

Burma/Myanmar
Joint Submission to the UN Universal Periodic Review
37th Session of the Working Group

**The 1982 Citizenship Law and Right to Citizenship of Minorities and Freedom of
Movement**

Contact:

Ye Hein Aung, Executive Director, MCRS

myanmarculturalresearchsociety@gmail.com

alexphothagyan@gmail.com

This is a joint submission by Myanmar civil society organizations which work on the issue of Human Rights and Citizenship Rights.¹

¹ Myanmar Cultural Research Society, Progressive Voice, Generation Wave, Nyan Lynn Thit Analytical, Olive Organization, Pace on Peaceful Pluralism, Synergy – Social Harmony Organization, Burma Monitor, Women’s Peace Network, Justice Base.

The 1982 Citizenship Law and Right to Citizenship of Minorities and Freedom of Movement

Introduction and Legal Framework

1. The 1982 Citizenship Law (The Citizenship Law) of Myanmar remains the main tool of discrimination against and socio-economic exclusion of religious and ethnic minorities as well as religious and intercommunal conflict in Myanmar. The Citizenship Law classifies 135 officially recognized ethnic groups or national races (*Taing Yin Thar* in Myanmar Language) in Myanmar and establishes a hierarchy of three citizenship classes. The law grants 'full citizenship' to those belonging to these 'national races' ('*Taing Yin Thar*') primarily based on ethnicity. The status of national races is defined in article 3¹ and article 5² of the Law. The Law also creates a hierarchy among those who have full citizenship. According to these provisions all who belong to national races recognized by the Myanmar Government at the time of the adoption of the Citizenship Law will automatically be recognized as citizens by birth, or full citizens.
2. The rest are granted a lower form of citizenship known as 'Associate' and 'Naturalized' citizens, who enjoy less rights than citizens belonging to 'national races.' The law's clear delineation between 'nationals by birth' and 'citizen by law' are fundamentally discriminatory on the basis of ethnicity, race or religion against long-time residents of Myanmar. Conditions for 'Associate' and 'Naturalized' citizenship are defined in Article 7(a to f) and Article 8.³ According to Article 7 and Article 8, the applicants for either of these types of citizenship need to show their ancestral documents or evidence of Family Tree for determination of their status of citizenship. Associate and naturalized citizens can also be stripped of their citizenship based on vague and politically motivated grounds.
3. While the Law does not enumerate national ethnic groups or national races, the Section 4 of the Citizenship Law empowers the Government to classify "whether an ethnic group is national or not." It is on this basis the government created the existing list of 135 ethnic groups that are officially recognized as 'national races' or '*Taing Yin Thar*'.
4. The Citizenship Law continues to remain as one of the main tools of Rohingya exclusion in the country. Rohingya are not recognized as one of the 135 officially recognized ethnic groups. Rohingya are, instead forced to go through the National Verification Card Process that effectively categorizes them as foreigners.
5. The Citizenship Law authorizes the establishment of a ministerial-level "Central Body⁴," of citizenship scrutiny with broad determinative powers, including for revocation and termination of citizenship. Its four members are the Ministers of Defense, Home Affairs, Immigration and Population and Foreign Affairs (two of whom are military appointees).⁵
6. The Citizenship Law requires urgent review and amendments to comply with fundamental principle of equality in international human rights law. Existing classifications such as 'mixed-blood' persons constitute discrimination. The classification

of citizenship categories and instructions on the determination of citizenship are not only discriminatory, dehumanizing and denationalizing but also foster corruption within the Government.

7. The Citizenship Law legitimizes discrimination and restrictions on citizenship based on religious and ethnic backgrounds. Deprivation of citizenship and discriminatory practices imposed by the law also have far reaching consequences for the exercise and enjoyment of other fundamental human rights including the right to freedom of movement, right to education, right to health and other basic rights and freedoms guaranteed in international law.

International Legal Standards and Previous Recommendations

8. The right to nationality is recognized in a number of key international human rights instruments. Although Myanmar has not ratified a number of these key instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Elimination of All Forms of Racial Discrimination (ICERD), the Citizenship Law contravenes several other treaties to which Myanmar is a state party. These include Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons living with Disabilities (CRPD).⁶ Furthermore, the Citizenship Law allows arbitrary revoking of citizenship based on vague and political grounds in direct contradiction to the Article 15 of the Universal Declaration of Human Rights that explicitly prohibits arbitrary deprivation of nationality. Similarly, the Article 18 of the ASEAN Human Rights Declaration state that everyone has a right to a nationality, and no one shall be arbitrarily denied the right to their nationality.
9. Myanmar's discriminatory Citizenship Law continues to be a key point of focus in international debate on the situation of human rights in Myanmar. Several UN human rights mechanisms including the UN Human Rights Council, the Office of the High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in Myanmar have repeatedly recommended Myanmar to review its Citizenship Law. Similarly, during the past two cycles of the Universal Periodic Review, Myanmar received several recommendations to repeal or review the Citizenship Law in line with international standards. However, Myanmar failed to support any of these recommendations to review or repeal the law.

