Legal Study on the Population Change in Myanmar

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Abstract
There are two reasons on the conditions of Myanmar population change. It depended on the migration and 1982 Myanmar Citizenship Law. Many intellectuals and experts in Myanmar have been moved and settled in other countries. Resettling of those people into Myanmar is mainly subject to the Myanmar Citizenship Law. Therefore, this article provided a historical account of successive Citizenship Law in Myanmar which has acquired and lost the rights of citizenship. In addition, this article presented two points of view that are derived from the special matter: (a) a number of persons in Myanmar have acquired citizenship in other countries; and then (b) Myanmar citizenship law attacked the rights of citizens which would resettle to Myanmar. Finally, it concluded the need to explore the consequences of the value of citizenship in the matters of the Myanmar population change.

Keywords: Migration; Myanmar Citizenship Law; Value of Citizenship; Population Change; Resettlement

1. Introduction

In Myanmar, most people have positioned from Myanmar to the developed countries or neighboring countries because of national conflicts and economic crisis. Accordingly, it becomes less human development in Myanmar.

In addition, the next step of shifting human development depends on the Myanmar Citizenship Law. Citizenship is a strong legal union between an individual and a state, and is thus important in encouragement a sense of belonging to a political community. However, citizenship is not only a legal status but also a bundle of rights and duties as well as a civic, law and customs-abiding attitude. Finally, it signifies also a collective identity.1 On the other hand, Myanmar citizens leave from the home country and take citizenship in developed countries. Indeed, this is the main fact of a smaller amount of population in Myanmar.

In many States, it has been perceived, in the former few years, progressively popular academic and political address concerning procedures depriving nationality on grounds of actions extremely pre-judicial to the State has happened.2 The Government of Myanmar will build an inclusive pluralist democratic society with human rights and the rule of law with the enactment of reforms to citizenship law.

2. Historical Background and Legislation of Myanmar Citizenship

The country at present acknowledged as Myanmar was called Burma until 1989, when the State Law and Order Restoration Council (SLORC) decided on a name change as part of an identitarian move to break


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In Myanmar, the sources of law in the pre-colonial period are the Dhammathat, a collection of Pali and the ancient Laws of Manu, and the Yasathat, a set of precedents, religious teachings and rules established by several monarchs. The First Anglo-Burmese war (1824-26) ended with the signing of the Treaty of Yandabo on 24 February 1826 and marked the provinces Rakhine and Thanintaryi to the beginning of British rule in Myanmar. The British conquered lower Burma, the cities of Bago and Yangon in the Second Anglo-Burmese War of 1852.

After the third Anglo-Burmese war of 1885, the country would totally come to fall under British rule. Later, when the Government of Burma Act was passed in 1935, the territory of Myanmar separated from the British Empire. But, Myanmar still applies the laws enacted for British India during British rule.

Myanmar became independent from Britain in 1948. Under the 1947 Constitution of the Union of Myanmar, the legislative, executive, and judicial powers were vested in the people. In 1962, the Revolutionary Council took over legislative and executive authority. 1974 Constitution of the Socialist Union of Myanmar was passed by the Myanmar Socialist Programme Party. During that period, while legislative power was vested in the House of Representatives (Pyithu Hluttaw), executive and judicial powers were vested to the central and local organs. Then, State Law and Order Restoration Council seized power in 1988. The name of SLORC was changed as SPDC in 1997. The Constitution of the Republic of the Union of Myanmar, 2008 was drafted and adopted during these periods. At present, the legislative, executive and judicial powers would be complied with the 2008 Constitution of the Republic of the Union of Myanmar.

The British government passed the Foreigners Act relation to foreigners and citizenship. The aim of this Act is to prevent the subjects of Foreign States from residing in the Union of Myanmar, or from passing through or traveling therein without the consent of the President of the Union. Until the British enacted the Myanmar Passport Act, people were free to travel in and out of Myanmar and they did not need passports to enter Myanmar. In addition, the British enacted the Registration of Foreigners Act and came into force on 23 March 1940. Foreigners were issued a Foreigner Registration Certificate (FRC) after registration by the requirement to report and register with the relevant authority. But, the term for “foreigner” from the Foreigners Act, 1864 was used without defining the term for “citizen” in the Act.

