

# A LEGAL GUIDE TO CITIZENSHIP AND IDENTITY DOCUMENTS IN MYANMAR

DECEMBER 2018

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## **A Legal Guide to Citizenship and Identity Documents in Myanmar**

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# INTRODUCTION

Lawyers can play a unique role assisting people in accessing their citizenship rights and identity documents. This legal guide is intended to assist lawyers as they work with clients to apply for identity documents, particularly Citizenship Scrutiny Cards. Equipped with expertise on Myanmar’s citizenship framework, lawyers can advocate for clients who face difficulties in their applications, such as frequent delays and refusals. To that end, this legal guide provides both an overview of Myanmar’s citizenship law, as well as practical steps that lawyers can take to help clients receive a scrutiny card.

## ***Why This Matters***

In Myanmar, statelessness poses a serious risk for many due to the interpretation and application of the 1982 Citizenship Law, which forms the central pillar of the current citizenship regime. As a result, millions of people in Myanmar lack identity documents today. Findings from the 2014 census indicate that 27.3% of the population holds no identity document—neither cards indicating citizenship nor residency cards.<sup>1</sup> This is a significant problem: if an individual lacks documentation, this can be a major barrier to realizing the right to citizenship, as well as other fundamental rights such as healthcare, education, employment and access to certain opportunities. While the lack of documentation may not directly result in statelessness, undocumented populations can be at higher risk of statelessness if they are unable to access documentation to indicate their citizenship.

The current laws and their discriminatory implementation have made access to citizenship and identity documentation difficult, particularly for ethnic and religious minorities. A defining feature of the 1982 Law is that it created a hierarchy of three distinct classes of citizenship—full citizenship, associate citizenship, and naturalised citizenship—with the latter two classes unable to access the full rights and duties of citizens. The law prioritizes full citizenship for *taing-yin-tha* (“national races”). Although non-*taing-yin-tha* minorities may also qualify for full citizenship, the lesser categories of associate and naturalised citizenship only apply to individuals from non-*taing-yin-tha* minority groups. As a result, individuals from minority groups in particular face discrimination in accessing citizenship and identity documentation even when they qualify for citizenship under the law.

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<sup>1</sup> According to the 2014 census, about 72% of the population holds some form of identity documentation (e.g. CSC, ACSC, NCSC, NRC, FRC or TRC). See Myanmar Department of Population, Ministry of Immigration and Population, “The 2014 Myanmar Population and Housing Census: The Union Report,” v. 2, at 2 (May 2015), <https://unstats.un.org/unsd/demographic-social/census/documents/Myanmar/MMR-2015-05.pdf>. It is important to note that this census left out a significant part of the population known to be undocumented, in particular in Rakhine state, and therefore this figure likely underrepresents the extent of the lack of documentation. See Myanmar Department of Population, Ministry of Immigration and Population, “The Union Report (Volume-3K) Rakhine State Report,” at 1, 8 (2015), <http://myanmar.unfpa.org/publications/union-report-volume-3k-rakhine-state-report>.

# INTERNATIONAL HUMAN RIGHTS LAW AND CITIZENSHIP

## ***What is International Human Rights Law?***

International human rights law refers to the set of international treaties and conventions, customary law, judicial decisions and principles and norms which collectively comprise an international legal framework aimed at respecting, protecting and fulfilling human rights. International human rights law is binding on countries (also known as States), as it sets out obligations that countries, like Myanmar, have in respecting, protecting and fulfilling the human rights of all people in their jurisdictions and beyond. For example, when a country is a party to a particular international treaty, the country must make sure that its domestic law implements and aligns with the obligations set out in that international treaty.

## ***Citizenship as a Fundamental Human Right***

The right to citizenship is recognised as a fundamental human right. It has three key components: the right to acquire, the right to change and the right to retain citizenship of a country.<sup>2</sup> A State generally determines the requirements for how a person may acquire citizenship. There are three ways that citizenship may be acquired:

- *jus sanguinis* (citizenship passes from a parent to the child)
- *jus soli* (citizenship is granted to all children born on the State's territory)
- naturalisation

However, a State's right to decide who its nationals are is controlled/overseen by a number of human rights instruments that establish the right to be a citizen of a country.