Case Studies: Different ethnic groups and their citizenship processes

The Kaman ethnic group

10. Kaman, a community of Islamic faith from Rakhine State, is one of the 135 officially recognized ethnic groups and one of seven ethnic subgroups of Rakhine State in Myanmar. The Kaman people are stuck between the citizenship scrutiny and national verification card process due to the loss of the rights and identity of Rohingya community in Rakhine State. In 2018, there were allegations that more than 3,000 NSCs with ethnic Kaman identification have been issued to Rohingya through NSC process where the

Immigration Department confirms the status of the card holder as a full citizen.⁷ Rakhine community refers to these people as “Fake Kaman”. There were accusations made against Kaman people as Fake Kaman so Kaman National Progressive Party (KNPP) stepped in and provided a reference about their individuals. Meanwhile KNPP also called for reviewing the issuance of National Scrutiny Cards (NSC or ‘pink cards’) to Kaman people since the Rakhine people are now referring to them as “Bengali”.⁸ Thus the issue rendered the citizenship status of many Kaman individuals is at risk with increasing scrutiny. Since the 2012 sectarian violence in Rakhine State, Kaman communities have faced increasing backlash from Rakhine population with allegations that the Kaman were helping the Rohingya obtain pink cards. The Government considers the population who self-identify as Rohingya with intention to subject them to a rigorous national verification process from citizenship by birth to citizenship by law. Although Kaman community in Rakhine State is one of the officially recognized national races, they are facing more and more stigmatization and discrimination because of their Islamic faith and even the Buddhist community in Myanmar often makes references to the Kaman people as “Fake Kaman”.⁹ On the 19th of December 2018, during a parliamentary session of Lower House (Pyithu Hluttaw), there was an attempt to reclassify the ethnic identity of national verification card of some Kaman people as ‘Fake Kaman’. In fact, the Rakhine community refers to Fake Kaman as ‘Bengali’. The Minister of Labour, Immigration and Population, Thein Swe, responded to the parliamentary discussion on the issue of the Fake Kaman.¹⁰ The Government reclassified them on 1st, January 2018 by suspending citizenship status of several people resulting in 3,285 National Verification Card holders of Kaman and 21 persons whose status has been suspended and may be reclassified within the total applicants of 3,306 people involved in the case. That classification on legitimated national race of Kaman issue lead to deny their rights of national race like Rohingya in the future.

The Monewon-Bamar ethnicity

11. In the case of the Monewon-Bamar ethnicity, there was an issue with the format of the name, or *Lumyo* (categorization of people based on race/ethnicity, literally meaning “type of people”): (1) Monewon-Chinese (2) Chinese-Monewon (3) Monewon-Bamar (4) Bamar(Monewon),(5) Monewon, (6)Monewon+Chinese, (7)Monewon+Kokang, and (8) Monewon+ (one of the recognized national races) on their identification document. The Minister for Labor, Immigration and Population Thein Swe clarified that using these different forms of *Lumyo* or format of naming was to allow them their right to self-identification. On this basis Monewon-Bamar was classified as one of the subgroups under the majority Bamar ethnicity by Central Body of citizenship scrutiny. Reportedly, President U Thein Sein instructed the Ministry of Immigration in 2016 to issue new identity cards to the Monewon-Chinese, who will now be identified as Monewon-Bamar. This was done ““for the sake of the country” according to Chapter 2 of the 1982 Citizenship Act”. There has been no initiative taken to add Monewon to the list of the 135 officials ‘national races’.¹¹

The Kokang ethnic group

12. There are three generations of Kokang in Myanmar: Those who migrated to the Kokang region during the Taungoo Dynasty (1510-1752), those who settled in Kokang before the

World Wars I and II and their descendants. The Kokang ethnic group requires 12 items of proof (The forms to verify that they are Kokang, by the Kokang Literary and Cultural Association, head shots, copies of their household registration certificate, birth certificate, the citizenship cards of their parents, grandparents and great-grandparents, documents from GAD and police station, etc.) to apply for citizenship, as opposed to the Kachin or Shan who only need 4 (household registration certificate, citizenship cards of their parents, and documents from GAD and police station.). According to the government this is essential for ‘national security’ concerns, because, the Kokang region is on the border area with China and a stricter identification is necessary to ensure only the ‘true’ Kokang, and not ‘illegal’ Chinese immigrants can get citizenship status.¹² Although Kokang are a national race (*Taing Yin Thar*), the Myanmar government has tried to reclassify the ethnic Kokang through the introduction of the National Verification Card system.