The Supreme Court of the Union of Myanmar showed that citizens who automatically acquired citizenship were not bound to produce a Union Certificate of Citizenship (UCC) issued in order to prove their nationality. So, while citizens applied only for a “Union Certificate of Citizenship” (UCC) as proof of citizenship of the Union completed by national jurisprudence, foreigners would need to register under the Registration Foreigners Act, 1940.

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3 José María Arraiza and Olivier Vonk, Reports on Citizenship Law: in Myanmar, October 2017, 1.
4 Hall, 138; Maung Maung.
5 Section 4 of the 1947 Constitution of the Union of Myanmar.
6 The Foreigners Act, India Act III, 1864 (12 February 1864).
7 The Myanmar Passport Act, India Act XXXIV, 1920 (9 September 1920).
8 The Registration of Foreigners Act, Burma Act VII, 1940 (23 March 1940).
9 Section 4(2) of the 1948 Union Citizenship Act.
10 Section 6(2), Ibid.
The Union Citizenship Act, 1948 was enacted on 8 November 1948, and the Union Citizenship (Election) Act, 1948 was enacted on 8 May 1948.

In the 1950s, the greater number of Myanmar did not have a citizenship certificate issued under the Union Citizenship Act or the Union Citizenship (Election) Act. In 1949, the citizens required to register through the Residents of Myanmar Registration Act. After registration, citizens were issued with National Registration Cards (NRCs) for males with green cards and females with pink cards. There were 18 million holding National Registration Cards at the end of 1960.\(^\text{12}\)

In 1989, the former NRCs were issued under the Residents of Myanmar Registration Act, 1949 and were replaced by three different types of color-coded on “Citizenship Scrutiny Cards” pink cards for citizens, blue cards for associate citizens and green cards for naturalized citizens.\(^\text{13}\) All citizens obliged it to be registered in the family “Household List”\(^\text{14}\).

At that moment in February 2015, still under the Union State and Democracy Party (USDP), Temporary Registration Cards (TRCs) commonly known as the “White Card”, were issued only temporarily in addition to the NRCs, were subsequently withdrawn and given an exchange of receipt under Presidential Notification 15/2015 Announcing Temporary Registration Cards Expiry on 31 March 2015. In December 2015, under the new National League for Democracy government, new “Identity Cards for National Verification” (ICNVs) were introduced as an interim card in the National Verification practice with the target to analyze whether the applicant encounters the suitability to become a citizen of Myanmar and to recognize them as populations of Myanmar during the citizenship authentication route.\(^\text{15}\)

More than 11,000,207 persons, especially over the age of 10 (27.3 per cent of persons) did not have a valid identification document according to the 2014 Union of Myanmar census.\(^\text{16}\)

However, National Registration Cards (NRCs) were de facto because of the registration of foreigners under the Registration of Foreigners Act.\(^\text{17}\) The holders of Temporary Registration Cards (TRCs) were also de facto as they were allowed to vote in succeeding elections.\(^\text{18}\)

There are several routes for modernizing the current legal framework on citizenship and the rule of law-abiding application in Myanmar. The consequence obligates to provide sustainable and clear solutions for its large undocumented population.

3. Legal Status of Citizenship

Citizenship fixes a legal status and relation between an individual and a state that involves specific legal rights and duties. Citizenship is a primary feature of the international state system. States determine the own name of people governed and responsibility through laws on citizenship. Citizenship is generally used as a synonym for nationality but the Myanmar law uses the expression citizenship and not nationality. While the legal rights and duties of individuals attached to nationality under domestic law, some exercise the rights and duties after the age of majority or in the national territory.\(^\text{19}\) States prescribe the opportunity in relation to nationality in their domestic legal framework. Individuals can acquire nationality operating the ways of practicing to States’ laws and practices operate an individual’s nationality on the doctrine of \textit{jus soli, jus sanguinis}, naturalization and the factors of an established relationship with the State through the long-term residence.


\(^{14}\) The Family Household List, also known as “Form-66/6”, is issued under the Residents of Myanmar Registration Act, 1949. However, details on the implementation of the process are not publicly known. It is assumed, nevertheless, that there was internal guidance on the procedures to be followed.

\(^{15}\) Republic of the Union of Myanmar, State Counsellor’s Notification, 27 December 2016, para. 7.

\(^{16}\) 2014 Myanmar Housing and Population Census. The Union Report, 207.

\(^{17}\) Nyi Nyi Kyaw, 276.

\(^{18}\) Ibid., 279. The TRCs which issued temporarily would later be used to document unrecognized minorities during the 1990s.

