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SUBJECT BURMA : PROPOSED CITIZENSHIP LAW

You will be aware that, for the past two or three years, the Burmese Government has foreshadowed its intention to introduce a new law which would contain provisions governing the status of the citizenship (or noncitizenship) of the residents of Burma. U Ne Win himself has made various statements about this matter in recent years, as have other Ministers, raising the question of whether residents of mixed blood (i.e. persons who were not Burmans or members of the other minority races in Burma) would be given citizenship, would be allowed to be elected to public office, to serve in the Army or be members of the Burma Socialist Program Party. In the past year or so, a number of Deputy Ministers and other members of the Pyithu Hluttaw were obliged to resign for the reason that one of their parents had not been a Burmese citizen. This particular point is, in fact, governed by article 177 of the current Burmese Constitution which says that:

> "Persons having the right to vote and possessing the following qualifications are eligible to stand for election as people's representatives to the Pyithu Hluttaw -
>
> (a) ...
> (b) ...
> (c) ...
> (d) ..."

2. On 4 July 1980 the Government circulated a "Paper on the Solicitations of Public Opinion regarding the drafting of the Citizenship Law" which went into these questions. This was followed by a number of public meetings throughout the country at which the Government "explained" its ideas and sought opinions. It seemed that the authorities were having considerable difficulty framing the law, possibly because they expected some opposition both domestic and foreign to any racialist overtones that the new law might contain.

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3. The text of the proposed bill was published in the English language press on 21 April and a copy is attached, along with the text of the speech by Dr Maung Maung, member of the Council of State and Chairman of the Law Commission. Dr Maung Maung without doubt is a skilled and well trained lawyer and is said to be originally of liberal sympathies, although he has irrevocably cast his lot in with the present regime. (He was the draftsman of the present Constitution and also the author of a standard text on the previous Constitution which was published three years before the 1962 coup.) There can be little doubt that the new bill has been carefully and professionally drafted. You will notethat Dr Maung Maung again makes a point of stating that the bill is still only in draft form and he asks that the people should tender further advice about it. This suggests that the Government realises that it is still treading on sensitive ground.

4. As a result of public statements by U Ne Win and his ministers (notably the former Home Minister, U Sein Lwin, reported in M.RA4469 of 4 February 1981) on the dangers of "newly-arrived stronger races oppressing, over-whelming and mixing blood with the original races", many Burmese feared that the new citizenship laws would adversely affect anyone whose ancestry was not derived exclusively from the national races. This fear was based more on extempore public comments than on the July 1980 written proposals and while those comments might indeed reflect the true intentions of the leadership, the provisions of the draft law carefully avoid language likely to cause alarm. However, an echo of the mixed-blood concept is to be found in the use of the specific designations "national" and "citizen" and in ambiguities as to the significance of the distinction. There are reassuring provisions about the continuing validity of rights acquired under existing legislation.

5. A comparison of the proposed law with existing legislation (the Union Citizenship Act 1948 and the Union Citizenship (Election) Act 1948) shows that the Government is seeking to achieve its objectives in two ways - by making it harder to acquire Burmese citizenship in future and by increasing the restrictions applying to a disadvantaged class of naturalised citizens.

Restrictions on Naturalised Citizens

6. Under the old Constitution and the 1948 legislation no distinctions were drawn between natural-born citizens and naturalised citizens. Indeed, section 10 of the 1948 Constitution stated that there would be only one class of citizenship. The difference between natural-born and naturalised citizens lay only in the procedure as to how citizenship might be acquired. In his book on the 1948 Constitution, Dr Maung Maung records that in earlier drafts of the Constitution the Presidency of the Union was to be reserved for natural-born citizens and judge-ships of the Supreme Court and High Court were to be reserved for persons who had been citizens for at least five years. However, these qualifications did not find a place in

the adopted Constitution. He also noted that in business and trading the natural-born citizens tended to press for more advantages than were allowed to naturalised citizens, although this was consistently and successfully resisted by the Union Government.

7. The 1974 Constitution, which established the new socialist order, drew the first distinction between natural-born and naturalised citizens, as article 177 (quoted above) shows. Section 27 of the draft law carries this distinction further, the note in the "explanation" column adding mysteriously that "a naturalised citizen ... has the right to enjoy all the rights prescribed by law other than those restricted." The section echoes article 177 of the Constitution in denying naturalised citizens the right to be elected as a people's representative. However, it goes further and denies them the right to serve as the head of one of the bodies of the public service (Director-General, Managing Director, etc.). It then indicates, in sub-sections (b)(iii) and (iv) that their rights may be further circumscribed by any law or as determined "by the Council of Ministers from time to time with the approval of the Council of State". It seems therefore that a naturalised citizen's rights may be severely curtailed by executive action at any time. By a simple proclamation, the State would be able to restrict the rights of naturalised citizens as a class or as individuals in almost any area it chooses. The potential applications of such a power are obviously far-reaching. Nothing is said in the draft law about restrictions on service in the Army and the Party but we understand the Party at least has its own restrictive rules on the matter.

