by the target person that requires an application by this person or his or her legal agent as well as an act of granting nationality by a public***

Thus, in general terms, naturalisation is a process through which foreigners – those who either have citizenship of another country or are stateless migrants – can apply to become citizens of a country. Naturalisation is usually available to those who have established a link with the country through criteria such as marriage to a citizen, residence in the country, adoption by citizens or protection status. As such, there is no right to naturalisation, and a person does not automatically acquire citizenship by naturalisation. It is a discretionary process, which the individual must apply for, and which the authorities have the right to approve or reject, in accordance with principles of due process and non-discrimination.

The 1947/48 Myanmar framework provided for this type of naturalisation. However, under the 1982 framework, it is not possible for foreigners who demonstrate strong ties to the country to naturalise. Instead, the term “naturalised citizen” relates to a discretionary means of acquisition of citizenship, whereby:

1. Those who are not from the 135 recognised ethnic groups, but who have been born in and lived their entire lives in the country (as have their predecessors dating back at least to 1948), or
2. The children of one citizen, associate citizen or naturalised citizen and one foreigner; one associate and one naturalised citizen or two naturalised citizens can apply (but have no right) to be recognised as Myanmar citizens.

One of the main characteristics of a ‘naturalised’ citizen in Myanmar is that he or she does not belong to one of the eight state recognised indigenous ethnic national groups (Bamar, Chin, Kachin Kayah, Kayin, Mon, Rakhine, Shan), later sub-divided into 135 groups through an administrative instruction.<sup>42</sup> The application of naturalisation as the only means of acquiring citizenship, even for the children of certain types of citizens, underlines the fragility of this citizenship status.

It is important to note that in most other countries, and under international standards which promote safeguards against statelessness and prohibit discrimination, people in a similar situation would acquire citizenship by right, on the basis of birth on the territory or by descent.

Further, in Myanmar, an applicant for naturalisation must be over 18 years of age, be fluent in a national language, be of ‘good character’ and ‘sound mind’. Similar criteria are to be found in the naturalisation provisions of other countries, though as will be explored below, the criteria of ‘sound mind’ is discriminatory on grounds of disability. As set out above though, ‘naturalisation’ under the 1982 Citizenship Law applies to a group of persons who, under international law standards, should have access to automatic acquisition of citizenship. Applying the same criteria to such a group, that is normally applied to persons who have pre-existing ties with another state as well as (in most cases) another nationality, heightens their risk of statelessness and is discriminatory.

As the table below sets out, there is also a distinction between the quality and security of citizenship of ‘citizens’ and ‘naturalised’ citizens. Here too, it is not unusual for countries to restrict certain high public offices to citizens by birth, or to have additional grounds for loss or revocation of naturalised citizenship. However, the basis for such distinction is that in other countries, naturalised citizens have ties with (and often the citizenship of) other countries as well. This does not apply to the Myanmar situation.

<sup>40</sup> See for example, the Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 34th session of the Human Rights Council, 13 March 2017, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21355&LangID=E> [accessed 01/03/2021]

<sup>41</sup> Advisory Commission on Rakhine State, ‘Towards a peaceful, fair and prosperous future for the people of Rakhine,’ (2017) available at: [http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport\\_Eng.pdf](http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf).

<sup>42</sup> European Democracy Observatory definition of ‘Naturalisation,’ available at: [https://ec.europa.eu/home-affairs/content/naturalisation\\_en](https://ec.europa.eu/home-affairs/content/naturalisation_en).

<sup>43</sup> In Myanmar, the word for ethnic group, ‘taiyintha myo su’ is widely perceived as meaning ‘official ethnic groups’ (the 135 recognised ethnic groups exclusively).

## LOSS OR REVOCATION OF ...

### ANY FORM OF CITIZENSHIP

Any citizen who leaves the State permanently, becomes the citizen of another country, or who takes out a passport of another country loses citizenship. These are the only grounds on which a **citizen by birth** can lose citizenship.

Any citizen (other than a citizen by birth) who has acquired citizenship by making a false representation or by concealment, shall lose their citizenship and be liable to 10 years imprisonment and a fine of fifty thousand MMK[1] (US\$33.3).

The child of one citizen and a foreigner, who is included on the citizen parent's Certificate of Citizenship will lose their citizenship if the parent loses their citizenship

The President or Union Government may in the interest of the State, revoke the citizenship of any person, except a citizen by birth.

### ONLY ASSOCIATE OR NATURALISED CITIZENSHIP

- The Central Body may revoke associate or naturalised citizenship for:
  - (a) Trading or communicating with enemy countries during a war;
  - (b) Trading or communication with those hostile to the State;
  - (c) Committing an act likely to endanger state sovereignty, security or public peace, or suspicion that such an act will be committed;
  - (d) Showing disaffection or disloyalty to the State by any act or speech;
  - (e) Giving information on State secrets;
  - (f) Being sentenced for over one-year imprisonment or a fine of at least 1,000 MMK (US\$0.7), for committing an offence involving moral turpitude.

*While some other states have similar criteria, the 1982 Citizenship Law sets these out very broadly, with very wide discretion.*

- A child included in an associate or naturalized parent's citizenship certificate, who does not affirm allegiance to the state by age 22.

*Offences include murder and manslaughter, theft and robbery, fraud and corruption, adultery and rape, drug and gambling related offences.*

- Dual citizenship is not permitted
- There is no safeguard against statelessness in the revocation of citizenship
- A child losing their nationality because the parent does, is contrary to international law

## RIGHTS

**'Citizens'** are entitled to enjoy the rights prescribed by the laws of the State.

**Associate and naturalised** citizens are entitled to enjoy the rights of a citizen under the laws of the State, with the exception of the rights stipulated from time to time by the President or Union Government.

*Associate and Naturalised citizens, often still referred to as being of "mixed blood", have, in practice, lesser rights concerning political participation, education, health, freedom of movement and property.*

## Acquiring a Naturalised Citizenship Scrutiny Card (NCSC) in Rakhine State: The Case of Win Naing<sup>44</sup>

Win Naing and his family trace their lineage and heritage in the Arakan/Rakhine region since before the central Burmese Konbaung dynasty entered and annexed Arakan in 1752. Win Naing is a Rohingya university student in his thirties, based in Sittwe, Rakhine State. His parents and grandparents hold National Registration Cards (NRCs) and he has a full set of NRCs and household registration documents to prove his eligibility for citizenship. As such, he was able to obtain a Naturalised Citizenship Scrutiny Card (NCSC) or a 'green card'. Nonetheless, in the application process, he encountered discrimination, extortionate levels of bribery and administrative errors that he is unable to correct or appeal against. For example, Win Naing's grandmother's name was wrongly recorded. When the authorities were asked to correct the name, immigration officials refused. Further, whilst his green card affords him limited freedom of movement within Myanmar, the use of "Bengali" on his green card, leaves him open to continued discrimination, limits his mobility within the country and presents continued barriers in education, work and social life. He explained:

*They did not ask me what my ethnic name is. Immigration people wrote Bengali on the card themselves as we have no rights to write it freely.*

He explained that his ethnicity was the source of the discrimination.

*We are being treated differently from other ethnicities - treated as second class citizens under 1982 citizenship law. We should be able to get citizenship as we did with the 1947 citizenship law. This 1982 law should be eliminated. We are not immigrants... Our family can show the full documents...that prove we are indigenous people of Myanmar.*

He noted that he had to apply for a National Verification Card (NVC) first which required him to respond to questions that suggested he was a foreigner, such as when and by what means he entered Myanmar. Further, whilst members of other ethnic groups could apply for citizenship documents from the township office, he was required to attend two township offices and submit his application for citizenship documents to the Union Board in Nay Pyi Taw. This created burdensome administrative procedures that took over a year and required additional paperwork. These procedures were marred by the eliciting of bribes at every turn, from offering dried fish and meats to the township officers to look at the files, to paying for the costs of 'security' to access the offices to paying the equivalent of seven to eight years of his salary to finally obtain one NCSC.