\(^{19}\) http://globalcit.eu
3.1 Myanmar Citizenship over the Basis Rules of *jus soli* and *jus sanguine*

All States allow citizenship over the basic rules of *jus soli* and *jus sanguinis*. The term ‘*jus sanguinis*’ offers that the determination of a person’s citizenship on the basis of the citizenship of his or her parent(s) at the time of the person’s birth or at a later time. The term ‘*jus soli*’ agrees that the determination of a person’s citizenship on the basis of his or her country of birth. Both *jus sanguinis* and *jus soli* cover not only automatic acquisition at birth, but also non-automatic acquisition at birth and after birth. The elements of both rules assorted the determination of a person’s citizenship.

The nonexistence of special *jus soli* provision tends to statelessness for children born in their territory. So, all states lead *jus soli* rule as to birthright citizenship for the first born child of emigrant citizens. The following persons recognized that the principles of *jus sanguinis* and *jus soli* were citizens of Myanmar:

i. Every person, both of whose parents have its place to any of the indigenous races of Myanmar;

ii. 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 Myanmar;

iii. Every person born in any of the territories included within the Union, of parents both of whom are, or if they had been animated at the commencing of this Constitution;

iv. Every person who had been the place of his birth was contained within His Britannic Majesty’s provinces 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 choice of citizenship of the Union in the routine and within the period set by law.

Foreigners in Myanmar during 1947-1982 could apply for naturalization under certain conditions. Moreover, *jus soli* provisions advanced persons whose four grandparents were permanent residents and whose parents and themselves, were born in Myanmar. But the present 1982 Citizenship Law lacks almost entirely *jus soli* provisions and dominants the principle of *jus sanguinis* that governs citizenship in Myanmar. Since 1982, it is an exception for those who entered and resided in the State prior to Myanmar’s independence on 4 January 1948.

However, under the 1982 Myanmar Citizenship Law, entitlement for citizenship in Myanmar principally follows an ethnicity and *jus sanguinis*, descent-based criteria. The national legislator can enhance the law that citizenship is granted by descent based on reasonable, objective criteria and safeguard for children to be allowed Myanmar citizenship and not to become stateless consistent with the Convention on the Rights of the Child.

3.2 Modes of acquisition and loss of citizenship under Myanmar Citizenship Law

Under the subsequent 1948 Union Citizenship Act which entered into force on 4 January 1948, automatic acquisition of citizenship involved: permanent residents whose grandparents had resided in Myanmar permanently; children born in the Union after 4 January 1948 one of whose parents was a citizen; and children born outside Myanmar and one of the parents was a citizen serving for the state authorities of the Union.

Further, persons born within His Britannic Majesty’s dominions and residing in the territory of the Union of Myanmar for eight years in the decade preceding January 1948 include the provision for non-automatic *jus soli* under the Union Citizenship (Election) Act of 1948.

Of course, it is necessary to be a naturalized citizen as a majority of age, five years of residence in

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20 Ibid.
21 Ibid.
22 Section 11 of the 1947 Constitution of the Union of Myanmar.
23 José María Arraiza and Olivier Vonk, Reports on Citizenship Law: in Myanmar, October 2017, p.11.
24 Article 5(a-c) of the 1948 Union Citizenship Act (Act LXVI, 8 November 1948).
25 Article 3 of the Union Citizenship (Election) Act (No. XXVI of 1948).
the Union, good character and knowledge of an indigenous language, the intention to reside in the Union, renounce all foreign citizenships, and a declaration of loyalty as prescribed in this Act. Subsequently, persons who had served in the Union armed forces for three years could also apply for naturalization.

The 1974 Constitution of the Socialist Republic of the Union of Myanmar defined “citizen” as “all persons born of parents both of whom are nationals of the Socialist Republic of the Union of Myanmar are citizens of the Union. Persons have the right to obtain nationals according to existing laws when this Constitution comes into force are also citizens”. The 1948 citizenship legal framework continued to be in force, which is important as the subsequent 1982 Citizenship Law recognized the citizenship of all of those who were citizens at the time it entered into force.

The 1982 Myanmar Citizenship Law and its Procedures codifies the acquisition, confirmation, and loss of Myanmar citizenship. It arranges for three types of citizenship – “citizens”, “associate citizens” and “naturalized citizens”.