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<sup>2</sup> UN Office of the High Commissioner for Human Rights, "Right to a Nationality and Statelessness," (last accessed 15 Aug. 2018), <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

## The Right to Have Rights

International law requires that all individuals within a State's jurisdiction benefit from some fundamental freedoms, as "human rights are, in principle, to be enjoyed by all persons." In other words, all people are entitled to protection of their fundamental human rights regardless of their citizenship status.

However, in most countries, it is common that certain – if not most – rights are limited to those officially recognised as citizens. As such, individuals who are deprived of citizenship face an acute vulnerability to human rights violations and discrimination. Being recognised as a citizen means that one is legally recognized as being a member of a country, and therefore possesses the rights, duties, privileges and opportunities granted by the government of that country. Holding documents to evidence one's citizenship status therefore enables individuals to claim protection of the rights guaranteed by their country's legal framework. It is important to note, however, that people who qualify as citizens under the law but do not hold documents are still legally entitled to their rights.

Some examples of how citizenship confers rights in Myanmar are set out on page 15 of this Guide.

International law pursues **two main objectives** with regards to the right to be a citizen of one country:

### 1) Preventing and reducing statelessness.

- Article 15(2) of the Universal Declaration of Human Rights (UDHR) explicitly prohibits arbitrary deprivation of citizenship.
- The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the two key conventions dealing with statelessness:
  - Article 1(1) of the 1954 Convention defines a stateless individual as "a person who is not considered as a national by any State under the operation of its law." This definition is recognised as being part of international customary law.<sup>3</sup>
  - Article 32 of the 1954 Convention encourages State Parties to "facilitate the assimilation and naturalization of stateless persons."
- The 1961 Convention requires "States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless."<sup>4</sup>

<sup>3</sup> See UNHCR, "Expert Meeting – The Concept of Stateless Persons under International Law: Summary Conclusions," para. 2, (27-28 May 2010), <http://www.unhcr.org/en-us/protection/statelessness/4cb2fe326/expert-meeting-concept-stateless-persons-under-international-law-summary.html>.

<sup>4</sup> UNHCR, "Introductory Note to the 1961 Convention on the Reduction of Statelessness," at 3, <http://www.unhcr.org/protection/statelessness/3bbb286d8/convention-reduction-statelessness.html>.

While Myanmar is bound by the UDHR, which is considered customary international law, it is not party to the two conventions on statelessness.

## **2) Ensuring that individuals do not face discrimination when acquiring citizenship of a country.**

A number of international instruments contain the principle of non-discrimination, including on grounds of race and religion:

- Article 2 of the UDHR states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- Article 2(1) of the Convention on the Rights of the Child (CRC) establishes that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”
  - Article 2(2) adds that “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”
- Article 2 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) says that “States Parties condemn discrimination against women in all its forms.”
- Article 5(1) of the Convention on the Rights of Persons Living with Disabilities (CRPD) establishes that “States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.”
- Article 2 of the ASEAN Human Rights Declaration establishes that “Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.”

## Myanmar's International Law Obligations Regarding Nationality

Myanmar is bound by four international law instruments, listed below:

- The Universal Declaration of Human Rights (**UDHR**), which grants everyone the right to a nationality. It goes further in establishing that no one “shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”
- The Convention on the Rights of the Child (**CRC**)
- The Convention on the Elimination of all forms of Discrimination Against Women (**CEDAW**)
- The Convention on the Rights of Persons Living with Disabilities (**CRPD**)

Importantly, the CRC, CEDAW and CRPD all affirm the right to a nationality on an equal basis for children, women and those living with disabilities, respectively. (See Article 7 of CRC, Article 9 of CEDAW, and Article 18 of CRPD).

Though not a legally binding treaty, the 2012 ASEAN Human Rights Declaration is a significant and authoritative document that Myanmar has signed. The Declaration protects the right to be a citizen of a country, in the same terms as in the UDHR. (See Article 18)

# IDENTITY DOCUMENTS

The government issues different types of identity cards.