Win Naing's explained that verbal abuse, and discrimination from government authorities were widely experienced by Rohingyas.

*I witnessed the immigration staff and clerks treating our Rohingya people differently from other ethnicities at the immigration office. They showed anger and intimidation toward Rohingya people... They treated us unfairly using disrespectful words because of our religion and ethnicity.*



Despite the hurdles Win Naing overcame in obtaining his NCSC, he was fully aware that this document did not provide him full access to civil and political rights. Additionally, his legal status remained insecure since it could be revoked more easily than full citizenship.

*We cannot get political rights with this green card. We do not have rights to be a member of parliament or minister, or to learn some professional higher education subjects – we are not free from discrimination at checkpoints...The green card can be revoked at any time. It is not a guarantee of our citizenship in future.*

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<sup>44</sup> Pseudonyms have been used for all interviewees, to protect their identity and privacy.

## 2.2.2 International Standards

Myanmar has acceded to four international human rights treaties:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The Convention on the Rights of the Child (CRC).
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and
- The Convention on the Rights of People with Disabilities (CRPD).

Following is an analysis of how the 1982 Citizenship Law fails to comply with the standards entrenched in these treaties and other standards that Myanmar is obligated to uphold.

### Discrimination on Grounds of Race or Ethnicity

As set out above, the 1982 Citizenship Law privileges the recognised ethnic groups and disadvantages others in the acquisition of nationality. While there are other countries which guarantee citizenship to persons from certain ethnicities, such criteria are normally complemented by other avenues for automatic acquisition for those who have strong ties to the country (as was the case with the 1948 law). In the case of Myanmar, the ethnicity-based criteria leave a large portion of the population, who have no links to another country, with no right to automatic acquisition of nationality. People who belong to the 135 recognised national ethnic groups have the right to enjoy full citizenship. By contrast, people who do not belong to the 135 recognised ethnic groups face disadvantages and discrimination.

The right to non-discrimination and equality under Article 2 of the Universal Declaration of Human Rights (UDHR) obligates States to guarantee human rights without discrimination on various grounds including race and national or social origin. Articles 13(1)(b) and 55(c) of the Charter of the UN also enshrine the right to non-discrimination. Similarly, Articles 2 of the CRC and CEDAW prohibit discrimination on any grounds against children (and their parents or guardians) and women respectively.

### The Child's Right to a Nationality

The 1982 Citizenship Law falls short of Myanmar's obligations under the CRC. As such, the Committee on the Rights of the Child raised various concerns with the state in its 2012 Concluding Observations on Myanmar.<sup>45</sup> The most relevant CRC provisions are:

- **Article 7** which establishes every child's right to birth registration, a name and a nationality and obligates States to "ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless".
- **Article 8** which protects the child's right to preserve his or her identity – including nationality.
- **Article 2** which protects the child from all forms of discrimination (including discrimination against the child's parent or guardian). and
- **Article 3** which obligates States to always treat the best interests of the child as a primary consideration.

As set out above, the 1982 Citizenship Law is discriminatory on grounds of ethnicity, thus undermining the

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<sup>45</sup> UN Committee on the Rights of the Child, 'Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Myanmar', CRC/C/MMR/CO/3-4 (2012), available at: [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_MMR\\_CO\\_3-4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_MMR_CO_3-4.pdf).

right to nationality of the children of parents from groups that are not recognised as being indigenous. The child should not have to undergo a naturalisation procedure, but rather should acquire citizenship by birth as a right. The 1982 Citizenship Law does not have a safeguard to protect all children born in the country from statelessness. Had such a safeguard been in place, it would have mitigated some of the discriminatory impacts of the law. Furthermore, children who are listed on their parent's certificate can lose their citizenship if their parents do, in violation of Article 8 of the CRC.

## Discrimination on Grounds of Disability

Under the 1982 Citizenship Law, being of 'unsound mind' is considered to be a basis for the denial of citizenship by naturalisation. However, Article 18 of the CRPD sets out that persons with disabilities have the right to a nationality "on an equal basis with others." Exacerbating this discrimination, as set out above, the term 'naturalisation' applies differently in Myanmar, to a group which should have access to automatic acquisition of citizenship.

## Gender

Article 9 of CEDAW prohibits gender discrimination in nationality laws. While there is no direct gender discrimination in the 1982 Citizenship Law, the requirement that both parents have citizenship in order for the child to also have citizenship does have a discriminatory impact. These provisions particularly disadvantage the children of single mothers, other women in vulnerable situations and undocumented women, due to a common understanding that the 'head of a household' is a man.<sup>46</sup>

### 2.2.3. Civil Documentation Related to the 1982 Citizenship Law

There are various civil documentation processes to establish proof of birth, family connections and citizenship. One key document is the birth certificate.<sup>47</sup> Another is the household registration document, col-

loquially known as the 'family list.' It is mandatory for all residents to be registered on this document.<sup>48</sup>

From 1949, the State required citizens to register through the Residents of Myanmar Registration Act. After registration, citizens were issued a National Registration Card. By the end of 1960, the government claimed to have registered most of the population, having issued 18 million National Registration Cards. While these National Registration Cards (also known as 'three-fold cards') were not citizenship certificates, they were recognised as proof of citizenship, as foreigners were registered through the separate Registration of Foreigners Act.<sup>49</sup>

In 1989, under the new 1982 Citizenship Law framework, the former National Registration Cards issued under the 1949 Residents of Burma Registration Act were replaced by three different types of 'Citizenship Scrutiny Cards.' The new cards were colour-coded to include the categorisation of the citizenship status of the bearer – pink cards for full citizens (CSC), blue cards for associate citizens (ACSC) and green cards for naturalised citizens (NCSC).<sup>50</sup>

Citizens by birth are eligible and required to carry their own CSCs from the age of ten. These are to be renewed at the ages of 18, 30 and 45.<sup>51</sup> Associate and Naturalised Citizen parents can apply to have their children added to their own ACSC or NCSC. Such children are eligible for their own ACSC or NCSC at ten years of age. These too must be renewed at the ages of 18, 30 and 45.<sup>52</sup>

Temporary Registration Cards (TRCs), colloquially known as 'white cards' were historically issued to those who had lost or damaged their National Registration Cards or to those with pending applications for one.<sup>53</sup> However, from 1995, TRCs were given to large numbers of Rohingyas and other Muslims and Hindus in North Rakhine State as well as others who had previously held National Registration Cards but were denied CSCs under the 1982 Law. This marked a key step towards further entrenching discrimination and arbitrariness within the system. While the legal and policy grounds for this move and the status of TRC holders remained unclear, the TRCs were treated in practice as an official ID Card which allowed its holders to vote in subsequent elections.<sup>54</sup>

<sup>46</sup> For a more comprehensive analysis of gender discrimination in Myanmar's citizenship law, see Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, 'A Gender Analysis of the Right to Nationality in Myanmar,' (2018), available at <https://www.nrc.no/resources/reports/a-gender-analysis-of-the-right-to-a-nationality-in-myanmar/>.

<sup>47</sup> Birth registration is a legislated requirement pursuant to the 2013 Child Law and the 1982 Citizenship Law and 1983 Procedures.

<sup>48</sup> The Family Household List, also known as 'Form-66/6', is issued under the Residents of Myanmar Registration Act, 1949. However, details of the implementation of the process are not publicly known. It is assumed, however, that there was internal guidance on the procedures to be followed.