The nationals such as the Kachin, Kayah, Karen, Chin, Burma, Mon, Rakhine and Shan, and ethnic groups as having settled in any of the territories included within the State as their permanent residents from an era former to 1185 B.E., 1823 A.D, are citizens.

The following persons born within or beyond the State are also citizens:
(a) Persons were born by the parents who are citizens;
(b) Persons born of parents, one is a citizen and another is an associate citizen;
(c) Persons born of parents, one of whom is a citizen and the other a naturalized citizen;
(d) Persons born of parents, one of whom is: (i) a citizen; or (ii) an associate citizen; or (iii) a naturalized citizen: and the other born of parents, both of whom are associate citizens;
(e) Persons born of parents, one of whom is: (i) a citizen; or (ii) an associate citizen; or (iii) a naturalized citizen; and the other born of parents, both of whom are naturalized citizens;
(f) Persons born of parents, one of whom is: (i) a citizen; or (ii) an associate citizen; or (iii) a naturalized citizen; and the other born of parents, one is an associate citizen and another is a naturalized citizen.

To be an associate citizen, the Central Body determines applicants for citizenship under the Union Citizenship Act, 1948 confirming the stipulations and qualifications.

If persons before 4th January 1948 and their children have not applied under the Union Citizenship Act, 1948, they will apply for naturalized citizenship to the central Body with significant evidence.

Although a citizen shall not lose his citizenship merely by marriage to a foreigner, a foreigner shall not acquire citizenship merely by marriage to a citizen.

A foreigner who was adopted as a Kittima Child shall not acquire citizenship merely by adoption of citizen parents.

Citizenship of a person ceases when a citizen who leaves the State permanently or who acquires the citizenship of or registers himself as a citizen of another country, or who holds a passport or a akin certificate of another country. The citizenship of a citizen by birth shall not be revoked if it does not commit the provision of section 16.

The central body will revoke associate citizenship and naturalized citizenship of a person if he commits to trade or communicate with enemy countries assisting or abetting, and with an organization or a

27 Article 6 of the 1982 Myanmar Citizenship Law.
28 Section 3, Ibid.
29 Section 7, Ibid.
30 Section 34, Ibid.
31 Section 42, Ibid.
32 Sections 15(a) and (b) of the 1982 Myanmar Citizenship Law.
33 Ma Waung Shwe Lin (a) Ma Alin and the Union of Myanmar, 5 Nov, 1970 B.L.R. (C.C.) 222.
34 Sections 16, Ibid.
35 Sections 17, Ibid.
On the other, the Constitution of the Republic of the Union of Myanmar 2008 also provides that all persons who have either one of the following qualifications are citizens: (a) person was born by the parents whose are nationals and (b) person who is already a citizen under the law on the day this Constitution starts at function.37

Therefore, the facility to confirm or acquire citizenship in Myanmar generally depends on the applicant necessarily representing their ethnicity and the citizenship of their ancestors. Moreover, the eligibility criteria for “citizenship”, “associate citizenship” and “naturalized citizenship” under the 1982 Citizenship Law applies equally to individuals born in and outside of Myanmar. Additionally, the 1982 Citizenship Law requires children who are “citizens” by birth and children born to “associate citizens” and “naturalized citizens”, born either in or outside of Myanmar, to make birth registration.

4. Legal Issues of Myanmar Population Change

In the course of the period from 2010 to 2015, 80 countries or areas experienced net inflows of migrants, despite the fact that 120 countries or areas practiced net outflows of migrants. Migration is a driver to grow the population on net inflows of migrants. The Republic of the Union of Myanmar is the largest country in the Southeast Asian nations. Among the total population, 70.4 percent (36.58 million) live in rural areas. The remaining 29.6 percent (14.9 million) live in urban areas, 20 percent of which reside in Yangon and Mandalay.38 Myanmar is a country experiencing the highest outflow of migrants. For Myanmar, the change in the migration pattern was caused by the armed conflict, political affairs and economic crisis, with an increased outflow that consisted of emigrating citizens.