## CITIZENSHIP DOCUMENTS

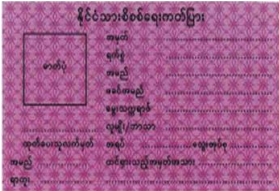
**Scrutiny Cards** are documents that help to show a person’s citizenship. Scrutiny cards are very important, as they may enable people to do basic things like travel, attend high school and university, open a bank account, register their marriage, vote, and buy and sell land. The card records their personal information, including name, sex, religion, race, father’s name and identification number.

**Full citizens** should receive a **pink card**, or **citizenship scrutiny card (CSC)**.

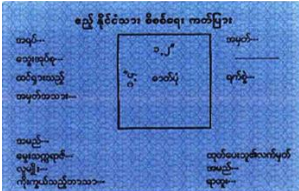
**Associate citizens** can apply for a **blue card**, or **associate citizenship scrutiny card (ACSC)**.

**Naturalised citizens** can apply for a **green card**, or **naturalised citizenship scrutiny card (NCSC)**.

*To determine what kind of citizen a person is under the 1982 Law, please turn to pages 16-18.*



CSC



Associate CSC



Naturalised CSC

People can apply for a CSC once they turn 10 years old. They should renew it at ages 18, 30 and 45.

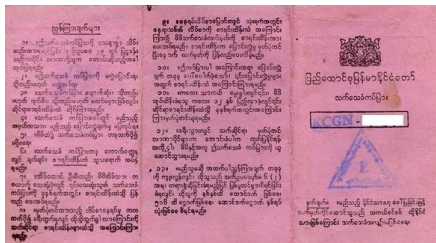
These three types of scrutiny cards were all created pursuant to the 1983 Procedures, which correspond to the three types of citizenship under the 1982 Citizenship Law. As discussed later in the guide:

- Full citizenship is defined in Sections 3, 5, 6 and 7 of the 1982 Law.
- Associate citizenship is defined in Section 23 of the 1982 Law.
- Naturalised citizenship is defined in Sections 42, 43, 44 and 45 of the 1982 Law.

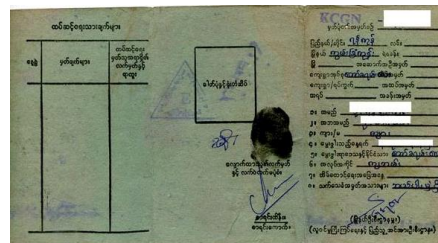
## RESIDENCY DOCUMENTS

### National Registration Card

**National Registration Card (NRC) or “three-folded card”** is a document that was issued to all Myanmar residents (except foreigners) after independence in 1948. Many Myanmar residents were granted citizenship in 1948. If an individual or his/her parents or grandparents have NRCs, they may be citizens, but an NRC is not a citizenship card. The government started replacing these cards with CSCs, but sometimes still gives out NRCs.



Women's NRC (outer)

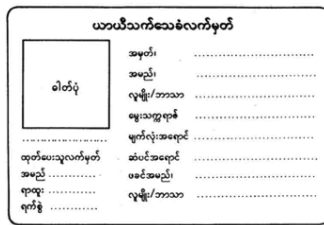


Men's NRC (inner)

NRCs were issued pursuant to the Burma Residents Registration Act 1949 and the 1951 Resident Registration Rules. While NRCs were not technically citizenship documents, they served as de facto citizenship cards given that foreigners (i.e. non-citizens) were issued FRCs.

In 1989, to implement the new 1982 Law and 1983 Procedures, the government conducted a nationwide citizenship scrutiny process during which NRCs were to be replaced with CSCs. However, some minority group members turned in their NRCs and did not receive CSCs in return.

## Temporary Registration/Identification Certificate



**Temporary Registration/Identification Certificate (TRC)**, also known as a “white card,” is a residency document that is only valid for a temporary period. A TRC is proof of identity and residence. The card specifies the date when it expires. TRCs became invalid on 31 May 2015.

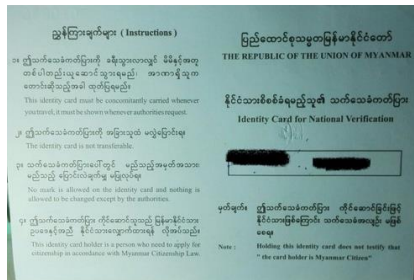
TRCs were issued under Section 4 of the Burma Residents Registration Act 1949 and Section 13(1)(c) of the 1951 Resident Registration Rules. They were issued in the 1990s to many Rohingya and other Muslims in Rakhine, and many individuals of Chinese and Indian background, a number of whom had handed in NRCs during the citizenship scrutiny process.