<sup>49</sup> Nyi Nyi Kyaw, 'Unpacking the Presumed Statelessness of Rohingyas,' (2017), Journal of Immigrant and Refugee Studies, vol. 15(3), available at: <https://www.tandfonline.com/doi/citedby/10.1080/15562948.2017.1330981?scroll=top&needAccess=true>.

<sup>50</sup> Thein. M. (Nyein Chan Lulin). Pyidaungsthar Muslims, Kit Thit Sar Pay, 2016.

<sup>51</sup> 1983 Procedures Relating to Citizenship, Section 12.

<sup>52</sup> 1983 Procedures relating to Naturalized Citizenship, Section 5; 1983 Procedures relating to Associate Citizenship, Section 5.

<sup>53</sup> 1951 Residents of Burma Registration Rules Sections 2 and 13, available at: <https://www.burmalibrary.org/en/residents-of-burma-registration-rules-1951>.

<sup>54</sup> Nyi Nyi Kyaw, 'Unpacking the Presumed Statelessness of Rohingyas,' (2017), Journal of Immigrant and Refugee Studies, vol. 15(3), available at: <https://www.tandfonline.com/doi/citedby/10.1080/15562948.2017.1330981?scroll=top&needAccess=true>. See also, Thein. M. (Nyein Chan Lulin). Pyidaungsthar Muslims, Kit Thit Sar Pay, 2016.

In February 2015, the TRCs were withdrawn along with voting rights. TRC holders were given a receipt, in exchange.<sup>55</sup> Piloted in 2015 and rolled out from 2016 onwards, the 'National Verification Cards' (NVC), were introduced as an interim card in the National Verification process with the aim *"to scrutinise whether the applicant meets the eligibility to become a citizen of Myanmar and to identify them as residents of Myanmar during the citizenship verification process."*<sup>56</sup> Delays, administrative barriers and excessive costs in the national verification process, however, left the vast majority of applicants in limbo and risked locking them into a permanent non-citizenship status. The issuance of NVCs and the national verification process was met by wide-spread resistance in Rakhine State. This was because the process required applicants to first register as a foreigner or non-citizen – even where Myanmar was the only country to which they belonged - and did not allow people to self-identify using their own ethnic or mixed ethnic identity. In 2016 and 2017, the issuance of NVCs became increasingly coercive. State authorities often used force and arrest in order to implement the ID scheme. Further, the denial of basic rights and freedom of movement for those who refused to comply with the scheme, prevented them from accessing work, food, basic supplies and services.<sup>57</sup>

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<sup>55</sup> Lall et. al, 18; International Crisis Group, 14. Presidential Notification 15/2015 Announcing Temporary Registration Cards Expiry on 31 March 2015.

<sup>56</sup> Republic of the Union of Myanmar, State Counsellor's Notification, 27 December 2016, para. 7 based on The Residents of Burma Registration Act (1949), Section 5(2)(d), available at: [https://www.burmalibrary.org/docs12/The\\_Residents\\_of\\_Burma\\_Registration\\_Act-1949.pdf](https://www.burmalibrary.org/docs12/The_Residents_of_Burma_Registration_Act-1949.pdf)

<sup>57</sup> Human Rights Council, Sept 2018, The Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, available: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E27/08/2021> (accessed 27/08/2021)



# Part 3

## CHALLENGES AND IMPACT

Having provided a brief overview of the 1982 Citizenship Law and related framework in Myanmar, Part Three turns to some of the most significant challenges in accessing documentation that are faced by persons who possess certain characteristics or fit within certain profiles. In particular, this section looks at challenges related to: discrimination in the implementation of the law; arbitrariness and the lack of effective oversight; excessive evidentiary requirements; accessibility; data entry problems; corruption; and delayed decision making.

These challenges are interlinked and overlapping, with discrimination and arbitrariness being a constant and underlying theme. Of particular significance is intersectional discrimination, where an individual suffers increased discrimination compounded by interconnected factors such as ethnicity, gender, disability etc.

### Case Study: A Returning Refugee's Trouble with Personal Documents

*I am not a criminal.*

*But what if I get arrested for not having a recommendation letter? And my children are not able to go to school? And I cannot ask help from anyone? I don't have any hope.*



Haymar lives in the area of Thaton, Southeast Myanmar, close to the Thai border. She has two young children, both below the age of five. Her grandfather raised her, but never applied for an ID card on her behalf. Before she was able to take steps to acquire an ID card, she had to flee to Thailand because of the conflict between the Tatmadaw and the KNLA. Eventually, she returned to Myanmar with her husband, who is also from Myanmar. Subsequently, their two children were born in Myanmar.

Despite her efforts, she has failed to obtain an ID card. She faces many obstacles:

*To get an ID, I need to show my household list. But I never had one and to get a household list I need a recommendation letter from the village head: either from my husband's village or my birth village. Going back to my village is costly and I am not sure if they still have documents of mine because this was a long time ago. I do not have enough money to travel to my birth village or to give money to the immigration officer to proceed with my application. We have a hand to mouth survival situation. I cannot always chase the immigration officers and the village leaders regarding my ID because I have responsibilities towards the children and have to work to earn money. My husband earns from 3000-5000 MMK (US\$ 2-3) per day. We can barely afford to pay for our expenses. Therefore, I cannot proceed with my ID application.*

Alongside the bureaucratic obstacles, she says that incompetence at her local council has not helped her case:

*There is incorrect information data entry. Names are not the same in different documents. The names are different in the birth certificate and other documents.*

She worries that she and her family will be significantly disadvantaged without documentation. For example, her children will need documents to continue their schooling beyond 10th grade. She hopes the authorities will show more flexibility to accommodate persons like her, who cannot fulfil the stringent requirements for very valid reasons:

*I want the immigration officers to provide options for cases like mine and to be helpful and supportive. If they ask for money, they should consider the financial capacity of the applicants.*

## 3.1 Challenges

### 3.1.1. Discrimination in the Implementation of the Law

As set out in Part Two of this report, citizenship in Myanmar is primarily derived through membership of

a recognised national ethnic group. This ethno-centric perspective particularly impacts those who may look different, who have been displaced, who have migrated, or whose ethnicities are mixed. Authorities are likely to scrutinise their belonging more intensely, questioning and disadvantaging them. The experience of a lawyer in Yangon with expertise in this area is pertinent:

*All records are held at the township level immigration office, (Khayaing) the district level, (Taing) region level and (Baho) state level. I have many applicants who have had the same issue, where they have lost their documents due to a natural disaster like (cyclone) Nargis, or due to fire or document destruction. The same group of people goes to the immigration office because they experienced the same problem. But minorities were told that their documents are no longer in the records, which is a lie.*

Thiri, who is Muslim from Kayah State, spoke of why she felt her family faced difficulties in accessing documentation for herself and her daughter:

*I did try to give them a suggestion letter and even a complaint letter. I told them to just use the 1982 law to make ID card decisions and provide us the ID card with the township officer instead of keeping us waiting for months and years. But they are not giving IDs to us as they distrust Muslims.*

This sentiment is shared by Khin, an 18-year-old Muslim from Tanintharyi, who said:

*If the applicant is from a minority, the MoLIP staff check for more details on their family tree. The rules for us are stricter.*

Significantly, discrimination by state authorities is compounded by discrimination by family members against girls and disabled children. Due to the difficulties that minorities face in the application procedure, parents often have to prioritise which child they will dedicate the required time and money to. The research showed a trend of gender discrimination against girls and women. In this context, sons tend to be chosen over daughters as priority recipients of identification documents. As Khin reflected:

*Parents give more priority to their son than daughter for an ID card application. In society, the son is seen to become the head of the family and will be responsible, for example, for owning properties that are registered with the household name – most of the time the wife's name will not be included – and therefore the son will need an ID number to do this.*

Another male interviewee, Kyaw, provided an answer that describes the trend of gendered discrimination within society, also acknowledging that the denial of opportunities to daughters adds to the intergenerational nature of the problem:

*For the majority of females, there is no special issue with their lack of an ID card because they are dependent on males and often remain in their houses. However, they will face challenges in the ID card application of their children if these females have no ID card.*

Other research has also shown that women who are the head of a household, are excluded from networks and interactions that could help them obtain citizenship documentation for themselves and the rest of the household.<sup>58</sup>

Disabled persons also face discrimination and exclusion. A representative of the Myanmar Independent Living Initiative described how in addition to the physical challenges faced by disabled people (especially those from rural areas) in accessing MoLIP offices, families and officials tend to believe that disabled persons do not need identity cards. This attitude perpetuates dependency and discrimination as, without identity cards, disabled persons are then unable to independently access services and participate fully in society.

Other groups who are likely to face multiple forms of discrimination include returnee refugees and IDPs. Conflict in Myanmar has caused mass internal displacement which often leads to IDP populations eventually moving across borders and into refugee situations elsewhere. IDPs are more likely to have endured destruction of their properties and possessions, including identification documents crucial for civic registration and for accessing healthcare, education and financial services.<sup>59</sup> IDPs in Rakhine State displaced by the violence of 2012-3, report high incidents of the destruction of their documents. There are multiple barriers to gaining access to replacements and in new citizenship applications for those affected. The administrative hurdles have been compounded by discrimination against Muslims and excessive financial barriers. Refugees returning to Myanmar from refugee camps in Thailand and Bangladesh face multiple barriers to proving their citizenship and residence rights.

<sup>58</sup> Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, 'A Gender Analysis of the Right to Nationality in Myanmar,' (2018), available at <https://www.nrc.no/resources/reports/a-gender-analysis-of-the-right-to-a-nationality-in-myanmar/>.

<sup>59</sup> Institute on Statelessness and Inclusion and the European Network on Statelessness, 'Statelessness in Myanmar: Country of Origin Information,' (2019), available at: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Myanmar-final.pdf>.

## Case Study: Forced Displacement in Rakhine

Shahida is a married woman in her 30s. She has been living in an IDP camp in Rakhine State since 2012, when she was displaced by anti-Muslim violence. Her status as an IDP, a Muslim, a woman and a Rohingya made the citizenship application process inaccessible for her and her family members. She described how discrimination and administrative barriers combined. Firstly, she explained that she was unable to meet the evidentiary requirements of a citizenship application, since Muslim properties had been targeted for arson.

*The previous documents of my grandparents and parents burned in the fire during the violence. Therefore, we cannot show any old documents to apply for identity cards. We need those documents to show for the application process.*

The requirement to be recorded under the stigmatising term 'Bengali' for the purposes of citizenship applications, together with the stigma of 'naturalised' as opposed to 'full citizenship' was also a significant factor. She explained that multiple documents carried the term 'Bengali' including some birth certificates issued in the IDP camps, re-issued household registration cards and NCSCs.

*When the mobile immigration team came to the camp to receive applications of IDP people...we did not apply for citizenship card...A few people in camp applied for it to run their businesses normally. But most people did not because they worried they would not be recognised as original citizens - Only naturalized citizenship/green cards are issued, not citizenship scrutiny card (coloured pink).*

The lack of accessibility to the township offices also presented significant barriers. This specifically applied to Muslims who were prevented from travelling outside of the camp areas without a police escort. Fears regarding discrimination, harassment and security disproportionately affected women's ability to attend official appointments. They were mostly escorted by male family members. Shahida explained the experience of a close friend during the application process.

*People usually need to go to immigration official seven to eight times during whole process until completion. It takes the whole day to arrive back home. My sister (friend) had to pay so much money. She needed a police guard to go to the government office. We (Muslims from the IDP camps) cannot go there ourselves alone directly. So, we are required to pay charges for car rental and for the police guards.*

Further, the costs associated with citizenship applications that were applied only to Muslims in the area were prohibitive. The lack of access to work for those in the IDP camps and the loss of properties in the violence of 2012-3 reduced the household income, rendering applications impossible for most. Shahida recounted how a member of the family ended up in a situation of debt bondage as a domestic worker in Yangon in order to cover the costs of her citizenship application. In addition to the regular application fees, Muslims including Rohingya and Kaman, were required to pay for the costs of security to access appointments, transport costs, broker fees due to the complicated and inaccessible procedures, and extortionate unofficial fees or bribes.

### 3.1.2. Arbitrariness and the Lack of Effective Oversight

As explored in Part Two above, the 1982 Citizenship Law encourages arbitrariness by creating disincentives for the positive use of administrative discretion and failing to protect the public from poor or corrupt practices. For example, the law penalises applicants who acquire citizenship through the provision of false representation or concealment, and it also penalises decision makers who abet the fraudulent acquisition of citizenship.<sup>60</sup> However, there is no penalty for wrongfully denying citizenship to those who

are entitled to it. Therefore, the law encourages restrictive and even arbitrary decision making, but does not penalise negative decisions which are motivated by corruption or discrimination.

As the report will explore below, officials have excessive discretion to veer away from the rules and to arbitrarily require applicants to undergo additional levels of scrutiny. Furthermore, there is no specified timeframe within which decisions must be made. This creates conditions for the abuse of discretion and for arbitrariness.

## The story of Aung

Aung is a Bamar Muslim in his 60s, from a village in Loikaw, Kayah State. By virtue of being of Bamar ethnicity, he should, in theory, have straightforward access to documentation and citizenship. In order to confirm his identity and prove his ethnicity for his CSC card, he was asked to bring his parents' and his grandparents' documents. He was unable to fulfil this evidentiary burden and believes that unlike those from other religious groups, he could not get around this problem. After recognising that hundreds of individuals from his village were in the same position, all of whom were from religious minority groups, he looked into which documents were officially required, as he saw no consistency in what was being required of him and other applicants. Through his research, he identified 16 different types of documentary evidence that were verbally required by local officials of different applicants. These included:

1. Application, 2. Blood test results, 3. Oath paper, 4. Proof of having two blood relative nationals, 5. Father's application form, 6. Father's CSC photocopies, 7. Grandfather's application form, 8. Mother's application form, 9. Mother's CSC, 10. Applicant's Personal History Form, 11. Photographs, and 12. Recommendation letter from township or village head.

Aung identified that many persons in his community, just like many other interviewees of this research, received differing instructions from the local offices. After a long-drawn-out process, eventually, he was able to obtain a CSC for himself and his family. The CSC acknowledged that he was of Burmese ethnicity and an adherent of Islam.

Once he achieved this, he dedicated several more years of his life to facilitating the process for others in his community, taking people back and forth to the offices and intervening on their behalf with the officials. Two years later, due to his perseverance, he managed to organise a meeting with the State Investigation Committee to review the applications that were pending in his community. He was even appointed as a member of the Review Committee. The other members were the Internal State Administrator, State Police, State Legal Department and another elder from another village. Through this process, 248 persons, including 214 with Indian ancestry, were recognised as citizens and granted documentation.

The story of Aung shows that there is often no legal or institutional reason behind why decisions are not made or why no discretion is exercised to find solutions for persons who cannot meet the heavy evidentiary requirements. Through effort and perseverance, Aung was able to achieve a significant impact for individuals, particularly from ethnic and religious minority backgrounds, who were being denied recognition as citizens and related documentation.