4.1 Migration and Nationality

Citizenship has occurred as a significant matter on migration and migrant integration since the 1980s. There was connection between migration study and the legal literature on nationality law or political systems and sociological scrutinizes of citizenship. The underlying forces of the migration process related with political changes towards a more comprehensive conception of citizenship.39

The four general tasks identified on migration and citizenship:
(a) to compare institutions and policies of citizenship that respond to migration within and across countries;
(b) to assess the consistency of these responses with legal norms, their legitimacy in terms of political norms and their consequences and effectiveness in achieving policy goals;
(c) to study the impact of migration on changes of institutional arrangements and policies;
(d) to analyze migrant attitudes, ties and practices with regard to citizenship: their senses of belonging to political communities, their involvement in different polities through social, economic, cultural and political ties, their choices with regard to alternative statuses of citizenship, their use of rights, their compliance with duties and their political activities.40

The indication is whatever about decision making and the changing aspects of international migration. The laws of migration were evolved the relations between space and tendency to move on the analysis of theoretical and empirical work. The laws are: (1) The common migrate only short distances and start ‘currents of migration’ towards larger hearts. (2) This roots movement and development methods in connection with populations in sending and destination provinces. (3) The processes of distribution and

36 Sections 35 and 58, Ibid.
37 Section 345 of the 2008 Constitution of the Republic of the Union of Myanmar.
40 Ibid.
concentration link to each other. (4) Migration chains improve over time. (5) Migration chains lead to leaving arrangements towards centers of commerce and industry. (6) Urban people are less likely to to migrate than rural people. (7) This is also proper for the female residents (Sir Ernest George Ravenstein, 1885 and 1889).41

The state is certainly involved as a basis actor in intermediating international migration movements. The creation of nationality and regulating of national boundaries are connected with the development of the nation-state as a legal concept. It founds a political barrier because each human being has been accredited with a legal status. The reproduction of national identity contains a procedure of self-identification with the state itself. This is persistently safeguarded by the identification of different people outside and beyond the nation state. It can be exposed by the migration of representatives of these people.42

After independence in January 1948, post-colonial Burma (Myanmar) was divided and started with national politics and a series of ethnic insurgencies enormously obscuring territorial politics. Then, since 1962, a nation with population has been governed by military for 40 years and has been to preside over division, deadlock, and decay. Both the junta and opposition forces create division in their national conflict and disputes.43 The ranks of the armed forces continue to remain due to political and ethnic disintegration and doubt.44 When the U.S. has intervened in Myanmar afterwards 1990, with regard to the policy failure, Steinberg described that “an indefinite policy of isolation may not work.”45 However, the opportunity to rethink existing policy is generally overlooked.46 Since 1990, manufacturing declined after having the major feature of national politics.47 In these circumstances, individuals leave out of the country to cause economic and social disaster.48 As a result, decay was counted by the U.N. Development Program’s (UNDP) Human Development Report 2004: the rank of Myanmar 132; Lao (135), Cambodia (130), and Vietnam (112) on its human development index among the members of the Association of Southeast Asian Nations (ASEAN).49

The Myanmar people have established as a survival strategy on migration for safe refuge and for livelihood. Those who have made migration not only support themselves but also give their families. The positions of Myanmar have changed the degree of vulnerability to natural hazards among the countries at highest risk to natural hazards. Both cities and towns in Myanmar are exposed to recurring rapid on-set natural hazards, such as cyclones and floods, which are exacerbated by global climatic changes.50

According to the Myanmar Population Census of 2014, people more than two million Myanmar citizens moved abroad. Most of migrants were in Thailand, and a smaller number was in Malaysia, China and Singapore. Moreover, the destination countries include Republic of Korea, Japan, and the GCC countries.51

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41 Marco Martiniello and Jan Rath (EDS.), Selected Studies in International Migration and Immigrant Incorporation, Amsterdam University Press, Amsterdam 2010, p.61.

42 Ibid. p.557.


51 Migration Data for Policy Development: An appraisal of data and statistics on international labour migration statistics in Myanmar, International Labour Organization, 2018, p.3.
People from Myanmar to Thailand has historically cross-border migrated for many years. During the military government in the 1980s, ethnic groups who lived along the Thai-Myanmar borders passed with no formal ways. Moreover, many asylum-seekers started to enter Thailand to take shelter in that time. Most of political asylum-seekers accepted by the Thai government. During the 1990s, the migrants also reached for economic reasons in Thailand. The Thai government has formally identify migrants from Myanmar on the labour market since 1992. From 1992 to 2012, the influx of migrant workers from Myanmar has continued on the path of economic progress, being without a job and forced labour. Both national races and ethnic groups arrived to Thailand for job opportunities and higher wages. The decision of migrant workers to return depends on economic, social and political development in Myanmar.52

After the developed regions have improved the population outstanding positive net migration since the 1950s, they will surprise negative population growth than current migration trends continued as a scenario by around 2040 or 2050. If there is no migration or the immigration and emigration are the same points, the developing regions will surely progress the population. Myanmar as a developing country expects the population growth by comparing this point.