Rohingya and National Verification Cards

13. Rohingya people, who identify themselves as a legitimate ethnic group of Myanmar, are still labelled as “Bengali” by the Government and society. The National Verification Card (NVC) is a step to apply the citizenship scrutiny recognition by the Citizenship Law, Section 65¹³ in Myanmar. According to the evidence of the applicants, the verification of citizenship, i.e., citizen, associate citizen or naturalized citizen was classified by the Citizenship Law of 1982. The Myanmar Government set up the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD) on the 17th of October, 2017¹⁴. After forming the team, they announced their undertaking on the recommendation of the Advisory Commission on Rakhine State. This policy of issuing NVCs to the Rohingya people essentially classifies them as foreigners instead of recognizing that generations of Rohingya have lived in Myanmar. NVC process verifies whether each member of the Rohingya meets the criteria under the Citizenship Law to apply for citizenship at some point in the future.¹⁵
14. Before the NVC system was introduced in 2017, the Rohingya community in Rakhine State have lost their identification documents several times due to the introduction of ‘White Card’ (Temporary Certificates) system by the former military government, which was subsequently cancelled in 2010. In this way, they not only lost their means to prove their identity, but also their rights to citizenship. These experiences put them in opposition against the NVC system.
15. In the citizenship section of the first report of the People on the Progress of Implementation of the Recommendations on Rakhine State¹⁶ (1, April, 2017 to 31, December, 2017) stated that there were 786 citizen card holders in Muslim community in Rakhine State. The second report (January 2018 to April 2018) mentioned that there were 339 citizen card holders¹⁷. The third report (May 2018 to August 2018) cited 130 citizen card holders, and the fourth report (September 2018 to December 2018) cited 19 card holders. The fifth report (January to August 2019) added 47 citizen cards holders and 46 were added in the sixth report (September to December 2019). The seventh Report (January – April 2020) cited 36 citizen cards holders. The total number of citizen card holders indicated above are mentioned only in the citizenship sections of these seven reports. The numbers of other categories card holders are shown in the table below. The Kaman people are also included in these reports and it is mentioned that 5,537 citizen

card holders are of Kaman ethnicity. (See Table-1)

Table-1 List of Citizenship, Biometric Data and NVC by Government Reports

Citizenship Verification process	First Report (April-December, 2017)	Second Report (January-April, 2018)	Third Report (May-August, 2018)	Fourth Report (September-December, 2018)	Fifth Report (January - August, 2019)	Sixth Report (September-December, 2019)	Seventh Report (January-April, 2020)	Total
1.NVC Holders	7,619	2,286	935	889	1,467	1,144	2,513	16,853
2.Citizenship Cards (Age-10, 18 ,45)	786	339	130	19	47	46	36	1,403
3.ID cards for Kaman ethnic	3,336			2,201				5,537
4.Naturalized citizenship	129							129
5.Biometric data	8,501	2,286	13,330	896	3,022	1,364	2,885	32,284
6.Listing under 18 of naturalized citizenship family' members	151							151
7.Listing above 18 of naturalized citizenship family' members	15							15

Freedom of Movement

The Rohingya

16. From 2012 to 2019, 7,210 Rohingya people were arrested for not having identification cards for travel. The military, police force, Ministry of Defense and Ministry of Home Affairs are not accepting the Rohingya as citizens and use the word, “illegal migrants” and “Bengalis” in press releases. They were sentenced to 2 years imprisonment for not possessing identification, and this included women and children. Several children have been detained at the Aung Thabyay Interrogation Center, Mayangone Township, Yangon Division.

The Rakhine/ Arakan

17. A total of 1,239 individuals of the Rakhine ethnic group were arrested multiple times from 2012-2019. The highest number of arrests was in 2019, when 778 Rakhine individuals were arrested. They were accused and arrested under Article 17(1) and 17 (2) of the penal code by reason of communicating with an unlawful organization. Rakhine people have been restricted from travelling inside Rakhine State as well as to other states and regions. If they wish to travel, they need special permission to do so. If they do not have travel permission they can be arrested, tortured and put in prison.