8. Sections 21 and 22 of the draft law provide that a naturalised citizen under 18 years shall not leave the state except when the state permits and that an adult naturalised citizen shall not leave the state within five years of the granting of his certificate of naturalisation. No such restrictions exist under the present law.

Impediments to the future acquisition of citizenship

9. The draft law carries the distinction between natural-born and naturalised citizens one step further by recognising, in Chapter 3, a sub-category of temporary naturalised citizens. The rights of this sub-category are nowhere defined, although it covers children under 18 years, who have as one parent a foreigner and as the other either a national, a citizen or a naturalised citizen. Under the existing law, children of parents who are granted a certificate of naturalisation are deemed to be citizens at once and retain their citizenship upon reaching 18 years unless they specifically renounce it within one year. Under the new provisions, not only would they occupy the lesser category of temporary naturalised citizens but they would also have to make a declaration and accept certain undertakings within one year of turning 18 years or else be designated a foreigner. Amongst the undertakings required is a commitment not to leave the state within five years of naturalisation. Even when these requirements are met, it is only the lesser status of naturalised citizen which is granted.

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10. Under the draft law, although a child born to naturalised citizens would be a citizen, this citizenship would be forfeited if the parents were deprived of their citizenship. At present a child does not lose his citizenship on account of the actions of his parents. The new proposals envisage that in these circumstances, the child would then be able to apply only for naturalised citizenship. Furthermore, if the parents lost their citizenship as a result of having obtained a passport or similar document from a foreign country, only children of nationals would have the right to apply for reacquisition of citizenship. All such applications would have to be made within one year of turning 18 years. At present there is no*limit for applying to reacquire citizenship and, of course, it is full citizenship which is granted.

11. A significant difference between the new proposals and the existing law is to be found in draft chapter 2. Under the present law, a person qualifies for citizenship if, inter alia, he is born in the state and either (a) one grandparent belonged to an indigenous race or (b) both parents are or, if they had been alive at the adoption of the 1948 Constitution (i.e. 24 September 1947) would have been citizens, or (c) he is descended from ancestors who for two generations at least have made any of the territories included within the Union their permanent home and whose parents were born in the Union. The draft proposals would continue to recognise these qualifications for citizenship (except that the date of independence, i.e. 4 January 1948, would be used instead of the date of commencement of the old Constitution) but provide that a person born after the new law comes into effect would not be entitled to citizenship by the mere fact of having these qualifications. In other words, whereas the present law confers an on-going right to qualify automatically for citizenship by, for example, having ancestors who for two generations had made the state their permanent home, this would no longer be possible under the draft provisions. Those presently entitled to citizenship would have their claims protected, but such claims would be the last of their kind. Parents who both were naturalised citizens would be able to endow their children with a right to citizenship but they themselves could never aspire to more than naturalised citizenship. To this extent naturalised citizenship would be a probationary period during which a family's loyalty to the state could be tested. If this loyalty was found wanting, parents and children could be deprived of their rights. Children would then only be entitled to apply for naturalised citizenship.

12. Amongst the more controversial aspects of the draft law are the provisions relating to stateless persons. Section 35 provides that a stateless person will only be permitted to apply for a Foreigner's Registration Certificate if, inter alia, he has served a sentence imposed by a court and has contributed forced labour. The intention of such provisions is obviously to discourage illegal immigration, especially where this could lead to political unrest. But the provisions are all-embracing and

would seem to include genuine refugees. Having served his sentence and provided his labour, a person granted a Foreigner's Registration Certificate under these provisions is specifically excluded from being able to apply for naturalisation.

13. Finally, it is worth noting that all matters relating to citizenship are to be determined by the executive government (i.e. the Central Body, composed of three Ministers) with appeals lying only to the Council of Ministers. The only role for the courts would be in relation to the draft law's punishment provisions. Under the 1949 Constitution, which was modelled on the Westminster system, there was recourse to the courts on a wide range of issues. The 1974 Constitution effectively stripped the courts of any independent role and the draft law is entirely in keeping with this new approach.