At present, most countries found the impacts of population change in the direction of various net migrations. Between 2005 and 2015, eight countries transformed to receiving from sending of international migrants. In opposition of another twelve countries changed net inflows to net outflows of migrants. The high level of net migration reflects in part the mass inflow of asylum seekers in some countries.

Attribution of citizenship at birth varies around the world, as do the rules for naturalization. At the present day, the most countries accept dual citizenship for immigrants and emigrants. Especially in Europe and South America, voting rights are regularly allowed to non-citizen residents in supra- and sub-national elections in their home countries. However, there are only 5 countries worldwide that grant them also voting rights in national elections and none of these allows them to stand as candidates.53

Citizenship is a principal factor of the international state system. Through laws on citizenship and democratic rights, states regulate who belongs to the people in whose name they administer and for whom they undertake responsibility. It highlights key differences between national laws regulating access to citizenship status and voting rights with a focus on how they affect international migrants.

4.2 Limitation of Myanmar Citizenship Law, 1982

In Myanmar, the military governments ruled still before April 2016 and enacted the key instruments establishing the legal framework for citizenship in the country. General Ne Win passed the 1982 Myanmar Citizenship Law and its three 1983 procedures. Then the Union Citizenship Act, 1948 and the Union Citizenship (Election) Act, 1948 were repealed by this 1982 Law.54

The provision of Section 22 of the 1982 Citizenship Law states that a person whose citizenship has ceased or has been revoked shall have no right to apply again for citizenship or associate citizenship or naturalized citizenship. Indeed, if a citizen of Myanmar who had acquired as citizen under the 1982 Citizenship Law, he or she shall be allowed to apply again for citizenship.

The provision of Section 14 of this Law describes a citizen shall have no right to renounce his citizenship during the war in which the State is engaged. Unless citizen renounces his citizenship during the war, his citizenship will keep on as citizen. During the war, people living the premises of civil war moved to other countries without renouncing their citizenship and nobody shall lose the citizenship on these migrations.

Under Section 16 of this Law, a person is ceased to be a citizen where he or she leaves the State permanently or who acquires the citizenship or registers as a citizen or gets a certificate of citizenship in

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53 http://globalcit.eu
54 Section 76 of the 1982 Myanmar Citizenship Law.
another country. Unless a citizen who intends to stay another State permanently, he will like to get the right to come back his country of birth.

Section 5 of the 1982 Myanmar Citizenship Law designates that every national and every person born of parents, both of whom are nationals are citizens by birth. According to Section 17 of this Law, the citizenship of a citizen by birth shall not be revoked, except in the case of cessation of citizenship under section 16. Nonetheless, the provision of Section 17 is the relationship of Sections 5 and 16.

In addition, Section 13 of this Law expresses that a citizen shall not acquire dual citizenship. A citizen applies for the dual citizenship in another country which he is at present working because the positions of dual citizenship of other country improve his job and opportunity prospects. If he accepts the citizenship of another country, the Myanmar citizenship will void. So, it is difficult to return the country of birth and his generation will grow up another country as to the limitation of this Section.

There are problems of citizenship on these situations although the migrants (nationals) were citizens by birth in Myanmar. If not, the children of these migrants would be citizenship of another country. This result affects the development of human resources in Myanmar.

The Myanmar national parents have to register their child born in or outside the State within the prescribed period. If one parent is not a Myanmar national and the child was born abroad, the remaining parent is likely to face difficulties in registering the child’s birth.

5. Opportunities for the resettlement of Myanmar citizens

To develop the population of Myanmar and have to resettle in Myanmar by the Myanmar nationals, it is essential to reform the 1982 Myanmar Citizenship Law and to protect them in consistent with International Human Rights Law.