The Chin

18. The State Peace and Development Council (SPDC), which was dissolved in 2011, placed several restrictions on the freedom of movement of the Chin people. They would not only have to pay money to the authorities to travel outside of their village, but their identity cards would be regularly confiscated.¹⁸ From 2006-2010, the Chin Human Rights Organization (CHRO) documented more than 30 arbitrary arrests in the Chin State.¹⁹ Around 600 Chin people in Rakhine State prefer to move to Magwe Division due to the escalation of fighting between the Arakan Army (AA) and the Myanmar military before January 2020. However, they are not able to do so as they are not allowed to buy bus tickets without household registration and ID cards (NSCs).²⁰

Restrictions to and discrimination in obtaining identity cards

19. There are multiple restrictions and discrimination against ethnic and religious minorities in the process of obtaining identity cards. This process is highly bureaucratic and riddled with entrenched corruption. In conclusion, Myanmar's Citizenship Law of 1982 violates civil and political as well as the economic, social and cultural rights of its ethnic and religious minorities.

Recommendations

20. Repeal or amend the 1982 Citizenship Law in accordance with international human rights law.
21. Ratify ICCPR and ICERD and align national laws with these treaties.
22. Repeal the provisions establishing different categories of citizenship and remove any indication of ethnicity in identity documents.
23. Restore full citizenship for Rohingya community and eliminate requirements for citizenship that discriminate on the basis of race, religion, ethnicity or any other status.
24. Give full citizenship to the people who are in IDP and refugee camps.
25. End discrimination, restrictions on citizenship and take action against the people who violate the rights of minorities.
26. Remove restrictions on freedom of movement of ethnic and religious minorities, including the Rohingya.
27. End discrimination, restrictions and corruption, and ensure transparency of the citizenship process for ethnic and religious minorities to obtain ID cards.
28. Stop the National Verification Card process for the Rohingya as well as other ethnic groups who are victims of the systemic discrimination.

¹ Article 3- Nationlas such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhin and Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to

1185 B.E, 1823 A.D are Burma Citizens.

² Article 5 – Every national and every person born of parents, both of whom are national are citizens by birth.

³ Article 8 (a) The council of State may, in the interest of the State confer on any person citizenship or associate citizenship or naturalized citizenship

⁴ 1982 citizenship law, sections 67-69

⁵ The commander-in-chief of the Tatmadaw appoints high-ranking military personnel to three key securities – related ministries, as per section 232(B) of the 2008 constitution. On the central body established by the 1982 citizenship law, a secretary joins the body as may a deputy secretary. State peace and development council, the law amending the Myanmar Citizenship Law, (The State Peace and development council law No 4/97), section 3

⁶ Refer to Article 9 of CEDAW, Article 7 of CRC and Article 18 of CRPD. Source: http://justicebase.org/wp-content/uploads/2019/09/12.2018-Legal-Guide-to-Citizenship-Documentation_ENG_FINAL.pdf

⁷ <https://www.irrawaddy.com/factiva/analysis-party-says-govt-issuing-fake-kaman-citizenship-cards-rohingya-demands-probe.html>

⁸ <https://www.irrawaddy.com/factiva/analysis-party-says-govt-issuing-fake-kaman-citizenship-cards-rohingya-demands-probe.html>

⁹ Bengali people who make a false representation and concealment their identity to be Kaman ethnic.

¹⁰ https://transcripts.theananda.org/?fbclid=IwAR11dYBzd46sDvX3pmxf9cNdSssqfn-m0yEsRfbrjmD3s_i85Bxot7od5ieec#/search/%E1%81%81%E1%81%89%E1%81%88%E1%81%82/transcript/5e299c48cc5e3009571d281f

¹¹ Article in the MyanmarTimes: <https://www.mmtimes.com/national-news/19717-chinese-minority-to-get-bamar-designation.html>

¹² Article in the Frontier Myanmar: <https://frontiermyanmar.net/en/how-a-kokang-becomes-a-citizen>

¹³ Any person may apply to the Central Body when it is necessary for a decision as to his citizenship, associate citizenship or naturalized citizenship.

¹⁴ <https://rakhine.unionenterprise.org/mm/index.php/latest-news/144>

¹⁵ TOWARDS A PEACEFUL, FAIR AND PROSPEROUS FUTURE FOR THE PEOPLE OF RAKHINE, Final Report of the Advisory Commission on Rakhine State, 2017, p- 27

¹⁶ <https://www.statecounsellor.gov.mm/en/node/1696>

¹⁷ According to government reports, it is not clear whether national ID or citizenship scrutiny cards or NVC.

¹⁸ Human Rights Watch report: https://www.hrw.org/report/2009/01/27/we-are-forgotten-people/chin-people-burma-unsafe-burma-unprotected-india#_ftn178

¹⁹ CHRO submission to UPR, 2010:

https://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/CHRO_ChinHumanRightsOrganisation_eng.pdf

²⁰

https://7day.news/detail?id=176348&fbclid=IwAR11FRi1KDVg9kintxPwTL_44D8qam7Mez5qT5iRTKD2mEmitS63ISFo3vQ