TRC-holders had to turn in their certificates in April 2015 and received these **TRC slips (“white card receipts”)** as proof that they returned their TRCs.



## Identity Card for Nationality Verification

Also called the National Verification Card (NVC), the **Identity Card for Nationality Verification (ICNV)** is a turquoise card that shows residency in Myanmar. The card does not have an expiry date and does not state the holder’s ethnicity or religion.



This card is not a citizenship document but getting it may help verify a person’s citizenship. An individual can apply for an ICNV if he/she: (a) has turned in his/her TRC, (b) no longer has an identity card, or (c) was instructed by the authorities to have an ICNV. People who have an NRC do not need to apply for an ICNV.

In 2015, the government announced that those who surrendered their TRCs were required to apply for an ICNV. These cards were introduced on June 1, 2015 and later issued pursuant to State Counsellor’s Office Notification dated 27 December 2016 based on Section 5(2)(d) of the 1949 Registration of Residents Act and the 1951 Rules.

The 2016 Notification stated that the objective of issuing the ICNV/NVC was “to scrutinize whether the applicants meet the eligibility to become a citizen of Myanmar and to identify them as residents of Myanmar during the citizenship verification process.”



### ***Foreign Registration Certificate***

**Foreign Registration Certificate (FRC)** is a document issued to foreigners that is valid for one year. Foreigners can get an FRC by informing the authorities of their address and providing proof of identity.

FRCs are issued pursuant to the 1940 Registration of Foreigners Act and Rule 6 of the 1948 Registration of Foreigners Rules following a foreigner's registration in Myanmar, as required by Rules 5 and 8 of the 1948 Rules.

A foreigner is a "person who is not a citizen of the Union" as defined under the 1864 Burma Foreigners Act.



## **OTHER DOCUMENTS**

### ***Household List***

A **household list** or **family list** is a document that lists all members of a household or family living in the same house. It is possible to apply for this list at the local township's Ministry of Labour, Immigration, and Population (MoLIP) office. Household lists must be updated by the head of the household when the members of a family change, such as after a birth, death, or marriage.

Also known as Form 66/6, the Household List was introduced under the 1949 Residents of Myanmar Registration Act.

### ***Birth Certificate***

A **birth certificate** (Form 103) is a certificate issued by the Ministry of Health when a child is born. It is signed and issued by the Township Medical Officer. A birth certificate is important because it will help to register a newborn child onto the family's household list, enroll the child in primary school and apply for the child's scrutiny card.

## LEGAL BACKGROUND ON CITIZENSHIP IN MYANMAR

The 1982 Citizenship Law (“the 1982 Law”) significantly altered citizenship eligibility in Myanmar. Prior to the 1982 Law, citizenship was a single, unified category under Myanmar law. Further, citizenship was granted automatically through a broader range of criteria—including multigenerational residency and descent from members of a national race—while citizenship could also be elected after a shorter residency period.<sup>5</sup> However, with the institution of the 1982 Law citizenship based on membership of a national race increased in importance, while minority groups suffered increased discrimination in accessing citizenship rights. The law also divided citizenship into a hierarchy of three unequal categories.

### Constitution of the Union of Burma, 1947

Under the post-independence citizenship regime, Myanmar had only one category of citizenship.<sup>6</sup> The 1947 Constitution provided that individuals could obtain citizenship via three different avenues: (1) those automatically granted citizenship by descent under the Constitution, (2) those permitted to elect citizenship based on residency of at least eight years, and (3) those granted automatic citizenship under laws that Parliament was empowered to create. Regardless of how citizenship was obtained, all those who qualified enjoyed the same citizenship status, and were guaranteed the rights of equality and non-discrimination under Section 13 of the 1947 Constitution.