5.1 Recommendations on the 1982 Myanmar Citizenship Law

Since 1997, the legal framework for citizenship has started to change. The NLD acknowledged the reality of problems accompanying with the 1982 Law. During the government of the Union Solidarity and Development Party (USDP) in 2011-2016, Daw Aung San Suu Kyi, the leader of the National League for Democracy (NLD), called for the 1982 Law to be revised. In April 2016, the NLD-led government took place and established an inter-ministerial group through a Presidential Notification to review the status of former citizens, who had acquired citizenship of other countries and sought to return to Myanmar. In August 2017, the government’s own Advisory Commission on Rakhine commended a criticism of the 1982 Law. Implementation Committee was established by the government accepting its recommendations. More than 25 percent of persons enumerated in the nationwide 2014 Census lack a documented legal identity. The status of those returning to Myanmar after periods abroad as refugees or migrants is so far unresolved. The number of marriages between citizens and non-citizens, and between citizens of different ethnicities, raises complex questions, including for the children of these unions.

Going back to the 1940’s, historical records describe how on 16 June 1947, the Honorable Aung San, Deputy Chairman of the Governor’s Executive Council, “amid cheers, moved in the Constituent Assembly that the future Constitution of Burma should be that of an independent sovereign republic.” The seven points-resolution approved stated that Burma would “guarantee and secure to all the peoples of the Union (…) equality of status”, that “the Constitution shall provide adequate safeguards for minorities” and that “this Historic Land of Burma shall attain its rightful and honored place in the world, make its full and willing involvement to the advancement and welfare of mankind and assert its commitment to the ideal of peace and friendly co-operation between nations founded on international justice and morality.”

57 Josef Silverstein, J. The Political Legacy of General Aung San, Cornell South East Asia Programme, 1993, p.72. (emphasis added)
Nonetheless, in Myanmar, despite the change of legal framework for citizenship since 1997, law reforming process remains consecutive demanding.

5.2 Legal Protection under International Human Rights Law

Basic human rights are assured by law to all men, women and children, irrespective of their nationality.

In general, human rights are classified into three main types:

1. Civil and political rights;
2. Economic, Social and Cultural rights; and
3. Group of Peoples’ rights.\(^{58}\)

Under international human rights law, States have obligations regarding the acquisition, renunciation and loss of nationality and equal protection of the law without discrimination on the grounds of race, color, religion, citizenship, nationality or migration status, national, birth or other status.\(^ {59}\)

The Universal Declaration of Human Rights (UDHR) begins the core legal relationship between individuals and States. It describes that everyone has the right to a nationality. It shall not be arbitrarily deprived of his nationality nor denied the right to change his nationality.\(^ {60}\) But a lot of people all over the world lack the security and protection which citizenship can afford.\(^ {61}\)

Therefore, with regard to citizenship, according to the provision of UDHR, Myanmar Government investigates Bengalis whether or not who are illegally settled in the State. And then, they are only if, they may apply in accordance with Section 44 of Myanmar Citizenship Law 1982 to the Central Body when it is necessary for a decision as to his citizenship, associate citizenship or naturalized citizenship under Section 65.\(^ {62}\)

Myanmar has also an obligation among the international instruments recognizing and guaranteeing the right to a nationality, in addition to the UDHR, four of the international human rights treaties by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the Convention on the Rights of Persons with Disabilities (CRPD); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).\(^ {63}\)

Although the 1982 Myanmar Citizenship Law gives the equal right of nationality without discrimination against men and women, it is prima facie compliant with Myanmar’s obligations under article 9 of the CEDAW relating to the acquisition, change and retention of nationality and the transfer of nationality to children and spouses.\(^ {64}\) Women are not expressly prevented from changing their citizenship or passing on their Myanmar citizenship to their children, if the father of the child is a non-national, and citizenship does not automatically cease upon marriage to a foreigner (Section 15(a) of the Myanmar Citizenship Law 1982).

Further, the right to a nationality is addressed in a number of international law. The UN Convention on the Rights of the Child-1989 and the International Covenant on Civil and Political Rights 1966 state that every child has the right to acquire a nationality. Myanmar has ratified both International Covenant on Civil and Political Rights 1966 and the UN Convention on the Rights of the Child 1989.

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\(^{59}\) See for example: The United Nations General Assembly, in its resolution of 9 February 1996, A/RES/50/152, building on the prohibition of arbitrary deprivation of nationality, has “[c]all[ed] upon States to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality”.

\(^{60}\) Article 15 of the Universal Declaration of Human Rights.