Indian Embassy Reaction

14. We sought the views of the Indian Minister, Devare, on the possible implications of the draft law for the many thousands of people of Indian descent living in Burma. Devare said that it was very regrettable that such "blatantly discriminatory" legislation should be contemplated in this day and age. The draft law appeared to establish three classes of citizens - nationals (applying the 1823 cut-off date), citizens who were not nationals and naturalised citizens. People whose ancestors had come to Burma from the sub-continent were obviously excluded from the category of Nationals. This was a test of blood and took no heed of the fact that many such people had been assimilated into the Burmese way of life for generations and had no contact with any other country. He wondered how the phrase "belonging to the Burmese race" used in the definitions would be interpreted in practice. Would it tolerate any non-Burmese ancestry? Would there be a blood percentage test?

15. On the face of the draft legislation, nationals and citizens who are nationals (qualifying for example, under section 5) appeared to enjoy the same rights. However, Devare was not convinced that this would be the case. The only blatant distinction drawn between nationals and citizens who are not nationals is to be found in section 30 which provides that where parents are deprived of their citizenship by reason of having obtained a passport or similar certificate from a foreign country, only the children of nationals will have the right to reapply for citizenship. However, in his speech introducing the draft law, Dr Maung Maung said, in paragraph 12, "If the draft law now presented is prescribed in future those who are not full blooded nationals or those who are foreigners who have been granted citizenship by the State upon application will be classified as naturalised citizens.". Significantly perhaps, he made no reference in this sentence to citizens who were not nationals, although in the following sentence he continued: "There will thus come to be three different categories, namely, nationals, citizens and naturalised citizens." Devare added

that it was difficult to square this with the explanation given to section 6 in the draft, that "in this law there will be two categories, namely, citizens and naturalised citizens." He also noted that section 26 of the draft contained the blanket provision that every citizen shall discharge the duties and enjoy the rights prescribed by law. It would be entirely consistent with this provision to enact or proclaim laws which discriminated against citizens who were not nationals. (Comment: There is nothing in the draft law, or in the Constitution for that matter, which would prohibit such discrimination. Indeed, article 167 of the Constitution provides that:

"(a) Laws may be enacted imposing necessary restrictions on the rights and freedoms of citizens to prevent infringements of the sovereignty and security of the State, the essence of the socialist system prescribed by this Constitution, the unity and solidarity of the national races, public peace and tranquility or public morality.

(b) Such a preventive law shall provide that the restrictive order shall only be made collectively by a body, and that the order shall be regularly reviewed and modified as necessary, and that the aggrieved person shall have the right of appeal to a higher organ."

As far as sub-paragraph (b) is concerned, the proposed law does provide for a collective decision (the Central Body is said to have been created specifically for this purpose - see explanation to s.36) and a right of appeal to a higher organ (the Council of Ministers).) Devare observed that whereas the 1980 "Paper" canvassed the idea that naturalised citizens should not enjoy the same economic rights as others, reference to this had been dropped from the 1982 draft. Nevertheless, it would be open to the government to impose economic discriminations on naturalised citizens under draft section 27 and on citizens who were not nationals under draft section 26. (Comment: Equally, restrictions on service in the armed forces, canvassed in the 1980 "Paper" but not referred to specifically in the new draft, could still be imposed under these blanket provisions.)

16. Devare said that even when people of Indian descent could claim citizenship by virtue of draft section 5 (as they could already under existing law) many would be unable to offer proof of their claims, possessing neither documentary nor any other kind of evidence of their ancestry. When they applied for a certificate of citizenship (as opposed to a certificate of naturalisation) the onus would be on them to substantiate their claims and most would be unable to do this. He said that even under existing laws there were thousands of people of Indian descent who had been waiting for decades to have their applications approved.

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17. Devare was also concerned about the provisions in the draft law relating to stateless persons. He said that while people tended to interpret these as applying to illegal immigrants in remote areas there was nothing to stop such provisions being applied to any person who was unable to provide evidence of his nationality. Many would fall into this category. He concluded by saying that in the light of the public comments of Burmese leaders and their past record he believed that people of Indian descent would be considerably disadvantaged by the proposed law, whether they were categorised as citizens, naturalised citizens or foreigners.

The Chinese

18. Many people of Chinese descent are also likely to be affected by the proposed law. To date, Chinese diplomats have been noticeably restrained in their comments, remembering perhaps the riots of the '60s and the subsequent strains in Sino-Burmese relations. Nevertheless, they will no doubt be watching closely to see how the law is applied and we shall seek Chinese views at any early opportunity.

19. It is only fair to add that a number of liberal-minded Burmese with whom we have discussed the law have expressed their surprise and relief that the proposed draft is, in their opinion, a relatively liberal one, especially because it does not contain any overt references to mixed-bloods as mixed-bloods and because it does not curtail existing rights of those who are now citizens. They may well be right but the illiberal aspects of the law mentioned above, plus the possibility that it will be constructed and implemented in a narrow sense suggest that the controversy about these questions may be far from over.

P G Bassett

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