### 1948 Union Citizenship Act

In the 1948 Union Citizenship Act (“the “1948 Act”), Parliament exercised its authority to create a new category of citizenship based on multigenerational residence in Myanmar. Section 4(2) of the Act states that: “Any person descended from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home and whose parents and himself were born in any of such territories shall be deemed to be a citizen of the Union.”<sup>7</sup>

This new category of citizenship was automatic: anyone who was from a family that lived in Myanmar for two generations was legally a citizen without applying. Because citizenship was based on family residency, a person’s ethnicity was not relevant to their citizenship status. In addition, the 1948 Act provided other means to automatic citizenship, including that a child born

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<sup>5</sup> See 1947 Constitution of the Union of Burma, Section 11; 1948 Citizenship Act, Section 4(2).

<sup>6</sup> Section 10 of the 1947 Constitution states that “There shall be but one citizenship throughout the Union; that is to say, there shall be no citizenship of the unit as distinct from the citizenship of the Union.” This provision refers to citizenship of a unitary state, rather than a federalist system in which individuals also have regional or state level citizenship. But throughout the 1947 Constitution, it is also clear that there was but a single category of citizenship at the Union level, in direct contrast to the three categories created under the 1982 Law.

<sup>7</sup> 1948 Union Citizenship Act, Section 4(2).

after 1948 to one citizen parent would also be a citizen, as would a child born outside of Burma to a citizen parent in the employ of the state.<sup>8</sup>

The 1948 Act also defined the term “indigenous races” (*taing-yin-tha*) that appeared in Section 11 of the 1947 Constitution:

For the purposes of section 11 of the Constitution the expression “any of the indigenous races of Burma” shall mean the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A. D. (1185 B.E.).<sup>9</sup>

This definition is still relevant today, as a similar definition of *taing-yin-tha* was later incorporated into the 1982 Citizenship Law.

## Registration Laws

Two other laws are relevant for citizenship status and identity documentation in the post-independence era. First, the Registration of Foreigners Act 1940 and the corresponding 1948 Rules required foreigners to register with the government and receive a Foreigner Registration Certificate (FRC).<sup>10</sup> The Act defined a foreigner as anyone who was not a citizen,<sup>11</sup> which, in turn, required reference to the 1948 Citizenship Act.<sup>12</sup>

Second, and by contrast, citizens received National Registration Cards (NRCs) pursuant to the Burma Residents Registration Act 1949 and Burma Residents Registration Rules 1951.<sup>13</sup> While NRCs were not technically citizenship documents, they served as *de facto* citizenship cards given that foreigners (i.e. non-citizens) were issued FRCs.<sup>14</sup> NRCs did not indicate ethnicity or religion, underscoring the fact that these characteristics were not relevant to citizenship status.<sup>15</sup>

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<sup>8</sup> 1948 Union Citizenship Act, Section 5; see Jose Maria Arraiza & Oliver Vonk, “Report on Citizenship Law: Myanmar,” European University Institute, at 6 (October 2017).

<sup>9</sup> 1948 Union Citizenship Act, Section 3(1).

<sup>10</sup> Foreigner Registration Rules 1948, Sections 5-6; see Foreigner Registration Act 1940, Section 5.

<sup>11</sup> Foreigner Registration Act 1940, Section 2(a) (referencing the definition of foreigner in the Foreigners Act, 1864, Section 1).

<sup>12</sup> See S.L. Verma, *The Law Relating to Foreigners and Citizenship in Burma*, at 20 (1961), <http://www.burmalibrary.org/docs19/Verma-Foreigners-ocr-600-tu-bal.pdf>.

<sup>13</sup> See Residents of Burma Registration Act 1949, Section 4; Residents of Burma Registration Rules 1951.

<sup>14</sup> Arraiza & Vonk, “Report on Citizenship Law: Myanmar,” at 6.

<sup>15</sup> Nick Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *J. Contemporary Asia*, at 11 (15 Mar. 2017).