\(^{61}\) UNHCR, The State of the world’s refugees, A humanitarian Agenda, 1997-98, P.225

\(^{62}\) Section 44 and 65 of 1982 Myanmar Citizenship Law


http://www.ijmsbr.com
The CRC provides that children shall be registered instantly after birth and have the right to attain a nationality.\textsuperscript{65} As a party to the CRC, Myanmar is pleased to implement these rights under the national law and their obligations under the related international instruments in this arena, if not above all where the child would be stateless.\textsuperscript{66}

UNHCR’s mandate responsibilities concerning statelessness were expanded following the adoption of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), and the 1961 Convention on the Reduction of Statelessness (1961 Convention). The 1954 Convention consist of a severely legal definition of a stateless person that a person who is not regarded as a citizen by any State under the procedure of its law.\textsuperscript{67}

Additionally, to be a national, a child’s right and birth registration is free from discrimination of race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of child or parents or guardians.\textsuperscript{68}

However, every person has the right to a nationality, it does not prescribe the specific nationality to which a person is entitled. To make sure that individuals are not poor of a minimum set of rights connected with nationality.\textsuperscript{69}

The Contracting States shall assist the integration and naturalization of stateless persons. Particularly, they shall make every effort to accelerate naturalization proceedings and to decrease the charges and costs of such measures.\textsuperscript{70} Procedural safeguards for Contracting States that makes the retention of nationality for individuals residing abroad subject to a declaration.

The Convention forbids the dismissal of stateless persons who are lawfully on the territory of a State Party. Moreover, this Convention provides an internationally recognized status for stateless people and a framework for States to protect stateless people, including children.\textsuperscript{71}

United Nations High Commissioner for Refugees (UNHCR) is actively involved in the drafting and promulgation of both national and international law and provides technical and advisory services to States and concerned organizations. It encourages States to accede to the 1954 and 1961 statelessness instruments. Therefore, this Convention sets out a framework for the protection of stateless persons which is complemented by international human rights law.

**Conclusion**

There is a current trend to take away citizens of their nationality in the international community for certain disagreeable manners. Myanmar has also an obligation among the international instruments recognizing and guaranteeing the right to a nationality. Myanmar’s obligation regarding with nationality is related to the statelessness. There are two international conventions relating to the statelessness. One is 1954 Convention relating to the status of stateless persons and another one is 1961 Convention relating to the reduction of statelessness. The 1961 Convention prohibits a result of becoming stateless by the individual. Nevertheless, neither Myanmar nor Bangladesh is the signatory of these two conventions. (The Daily Star, 2017) But, Myanmar is preparing to give the citizenship of Myanmar on the stateless persons living within the territory of the country consistent with the law. This process is not only the development of human beings but also the humanitarian manner.

Then, the aim of the article was also for the development of population in Myanmar. Therefore, the Government of Myanmar shall accept the resettlement of Myanmar nationals abroad, acquiring the dual citizenship. The acceptance of dual citizenship in another country by the Myanmar nationals may be due to

\textsuperscript{65} CRC, art. 7(1).
\textsuperscript{66} Ibid, art. 7(2).
\textsuperscript{67} Art 1(1) of the 1954 Convention relating to the Status of Stateless Persons.
\textsuperscript{68} CRC, art. 2.
\textsuperscript{69} Ms.Marilyn Achiron, Nationality and Statelessness, A Handbook for Parliamentarians, UNHCR, 2005, p.9.
\textsuperscript{70} Art 32 of the 1954 Convention relating to the Status of Stateless Persons.
\textsuperscript{71} UNHCR, The Urgent Need To Address Stateless Children’s Rights, 2012, p.11
their current survival life and their safety (advantages of dual citizenship). Mainly the Government needs to revise the provision of Sections 13 and 22 of 1982 Myanmar Citizenship Law. Myanmar nationals abroad are difficult to return and resettle in their country of birth or origin as to the limitation of these Sections. Myanmar citizens automatically shall lose their citizenship if they acquire the dual citizenship in another country according to the existing Myanmar Citizenship Law. The loss of their citizenship will move to their loss of generation in Myanmar. It affects the sustainable development of Myanmar citizens.

While 72 per cent of Governments all over the world have policies to encourage the return of their citizens, the Myanmar Government will seek to encourage the return of citizens, focusing the sustainable development goal of Myanmar. The return of citizens will have positive impacts for the development of Myanmar by promoting capital inflows and investments and the transfer of technologies and skills. Myanmar’s legal framework for citizenship is unsuitable with basis rule of law and democratic principles. In particular, the 1982 Citizenship Law disappears to satisfy the State’s obligations under international human rights law. Therefore, it needs to reform the 1982 Myanmar Citizenship Law and to protect the citizens under International Human Rights Law.

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