



Myanmar's 1982 Citizenship Law and Rohingya

December 2014

Problems

Problem 1:

The 1982 Citizenship Law deprives the Rohingya of citizenship in Myanmar.

Under this law, full citizenship is primarily based on membership of the “national races” who are considered by the State to have settled in Myanmar prior to 1824, the date of first occupation by the British. Despite generations of residence in Myanmar, the Rohingya are not considered to be amongst these official indigenous races and are thus effectively excluded from full citizenship. This criterion for citizenship is based on deeply flawed and out-dated notions about race and ethnic identity formation that were prevalent during the colonial period in Myanmar. The 1982 Citizenship Law is discriminatory on the grounds of race, since access to citizenship is primarily based on race, and excludes certain races and ethnic groups, most notably the Rohingya hundreds of thousands for whom have been made stateless.

Naturalised citizenship in Myanmar may be applied for by individuals and their children who can provide “conclusive evidence” that they entered and resided in Myanmar prior to 4 January 1948, the date of state succession from the British. Due to a lack of documentation and the arbitrary and discriminatory implementation of the law, this effectively excludes most of the Rohingya from naturalised citizenship. The very high standards required to acquire naturalised citizenship that replaced the more reasonable ones of the 1948 Citizenship Act are not compliant with international standards.

Furthermore, there is significant evidence to suggest that, within the context of widespread corruption and impunity, the 1982 Citizenship Law has been applied in a discriminatory and arbitrary manner that has further led to the deprivation of Rohingya citizenship.

Problem 2:

The 1982 Citizenship Law does not comply with Myanmar's international obligations in multiple areas.

Myanmar's 1982 Citizenship Law violates the Universal Declaration of Human Rights which rests on the principles of non-discrimination and provides that everyone has a right to a nationality. It violates the Convention on the Rights of the Child which obliges states to ensure a child's right to acquire a nationality, and international norms prohibiting discrimination of racial and religious minorities, such as the UN General Assembly Resolution on the International Convention on the Elimination of all forms of Racial Discrimination.

Problem 3:

The 1982 Citizenship Law leads to an increase in statelessness over generations.

The law does not contain measures to ensure that stateless children born in Myanmar acquire Myanmar citizenship. There are no safeguards to ensure that children born within the territory of Myanmar who do not have another nationality will acquire Myanmar citizenship. Children born of stateless persons in Myanmar are automatically stateless. This means that statelessness in Myanmar continues to increase. As a party to that Convention on the Rights of the Child (UNCRC), Myanmar is obliged to ensure the implementation of every child's right to acquire a nationality, particularly where the child would otherwise be stateless - an obligation Myanmar does not honour.

Problem 4:

The 1982 Citizenship Law is the linchpin for a whole set of laws, policies and practices that discriminate against Rohingyas as non-citizens and leaves them extremely vulnerable to human rights abuses by government and non-government actors.

These include systematic and severe restrictions on Rohingya freedom of movement, marriage restrictions, birth and population control. These restrictions limit Rohingya access to health, education, livelihoods and family life.

Problem 5:

The 1982 Citizenship Law attacks the foundations of Rohingya identity.

Under this law, access to full citizenship is primarily based on membership of one of the “national races”, which are officially fixed by the state. Which groups were included as races and how they would be referred to, has been decided at the full discretion of the State in violation of communities’ right to self-identify. The exclusion of Rohingya from the list of 135 national races legitimises and sanctions a-historic notions that incorrectly exclude large proportions of Rakhine State’s Muslim population from Myanmar’s history. This feeds into today’s public perceptions in Myanmar of the Rohingya as a people who do not belong to the country and encourages discrimination against them. It promotes the view within Myanmar that Rohingya is a “made-up” ethnicity. It leads to the destruction of Rohingya identity and paves the ground for racial hatred and violence against the community as a whole. .

Problem 6:

Calls from the international community for the revision of the 1982 Citizenship Law are claimed by the Government of Myanmar to violate their national sovereignty.