## Constitution of the Socialist Republic of the Union of Burma, 1974

The 1974 Constitution still provided for only one category of citizenship, but amended the 1947 Constitution's language regarding citizenship eligibility. Replacing the broad citizenship criteria in the 1947 Constitution, Section 145(a) of the 1974 Constitution afforded only one avenue: "All persons born of parents both of whom are *taing-yin-tha*" are citizens of the Union.<sup>16</sup> However, Section 145(b) ensured that the new Constitution did not significantly alter the citizenship regime, providing: "Persons who are vested with citizenship according to existing laws on the date this Constitution comes into force are also citizens."<sup>17</sup> In this way, the 1974 Constitution preserved the citizenship laws under the 1948 Act, including automatic citizenship under Section 4(2) based on multigenerational residency. However, the 1974 Constitution again granted the government the authority to change citizenship laws under Section 146, which provided: "Citizenship, naturalisation and revocation of citizenship shall be as prescribed by law."<sup>18</sup>

## The 1982 Citizenship Law

The 1982 Law serves as the central pillar of the current citizenship regime. A defining feature of the 1982 Law is that it created a hierarchy of three distinct classes of citizenship—full citizenship, associate citizenship, and naturalised citizenship—with the latter two classes afforded lesser rights.

### **Full Citizenship**

Full citizenship ("*Naing-ngan-tha*") is granted on the basis of several grounds, the most important of which is membership in a *taing-yin-tha*. The definition of *taing-yin-tha* is similar to the 1948 Act: "Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or 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 citizens.<sup>19</sup> The 1982 Law grants the government the authority to decide "whether an ethnic group is national or not."<sup>20</sup> Although the government later created a list of 135 recognized *taing-yin-tha*—which notably left out certain groups included on older census lists<sup>21</sup>—these national ethnic groups are not enumerated in the 1982 Law. Nevertheless, the 1982 Law elevates the status of *taing-yin-tha*, even among full citizens, because those with two *taing-yin-tha* parents are considered "citizens by birth" ("*mwe-ya-pa naing-ngan-tha*").<sup>22</sup> Citizens by birth enjoy a special status under the law, as they are the

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<sup>16</sup> 1974 Constitution, Section 145(a).

<sup>17</sup> *Id.* Section 145(b).

<sup>18</sup> *Id.* Section 146.

<sup>19</sup> 1982 Citizenship Law, Section 3.

<sup>20</sup> *Id.* Section 4.

<sup>21</sup> Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya," at 9.

<sup>22</sup> 1982 Citizenship Law, Section 5; see Nyi Nyi Kyaw, "Alienation, Discrimination, and Securitization: Legal Personhood and Cultural Personhood of Muslims in Myanmar," 13:4 *Review of Faith & Int'l Affairs* 50, 55 (15 Dec. 2015).

only individuals whose citizenship status cannot be revoked by the government,<sup>23</sup> unless they become a citizen of another country or leave Myanmar permanently.<sup>24</sup>

Despite the special status of *taing-yin-tha*, the 1982 Law also grants full citizenship on two other bases. Critically, the law recognises the citizenship of anyone “who is already a citizen on the date this Law comes into force,”<sup>25</sup> which means that all those who were citizens pursuant to the 1948 Act—including those who qualified due to multigenerational residency under Section 4(2)—remain full citizens after 1982. The second alternative basis for full citizenship is on grounds of descent from parents who have a specific citizenship status. An individual is eligible for full citizenship if at least one of his or her parents has full citizenship, while the other parent has full citizenship, associate citizenship, or naturalised citizenship.<sup>26</sup> Even where an individual does not have a parent with full citizenship, that person is eligible for full citizenship provided that he or she is the third generation descended from any combination of associate and/or naturalised citizen parents and two grandparents.<sup>27</sup>

### ***Associate Citizenship***

Associate citizenship (“*eh-naing-ngan-tha*” or “guest citizen”),<sup>28</sup> the second category of citizenship, covers those who applied for citizenship pursuant to the 1948 Act prior to October 1982, but whose application result was still pending when the 1982 Law came into effect.<sup>29</sup> As a result, associate citizenship applies to a limited group of people and is the least common category of citizenship.

### ***Naturalised Citizenship***

The third class of citizenship created under the 1982 Law is naturalised citizenship (“*naing-ngan-tha pyu-kwin-ya-thu*”).<sup>30</sup> It may be acquired by non-*taing-yin-tha* who “furnish[] conclusive evidence” that they or their ancestors resided in Myanmar prior to 1948 but did not apply for citizenship under the 1948 Act by 1982.<sup>31</sup> Naturalised citizenship is also available to those who do not qualify for full citizenship, but have parents who both hold naturalised citizenship, or a combination of naturalised and associate citizenship, or have one foreigner parent and one parent with any of the three classes of citizenship.<sup>32</sup> Any foreigner married to a naturalised citizen may also apply for naturalised citizenship, provided that he or she held a Foreigner’s Registration

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<sup>23</sup> 1982 Citizenship Law, Section 8(b).