<sup>60</sup> Myanmar Citizenship Law, (1982), Sections 18,19,36,37,59 and 60, available at: <https://www.refworld.org/docid/3ae6b4f71b.html>.



Where it is not possible to persevere as Aung did, the lack of an effective oversight mechanism is an ongoing concern. Section 71 of the 1982 Citizenship law states that the decision of the Council of Ministers is final and “no reasons need to be given by organizations invested with authority by this law in matters carried out under this law.”<sup>61</sup> Consequently, there is very little scope for the administrative review of decisions on the acquisition, confirmation and loss of citizenship. This is likely to be one reason for the limited jurisprudence on the review of administrative decisions related to the 1982 Citizenship Law.<sup>62</sup>

While the 1982 Citizenship Law itself provides little scope for oversight of administrative actions, Article 378 of the 2008 Constitution of the Republic of the Union of Myanmar entrenches the writ jurisdiction of the Supreme Court. Accordingly, the Court may be petitioned to issue a prerogative writ to obligate public servants to act.<sup>63</sup>

However, in reality, these are not realistic remedial avenues. This is mostly because, as will be explored in more detail below, negative decisions regarding procedures on citizenship are rarely made. The more likely scenario is the failure to make any decision at all, in extreme situations, for decades. In the few instances known where a negative decision has been made, appeals have not been lodged. One reason is likely to be the hierarchical nature of society and the reticence of civilians, particularly from minority backgrounds, to challenge the decisions of civil servants.

### 3.1.3. Excessive Evidentiary Requirements<sup>64</sup>

The evidential requirements for those applying for an ID card are cumbersome, and vary according to the local MoLIP office, the particular decision maker and the profile of the applicant. According to the official procedure, the applicant is required to produce the following documents:

#### **Required Documents for a First-time Applicant:**

1. *Applicant's household list with his/her name on it.*
2. *Ancestral information form.*

3. *Original birth certificate or documentary evidence of the age of the applicant.*
4. *The original CSC cards of the applicant's parents.*
5. *Recommendation letter from township administration or village administration confirming residence.*

#### **Required Documents when Renewing a CSC:**

1. *Applicant's household list with his/her name on it.*
2. *The current CSC held by the applicant.*
3. *The original CSC cards of the applicant's parents.*
4. *Recommendation letter from township administration or village administration confirming residency.*

While this list is reflective of the standard MoLIP procedure, in reality, different requirements are made of applicants, both based on where they are applying from and what characteristics they possess. The research shows that different instructions are given at the discretion of the local authorities. This inconsistency and vagueness, which is a recurring factor, allows for arbitrariness, disadvantaging minorities and others with protected characteristics.

With the necessary documents in hand, the applicant is required to go to the local MoLIP office which is obligated to process the application and issue successful applicants with a CSC document. The evidentiary requirements can be challenging to adhere to, particularly for those who do not live in the same area in which they were born and where their family lives. Ohnmar, a 56-year-old Muslim from Tanintharyi, for instance, explained that she had visited the MoLIP office three times, but could not progress with her application as she had lost one of her grandparents' documents. The office did not offer an alternative solution. This bureaucratic intransigence and lack of willingness to exercise discretion in her case means that she cannot complete the procedure.

Her experience is mirrored in testimonies in another report, according to which, applicants whose grandparents are deceased can face an additional obstacle to obtaining proof of their ancestor's citizenship.<sup>65</sup> Furthermore, there is evidence of individuals being refused the relevant documents by their village chief because they have been away from their village for a long period and/or are unknown to the chief.<sup>66</sup>

<sup>61</sup> Myanmar Citizenship Law, (1982), Section 71, available at: <https://www.refworld.org/docid/3ae6b4f71b.html>.

<sup>62</sup> For more analysis, see Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, 'A Gender Analysis of the Right to Nationality in Myanmar', (2018), available at <https://www.nrc.no/resources/reports/a-gender-analysis-of-the-right-to-a-nationality-in-myanmar/>. See also International Commission of Jurists, 'Citizenship Law and Human Rights in Myanmar: Why Legal Reform is Urgent and Possible', (2019), available at: <https://www.icj.org/myanmars-discriminatory-citizenship-laws-can-and-must-be-immediately-reformed/>.

<sup>63</sup> Writs of Mandamus can direct a relevant decision maker to take certain action, Writs of Prohibition can prohibit and prevent a decision maker from taking certain action and Writs of Certiorari can cancel a relevant decision by a decision maker. See International Commission of Jurists, 'Special Economic Zones in Myanmar and the State Duty to Protect Human Rights', (2017), available at: <https://www.icj.org/wp-content/uploads/2017/02/Myanmar-SEZ-assessment-Publications-Reports-Thematic-reports-2017-ENG.pdf>; and Constitution of the Republic of the Union of Myanmar, (2008), Article 378, available at: <https://www.wipo.int/edocs/lexdocs/laws/en/mm/mm009en.pdf>.

<sup>64</sup> The evidentiary requirements listed in part 3.1.3 of this report apply to Southeast Myanmar but may vary across other parts of Myanmar.

<sup>65</sup> Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, 'A Gender Analysis of the Right to Nationality in Myanmar', (2018), available at <https://www.nrc.no/resources/reports/a-gender-analysis-of-the-right-to-a-nationality-in-myanmar/>.

<sup>66</sup> *Ibid.*

Individuals from ethnic majorities in the Bago, Mandalay and Yangon regions also spoke of experiencing problems with getting ID documents. This was mainly because they were required to travel to other regions to get their parents' or grandparents' documents or

because they did not have their grandparents' documents. In those instances, research participants reported that they ultimately resorted to paying bribes to receive their ID documents.

## Additional Difficulties Faced by Migrants and Displaced Persons:

The evidentiary requirements are particularly challenging for those who do not live in the region they were born in, often because they were displaced either within or outside Myanmar. Zarni, a Christian of Kayah ethnicity gave an example of when the documents required of him were impossible to provide. In 1996, when he was approximately 20 years old, he fled with his family to Thailand. He lived there for 18 years in a refugee camp before he returned to Myanmar in 2014:

*I returned to Myanmar from Thailand in 2014 and I have applied for an identity card over the past two years and I still haven't got it. I have all the required documents, including a recommendation letter from the village head, the medical test document, my wife's household list, 20 village head recommendation letters. But they still will not issue an identity card for me. The government officer said there needs to be a sibling who provides a recommendation letter and has asked me to bring one of my siblings or a parent. But the rest of my family is in Thailand, in the refugee camp. How will I bring them here? And even if I bring them here, they do not have an ID either.*

Zarni believes that they asked him for recommendation letters because they were suspicious of his nationality. His experience highlights the particular difficulties that displaced persons face due to prejudicial perceptions of authorities.

Thinzar, another returnee from Thailand, had a similar story:

*To get an ID, I need to show my household list. But I never had one and to get a household list, I need a recommendation letter from the village heads either from my husband's village or my birth village. Going back to my village is costly and I am not sure if they still have documents of mine anymore because this was a long time ago. As for my husband's village, no one wants to give me recommendation letter because they distrust me.*

An additional problem, unearthed in a recent report, is that Myanmar officials do not recognise Thai birth certificates. Therefore, the children of refugees born in Thailand are required to also have their births registered in Myanmar. Those who cannot do so are likely to face serious challenges obtaining identity cards in future. The situation is the same for those born in conflict affected areas, such as Mon State, who could not access birth registration due to the ongoing conflict. Children could not access birth certificates if

they were unable to prove where they were born or who their parents are, which can be of increased difficulty during conflict.<sup>67</sup>

Those who migrate for economic reasons can also face difficulties in return. Maung, a Pa-O Buddhist from Loikaw, highlights the problem of those who lived abroad and do not have household lists. He travelled to Thailand as a minor for economic reasons and was never added to his family household list as a result:

*I do not exist in any of the household lists made by my mother. And when I tried to get a new one, I could not because I am now over 18. I have been to the offices three to four times.*

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<sup>67</sup> Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, 'A Gender Analysis of the Right to Nationality in Myanmar', (2018), available at <https://www.nrc.no/resources/reports/a-gender-analysis-of-the-right-to-a-nationality-in-myanmar/>.