Since international calls for the revision of the 1982 Citizenship Laws, further comments have been made by President Thein Sein that there are “no Rohingyas” in the history of Myanmar and that there will be no revision of Myanmar’s controversial 1982 Citizenship Law. The international community, for the sake of political expediency, has all but given up on exerting pressure on the Government of Myanmar to revise the 1982 Citizenship Law until after the 2015 elections. However, by this time the Rohingyas who, contrary to public perception, have participated in every national election since Myanmar’s independence, may well have had further political rights removed from them. The international community, in its efforts to engage with Myanmar economically and politically since election of the quasi-civilian government in 2010, has failed to exert effective pressure over the Government of Myanmar, particularly in respect to the national laws and policies that lay the groundwork for the violence and abuses against the Rohingyas in Rakhine State

Problem 7:

The 1982 Citizenship Law marks the legalisation of a broader and on-going national campaign to de-nationalise the Rohingyas, which includes removing them from Myanmar soil and destroying them as an ethnic group.

This process began under the military rule of General Ne Win and continues until today. Events in this process include the military operation known as Nagamin in 1978 which reportedly resulted in an estimated quarter million Rohingyas being driven into neighbouring Bangladesh and many being declared illegal immigrants, the 1989 Citizenship Scrutiny exercise during which Rohingyas National Registrations Certificates - the only effective proof of citizenship at the time - were removed, military and civilian campaigns against them in the 1990s, and the violence against Rohingyas in Rakhine State since June 2012 which has led to mass displacement and further disproportionate restrictions for Rohingyas. Revision of the 1982 Citizenship Law needs to be placed in a much broader set of reforms aimed at protecting Rohingyas and religious minorities in Myanmar and reversing the trends of increasing racial and religious hatred and violence in Myanmar.

Solutions

Solution 1:

The 1982 Citizenship Law needs to be revised. Any so-called “interim solutions” should not detract from the pressing and immediate need to revise the discriminatory citizenship laws. The international community should not shy away from exerting pressure on the Government of Myanmar in the lead-up to the 2015 elections, or allow for the further attacks on Rohingyas political rights in the meantime. Such policy “pragmatism” in this regard in effect facilitates the further destruction of the Rohingya.

Solution 2:

Myanmar’s Citizenship Laws should remove race as a criterion for citizenship and base citizenship on objective criteria such as decent, as most countries in the world do today, to ensure that their citizenship laws do not discriminate on the grounds of race.

Solution 3:

Myanmar Citizenship Laws should ensure that children born of stateless persons in Myanmar are able to acquire Myanmar nationality to prevent the generational spiralling of statelessness and ensure that Myanmar’s obligations as a party to the UNCRC are met.

Solution 4:

Myanmar Citizenship Laws should include naturalisation procedures that are fair, reasonable and accessible to those who have a clear link to Myanmar.

Solution 5:

Myanmar’s laws should be implemented in a non-discriminatory and non-arbitrary manner.

Solution 6:

Myanmar’s Citizenship Law should not reinforce hierarchies of citizenship through different categories of citizenship such as “full citizen”, “associate citizen” and “naturalised citizen”. All citizens should have the same access to rights in Myanmar.

Solution 7:

Myanmar should improve the law and policy framework to ensure the protection of human rights for all non-citizens within the territory.

Solution 8:

The 1982 Citizenship Law needs to be understood not in legal isolation, but as part of a broader process of ethnic cleansing and destruction of the Rohingya as an ethnic group in Myanmar, which holds in place and sanctions multiple anti-Rohingya policies and practices. This process has important regional consequences as populations and conflicts spill over into the region. The international community should not consider the 1982 Citizenship Law as simply a sensitive domestic issue to be dealt with internally by the Government of Myanmar. Both Myanmar and the international community have the responsibility to protect Myanmar’s population, including the Rohingya, especially where there is evidence of ethnic cleansing and crimes against humanity.

**Published by Burmese Rohingya Organisation UK
627 Romford Road, Manor Park, London E12 5AD**

Tel: +44 2034892760 E-mail: rohingya@brouk.org.uk www.brouk.org.uk