<sup>24</sup> *Id.* Sections 16-17.

<sup>25</sup> *Id.* Section 6.

<sup>26</sup> *Id.* Section 7.

<sup>27</sup> *Id.*

<sup>28</sup> See Nyi Nyi Kyaw, “Alienation, Discrimination, and Securitization: Legal Personhood and Cultural Personhood of Muslims in Myanmar,” at 50, 55.

<sup>29</sup> 1982 Citizenship Law, Section 23.

<sup>30</sup> See Nyi Nyi Kyaw, “Alienation, Discrimination, and Securitization: Legal Personhood and Cultural Personhood of Muslims in Myanmar,” at 55.

<sup>31</sup> 1982 Citizenship Law, Section 42.

<sup>32</sup> *Id.* Section 43.

Certificate and was married prior to 1982.<sup>33</sup> Applicants for naturalised citizenship must also meet other requirements, including that they are at least 18 years old, are able to speak a national language well, have a good character, and are of sound mind.<sup>34</sup>

The government has the authority to grant any type of citizenship “in the interest of the State.”<sup>35</sup> At the same time, apart from “citizen by birth,” any other full citizen, associate citizen, or naturalised citizen may have their citizenship revoked “in the interest of the State.”<sup>36</sup> Associate and naturalised citizens have even lesser rights with regard to revocation. Myanmar may revoke their citizenship for reasons including communicating with enemies of the state, showing disloyalty to the state, or committing an offence of moral turpitude.<sup>37</sup>

## 1983 Procedures

The 1983 Procedures Act implements the 1982 Law and provides for three types of scrutiny cards that correspond to the three classes of citizenship: a Citizenship Scrutiny Card (CSC) for full citizens; an Associate Citizenship Scrutiny Card (ACSC) for associate citizens; and a Naturalised Citizenship Scrutiny Card (NCSC) for naturalised citizens.<sup>38</sup> Under the procedures, a scrutiny card must include both the race and religion of the card holder, and an applicant for a scrutiny card is required to include his race and religion—and that of family members—on certain application forms.<sup>39</sup>

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<sup>33</sup> The applicant for naturalised citizenship must also have been married and resided in Myanmar for at least three years and be the sole husband or wife of their spouse. *See* 1982 Citizenship Law, Section 45.

<sup>34</sup> 1982 Citizenship Law, Section 44.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* Section 8.

<sup>37</sup> *Id.* Sections 35, 58.

<sup>38</sup> *See* 1983 Procedures to the Myanmar Citizenship Law.

<sup>39</sup> *See id.*

## Constitution of the Republic of the Union of Myanmar, 2008

In 2008, the Myanmar military government drafted a new constitution. As to citizenship, the 2008 Constitution borrowed provisions from the 1974 Constitution. Accordingly, under Section 345, those born of two *taing-yin-tha* parents were granted citizenship, as were those who were already citizens under the law when the new constitution came into effect.<sup>40</sup> However, the law in effect in 2008 was markedly different from that in 1974, as the 1982 Law had repealed the 1948 Citizenship Act and had promoted the significance of race as a defining feature of Myanmar's citizenship regime.

### Rights of Citizens in Myanmar

The 2008 Constitution sets out a number of rights, some of which are afforded specifically to citizens, which are listed below:

- Non-discrimination on the basis of race, birth, religion, official position, status, culture, sex and wealth (Section 348)
- Equal opportunities of employment (Section 349)
- Protection against discrimination in appointing/assigning duties to civil service personnel (Section 352)
- Freedom of media and expression: freedom of speech, the right of assembly, the right of association, freedom of religion, cultural rights (Section 354)
- The right to settle and reside anywhere in Myanmar (Section 355)
- The right to protection of property, privacy and communications (Sections 356 and 357)
- The right to develop literature, culture, arts, customs and traditions (Section 365)
- The right to education (Section 366)
- The right to healthcare (Section 367)
- The right to political participation (Section 369)
- The right to freely conduct business (Section 370)

The Constitution specifies certain rights for citizens and certain rights that apply to “all people,” which can be interpreted to create gaps for those who are stateless or are unable to acquire documentation.