### 3.1.4. Accessibility

Financial and physical obstacles to accessing application procedures may provide additional barriers to documentation. Below is an overview of research findings in this regard.

#### Access to MoLIP Offices:

All applications for identity cards must be made in person at the relevant MoLIP office. For those living in remote rural areas, these offices can be a significant distance away, with very limited transport options available. Particularly when considering that the journey may have to be made several times, physical distance can be an insurmountable barrier to documentation. Indeed, many of those interviewed noted that the offices are so far away from their homes that they had to spend money on transport and food for the days they have to travel.

Phyo, a village head, spoke of how access to offices is difficult for both him and his constituents:

*My duty in the ID card process is to issue the recommendation letter but apart from this, the villagers also ask me to sometimes accompany them to the immigration office, and we do face difficulties. I am responsible for many other roles so for me traveling out of the village for one person is very time consuming.*

*The travel route is very bumpy, rough and long ... the road is so rough that only certain cars can be driven on it. What I do is try to get three to four applicants together, but the immigration officer gives each person a different date to collect their IDs which makes it hard for me to arrange their trip and accompany them. Another issue is that immigration officers are not punctual; they will sometimes not even be there.*

Ei is a 16-year-old girl from a village in Loikaw who is physically disabled. For over a year, she has tried to obtain an identity card, but has not been successful. Her mother explains the challenges that disabled people in particular face:

*There is no help with a person with disability. Government offices are far, we need to ask people for help to give us a lift in their car because my daughter cannot walk or sit on motorcycle.*

Ei's Buddhist Shan/Kayah family does not have access to a car. Therefore Ei, like many other disabled persons, is unable to regularly follow-up with her application. Her disability, like many in similar situations, has become an added obstacle in her attempts to obtain ID documents.

For some of the interviewees, access to the nearest local office is by boat, as Htoo explained:

*I travel to the immigration office on a boat so when returning, if I am late, I might not get the ride back to the village. I might get stuck. There is a long distance to get to the office and a boat is the only option for transport so if it rains, there are issues with the water level.*

Htoo and others from his village sometimes miss their appointments at MoLIP offices due to bad weather. To ensure that those who find it difficult to travel to MoLIP offices are not disadvantaged, interviewees proposed a solution of requiring offices to first deal with those who have travelled a long distance, or alternatively, to provide specific appointment times, grouping together the appointments for persons who travel together. Such simple adjustments could be the difference between an individual enjoying their right to citizenship and documentation or them being denied this very right.

## Financial Impediments

The majority of those interviewed also spoke of the financial implications of applying for an ID document. Some of these are transport-related costs, which can add up if multiple visits are required. For example, Tun was a refugee in Thailand for 15 years. He faced multiple problems with his application but was unable to effectively follow up with his case due to the mounting costs. In his particular case, it can cost between 4000 and 5000MMK (US\$2-3) to go to the immigration office each time.

Having to take time off work in order to visit MoLIP offices adds to the cost. It is not just expenses, but also lost income, which applicants must take into consideration. Myo explained his situation:

*They kept on asking me to come back and when I do, they give me another date and now they want money. I cannot keep on going to the immigration every time they ask me to because I have to be at work to earn money.*

This was similar to the situation of the parents of Yasmin, a Muslim family living in Tanintharyi, who have had to halt their application process because of the financial implications.

*We have been to the MoLIP office at least five times to apply for the card. We are no longer able to spend many days without work and to spend so much in costs for transportation to the MoLIP office.*

Soe, who was displaced and therefore lives away from the village of his family, described how the cost coupled with the stringent evidentiary requirement has prohibited him from getting the documents he needs, including the recommendation letter from the village head, to make his application.

*I do not have enough money to travel to my birth village or to give money to the immigration officer to proceed with my application, so the application has stopped.*

IDPs contained in camps without access to livelihoods also face significant financial barriers to accessing documentation. Kyaw Kyaw from Sittwe explained:

*Everyone can understand how we IDPs have difficulty to collect that money while we have no job opportunity for income. It has been for nine years since we were displaced and live in the camp with the aid of WFP. How do we get that amount of money to apply for an ID card? Few people can afford to apply.*

Those interviewed suggested that the costs would be bearable if they were only required to visit the MoLIP offices once in the process, and if they were guaranteed an appointment where they would have their application reviewed and a decision made.

## 3.1.5. Data Entry Problems

Another significant problem identified is that of data being entered incorrectly by officials. Due to the varied linguistic and ethnic make-up of the country, names are often spelt incorrectly, particularly when translated from one language to another. Therefore, it is common for names and other personal information to be entered incorrectly into official documents. The system places the burden of proof on the applicant, who is required to prove that it was a mistake and correct it, despite the mistake having been made by the authorities. This adds even more time to the application process and can even be the basis on which the credibility of applicants is undermined, and applications denied. Zaw highlights some of the problems he faced in this regard:

*If we do not have household lists, it becomes very hard to get an ID. They do not write the ethnic names correctly in the household lists and so the names in the documents are not the same. They call us on a working day when the names are not the same or when there are small issues with documents. We go to the office then we miss our work.*

Kyaw, a Buddhist Kayin from Thaton, has been unable to obtain identity documentation for herself or her family due to the following mistakes:

*Incorrect data entry in the household lists. Different names on household lists and CSCs. Names are not the same in different documents. The names are different in the birth certificate and other documents.*

According to Kyaw, when officials see discrepancies in information, they challenge her regarding the validity of the information rather than accepting that it may be a mistake from their side. Min, a village head in Thaton who is Kayin Buddhist, talks about the situation of her own daughter:

*Data entry mistakes meant that my daughter was given a name on her birth certificate which was completely different to the name she was registered with. Such differing details would have taken even longer to correct and provide proof and evidence for when trying to get her an ID card.*

Shwe, a Muslim from Loikaw, describes how such mistakes often stem from a lack of local knowledge



of different communities by government officials, and how officials who make these mistakes shift the blame onto applicants:

*The government officials have limited knowledge of the different kinds of ethnic groups and the pronunciation of their names. Names are not the same in the documents because the officials do not know how to write ethnic names in Burmese. They then accuse the applicants of fraud.*

Thurein is another village head in an area that is predominantly Buddhist Kayin, but with various minorities living in his village. Like many other village chiefs, he plays a substantial role, both officially and unofficially, in facilitating the acquisition of ID documents for the residents of his village. He fulfils his official role of providing a recommendation letter, accompanies his constituents when they visit the MoLIP office, and guides them through the process. He sees poor data entry as a fundamental problem:

*I want accuracy and correct information in data collection and data distribution. When the start of the process is wrong, what will the end look like? ... I think they should not make mistakes with names in the identity cards because they have other documents*

*to check the information provided to them and make sure the data entry is accurate. But instead they blame the village head when such mistakes are made. I even have some documents where the date of birth has been entered wrong. In one document the entry is under the Gregorian calendar, and in another, it is under the Buddhist calendar.*

Poor data entry by officials highlights the lack of accountability and creates additional room for discrimination to enter into the procedure. Often those experiencing problems with data entry have names and/or speak languages of ethnic, religious or linguistic minorities which officials do not understand. These minorities are therefore disproportionately disadvantaged.

It is also important to juxtapose the challenge of extensive evidentiary requirements of applicants with this problem of poor data entry by officials. These two issues demonstrate the double standards engrained in the system, whereby applicants are held to a higher standard than officials. Furthermore, the cost of mistakes by decision makers is borne by applicants. An overhaul is required to introduce higher professional standards and modernise the system, to ensure that applicants are not penalised due to the errors of administrators.

## Case study: The Lisu of Isen and Tanaung Nyut <sup>68</sup>

The challenge related to incorrect data has on occasion impacted entire ethnic groups. In the villages of Isen and Tanaung Nyut, 47 households (182 individuals) originally held National Registration Cards which they claim labelled their ethnicity incorrectly. The National Registration cards recorded the ethnicity of the holders as the Lishaw ethnic group. The Lishaw ethnic group is listed among the 135 recognised national ethnic groups. The community instead claims that they are in fact Lisu which is also recognised as a national ethnic group.

The community was not happy with their ethnicity being labelled incorrectly, and they planned to collectively return their National Registration Cards and re-apply for CSCs with their correct ethnicity stated. In reality, only some of the community ultimately applied for CSCs, and these applications are still pending. In 2017, some of the community were given NCSCs. We can now categorise the community into two main groupings: Lisu who hold National Registration Cards with pending CSC applications, and Lisu who hold NCSCs. Both groupings within the community remain unhappy with their situation because they are entitled to hold CSCs, as the Lisu ethnicity is among the 135 recognised groups.

There has been an effort by the community to resolve this issue. On a few occasions, the village leaders approached the MoLIP office, which is an hour away by motorbike, to request action. Despite the MoLIP offices being notified of this issue in 2016, this issue is still open and remains unresolved.

It must be noted that while the wrongful recording of their ethnicity is problematic, a deeper problem relates to the fact that they have been denied CSCs despite holding National Registration Cards. As clearly set out in the 1982 Citizenship Law, all persons recognised as citizens prior to the enactment of the law are citizens of the country, regardless of whether they belong to one of the recognised national ethnic groups or not.

Whilst a decision remains pending, this community cannot travel, some reported that they could not work, and the children cannot attend high school. Additionally, at the time of writing, they have paid 800,000 MMK (US\$ 553) to the village leaders and the MoLIP towards administrative expenses.

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<sup>68</sup> For more on the Lisu, see David Bradley, Onomastic, orthographic, dialectal and dialectical borders: the Lisu and the Lahu, Asia Pacific Viewpoint, Volume 38, No 2, August 1997, pages 107 – 117.

Another challenge regarding data entry concerns the Bamar Muslims, who have reported difficulties in obtaining citizenship documentation that accurately reflects their religion and ethnicity. As set out in another report:

*A number of participants explained that when they have applied to renew their citizenship documentation with MoLIP, they are provided with replacement documentation that lists their ethnicity and religion as “Bengali Islam” or “Pakistani Islam”. So, despite the fact that they identify as Muslim of Bamar ethnicity, their previous CSC listed their ethnicity and religion as “Bamar Islam”. Such practice caused concern in the community as they felt this was a policy of increasing exclusion rather than cohesion. Participants whose parents adhere to different religions reported longer waiting times to obtain citizenship documentation. Participants reported that many of these barriers linked to religion and ethnicity can often be overcome by paying “unofficial fees.”<sup>69</sup>*

This is an alarming trend, which is demonstrative of efforts to deny full citizenship rights to Muslims, even if they belong to one of the recognised national ethnic groups. This points to deeper discrimination on the grounds of religion in addition to the existing race discrimination under the 1982 Citizenship Law.

### 3.1.6. Corruption

The prevalence of bribery and corruption places an additional financial burden on applicants, while undermining the fairness and efficiency of the procedure. It is common for officials and agents to require bribes to speed up the application process, lower the evidentiary burden and provide final positive decisions. Unofficial fees are so entrenched in the system that applicants see it as a normal part of the process. This is also true for members of the public. Aye, a female Rakhine Buddhist, speaks about her experience as someone from the majority religion and a recognised national ethnic group, who was able to pay a bribe in order to expedite her application process:

*When I went through the ID process at the Government employee’s house, they allowed me to come on a Sunday (because it was my only day off) then I gave money under the table for the service. Only then did the official in charge provide me with the card.*

Others from the majority community whose profile places them at risk for other reasons (for example, because they have migrated) are more likely to have been faced with demands for bribes merely to complete the process. As Sabei, a Buddhist from the Thaton region, explained:

*I have been three times to the MoLIP office. My name was not in the household list which is why I do not have an identity card. I was told to get the recommendation*

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<sup>69</sup> Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, ‘A Gender Analysis of the Right to Nationality in Myanmar’, (2018), available at <https://www.nrc.no/resources/reports/a-gender-analysis-of-the-right-to-a-nationality-in-myanmar/>.

*letter from my village head. I cannot afford to make several visits to the MoLIP office as it is costly for me. Without paying 15000 MMK (US\$ 10) and 25000 MMK (US\$ 16.7) in bribes, I cannot get my identity card. They keep on saying I cannot get my identity card and I don't have a clue how else to proceed if I cannot afford the money. This is a huge obstacle.*

However, it is evident that those from minority religious and ethnic groups are most vulnerable to abuse of power and corruption, with higher bribes being demanded from them to carry out standard procedures. Thiha, a 66-year-old who has 'Bengali', Mon and Kayin heritage, had successfully obtained an identity card

in the past. However, because he used to work as a fisherman, his card had faded over the years as a result of exposure to the elements. He therefore was forced to reapply for a CSC in 2017 without success:

*The official gave us many reasons, saying it is not a free service and asking for money. Even when we pay we don't immediately get whatever we are asking for. I have already paid 50,000 MMK (US\$ 33.30). The more money you give the faster the application happens. I was supposed to give the 170,000 MMK (US\$ 113) he asked for, but I gave 50,000 MMK (US\$ 33.30). I cannot afford to pay the full amount to them to get my renewed identity card issued. I do not have that amount of money for my application because I am now retired and only get a monthly allowance from my children.*

Thiha believes that there is a strong element of discrimination that underlies the procedure, where applicants from a minority ethnic or religious background get pushed to the back of the queue until a significant bribe is paid.

*They tell you there are delays because there are many cases and there is a queue, and that their priority are the Buddhists. I feel small in the office. We are asked to either go to this desk or the other and they make excuses that the officer responsible is either traveling, out or busy. The higher-ranking officers also ask for money.*

Interviews with Muslims in Rakhine indicated that costs are, in relative terms, significantly higher there than in other parts of the country covered in this research. In part, this was because the barriers to

citizenship applications were such that applicants needed to use unofficial brokers to assist them. Kyaw Kyaw explained the costs he paid for his son's NCSC.

*The ID card (NCSC) was received for my son. We submitted the correct documents - copies of my ID and his mother's ID and copies of his four grandparents. It took nine months. We don't have rights to ask or do anything, so we used a broker for the application process. The broker directs us where we need to pay. He gives many reasons to release money. Not everyone can get ID. The costs are so high. Immigration people do not accept money from us/people directly. Although they announced there are no agents/brokers to run official work, they keep unofficial ones. All officers are the same for us, hoping to get our money. But if I complain about these issues, I and my generation will not receive any pieces of documents anymore. Then it becomes worse. They will throw away the applications and they will be lost.*

These cases were not unique, nor confined to one region, with many interviewees describing that their inability to pay the bribes demanded by officials was ultimately what prevented them from obtaining an identity card.

### 3.1.7. Delayed Decision Making

There is no legal obligation for MoLIP officers to make their decisions within a particular timeframe. There also is no administrative target in this regard. As has already emerged in this report, delays in the decision making process are a significant challenge. Indeed, in many instances, officials simply do not make a decision.

As with the other challenges, this too is one which disproportionately impacts those from minority ethnic or religious backgrounds,<sup>70</sup> as well as those with more complicated profiles, including as a result of displacement. Many of those interviewed said they are yet to receive a decision despite having made their applications many years before. Pyone, a Kayin Muslim from Thaton, has faced particularly lengthy delays:

*Three or four times I have already visited to make the CSC card since 1988. I have tried but I don't have money to pay the officers.*

<sup>70</sup> Norwegian Refugee Council, The Seagull, Institute on Statelessness and Inclusion, Statelessness Network Asia Pacific, UNHCR and UN Women, *A Gender Analysis of the Right to Nationality in Myanmar* (2018), available to download [here](#).

She was unable to push her case further because of the lack of money to pay bribes or to regularly travel to the offices to follow-up on her case. She therefore never got a response from the immigration office and no decision has been made on her case. She recently gave up on the procedure and now relies on a daily allowance provided by her children. Naing, from a Hindu background, has a citizen father and a naturalised citizen mother. He has been trying to apply for his documents for many years:

*I got together all the documents required. I have submitted all documents but they say that they are busy so they will work on it when they have time. They said they will have to ask Nay Pyi Taw<sup>71</sup> and that is taking a long time for me.*

He believes the majority of individuals from his community are unable to obtain ID documents. For example, his wife had submitted her naturalisation application in 2013, and when this research was carried out, she was still awaiting a decision. It is clear in his situation that waiting for a decision has become a psychological strain:

*Time (...) to go to the office again and again. It is time consuming. The officials have little manpower. It is tiring, it is tiring.*

Compelling applicants to wait indefinitely for a decision is a hallmark of an inefficient system that is unfair and vulnerable to corruption. Importantly, as there has been no formal rejection, these applicants are unable to appeal a negative decision. Under principles of administrative law, such lengthy and indiscriminate delays should be open to the scrutiny of the courts, especially when considering how pervasive this problem is, and the disproportionate impact it has on disadvantaged groups.

## 3.2 Impact of the Lack of Identity Documents

Over the course of the research, most participants stressed the negative impact that the lack of identity documents has on themselves, their families and their communities. They were particularly concerned about the potential impact this would have on their children's futures.

One significant impact of the denial of identity doc-

umentation was the resultant difficulties travelling within the country. As recollected by an interviewee:

*When I was in Kayin, the checkpoint police at the crossing bridge asked for an ID. I explained to them that a lot of people in Kayah who are Muslim do not have IDs.*

He was detained at the checkpoint and only released after he paid a bribe of 3000 MMK (US\$2). Even if he was able to reach his destination, he would face problems with the most basic things:

*Without a recommendation letter of my township, I cannot stay at a hotel because they ask for ID. And I also cannot make or receive any money transfers within the country.*

The inability to travel can also have a knock-on effect on job opportunities. Previous research in Bhamo, Kayah State showed how those without identity documents suffered significantly from the inability to access employment due to the inability to travel. Accessing the market economy, which is predominantly trade with China, becomes impossible for those without identity documents. Furthermore, ownership of land and vehicles is restricted to those who have identity cards. As a coping mechanism, many spoke of having to get a recommendation letter from an individual with an ID card in order to be able to purchase a property.

There is also a significant impact on access to education. Abul, a Muslim from the village of Tanintharyi was waiting to hear the decision of his application after many months. Without obtaining documentation for himself, he could not begin the process for his son. He spoke of how this is a problem for him now that his son has become a teenager:

*I need my son to have a CSC, so we are trying to get CSC for me first as when the parents get a CSC, the process for children becomes smoother. We are yet to be successful. However, now my son has difficulty to travel to Yangon to attend religious school, he cannot do that without an ID card.*

Many of the consequences of not having an identity card in turn serve to further heighten the exclusion and disadvantage of certain communities such as returnees, minorities and persons with disabilities. When members of a minority community cannot access employment, travel or further education, it adds layers of disadvantage to their situation, further exac-

<sup>71</sup> Nay Pyi Taw is the capital city of Myanmar.



erbing their disadvantage. The daughter of Naing, for example, faced delays graduating with her diploma because she could not show her identity card and she described how this led to her facing further discrimination:

*When my elder daughter was graduating from her diploma course, they did not issue her the diploma immediately and said because we believe in Islam, we are Kalar<sup>72</sup> that's it. My daughter had issues with getting a diploma because she is Kalar and could not get her ID. They had a panel discussion in order to decide if they will issue a diploma to my daughter.*

Many individuals who have been denied identity documents also reported that they face psychological consequences. With a procedure that is often indefinite, arbitrary and unclear, which can drag on for months or even years, many of the interviewees expressed a sense of helplessness and futility. "I feel helpless" and "I cannot do much" were recurring phrases in the interview process. Haymar spoke openly about the anxiety she feels:

*I am very worried and frustrated for my children and their education because they will also suffer if I do not get an identity card. I am not a criminal but what if I get arrested for not having a recommendation letter in case something happens? And my children are not able to go to school. And I cannot ask help from anyone. I don't have any hope.*

At times this helplessness, which is the result of being treated unfairly by a bureaucratic system, can translate into feelings of guilt and blame regarding how this impacts the whole family:

*My children blame me for not getting them IDs. I am very worried for my children and their future. Their education. My grandchildren will blame me for not having IDs. I did try but it did not work out, that is the reality.*

In terms of healthcare, in many cases, a letter from the village chief is adequate to ensure access to healthcare. However, the reliance on village chiefs for the enjoyment of the right to health is both unsustainable and unfair. This places individuals and families in a situation of unnecessary dependence on the village chief, leaving them vulnerable to exploitation and abuse. Furthermore, larger hospitals do not always accept such letters as proof of identity for the purposes of healthcare.

This situation is particularly problematic for those who need regular treatment. The family of Ei, the 16-year-old disabled participant quoted above, spoke of the obstacles they faced because she does not have an identity card, which often meant her treatment was delayed:

*We need to get recommendation letter from the village head every time she needs treatment and when the village head is busy it takes longer for medical assistance.*

Some of the other challenges faced by those who lacked identity cards related to international travel, obtaining passports and visas, purchasing land and other large assets, borrowing money and obtaining driving licences. It is therefore possible to conclude that even though this research did not focus on the impacts of the lack of documentation, interviewees clearly highlighted a range of negative impacts which fundamentally affected their lives. The resultant discrimination and deprivations they faced undermined a range of social, economic, political and civil rights to which they are entitled.

In conclusion of this section, it is important to note that perhaps the most serious and long-term (even inter-generational) impact on individuals, families and entire communities is the denial of their right to nationality and resultant statelessness. While there has been no comprehensive research into the extent of statelessness throughout the country, anecdotal evidence suggests that this is a widespread problem which disproportionately impacts those who do not belong to the 135 recognised national ethnic groups. Furthermore, even where statelessness is not the outcome, the lack of identity documentation can significantly impede the lives of individuals, while placing them and their descendants at risk of statelessness.

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<sup>72</sup> This is a derogatory term used in relation to people of South Asian descent.



**The Institute on Statelessness and Inclusion (ISI)** is the first and the only human rights NGO dedicated to working on statelessness at the global level. Its mission is to promote inclusive societies by realising and protecting everyone's right to a nationality.