The Supreme Court has previously concluded that, even where the law appears to grant rights only to citizens, “most rights are assured to citizen and alien alike and their full enjoyment is unrestricted; and such rights are not to be denied without legal authority.” See *Kasi Vishwanathan Chettiar v. The Official Assignee and One*, 1958 B. L. R. 74 S.C.

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<sup>40</sup> 2008 Constitution, Section 345.

# CITIZENSHIP CRITERIA – 1982 LAW

The following is a quick reference guide for the criteria for each category of citizenship—full citizenship, associate citizenship, and naturalised citizenship.

## Full Citizenship

Individuals are automatically full citizens if one of the following situations applies to them:

1. They are *taing-yin-tha* (national race) (Section 3). *The government has made a list of the 135 taing-yin-tha that are officially recognized, but this list is not in the 1982 Law.*
2. They were already citizens on 15 October 1982 (Section 6).
  - This may apply if a person’s grandparents, their parents, or they got automatic citizenship in 1948, under the 1948 Act. *Anyone from a family that had lived in Myanmar for two generations became a citizen in 1948, as long as they and their parents were born in Myanmar (Section 4(2), 1948 Citizenship Act).*
3. Both of their parents are citizens, or they have one parent who is a citizen and one parent who is an associate or naturalised citizen (Section 7). (See Figure 1)
4. Both of their parents and two grandparents are naturalised or associate citizens (Section 7). (See Figure 2)

Figure 1:

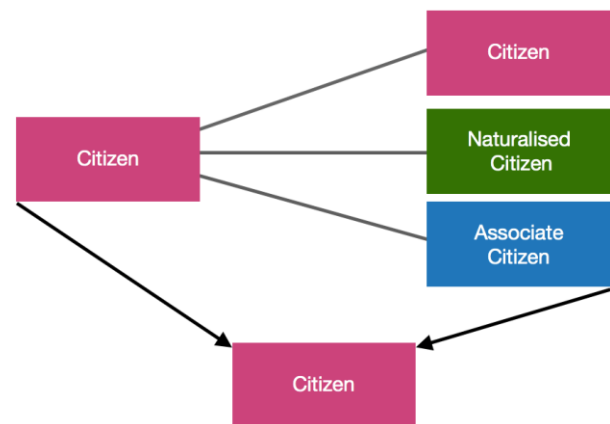
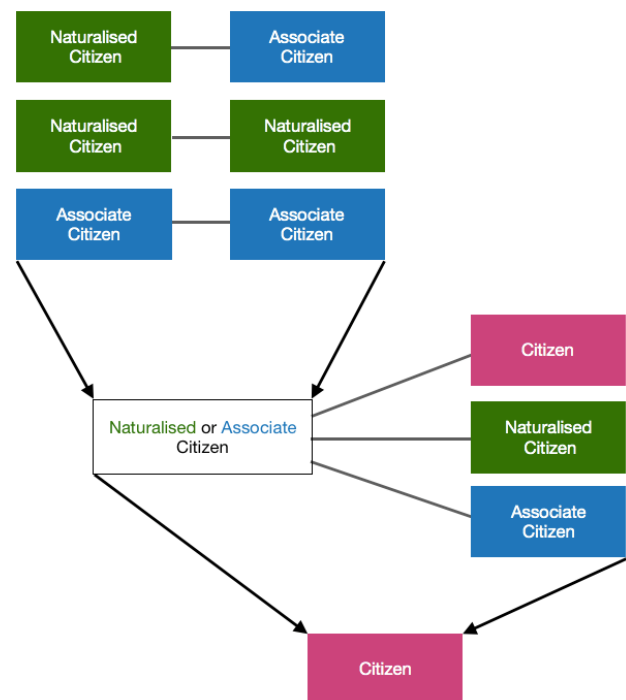


Figure 2:



## Associate Citizenship

Individuals qualify for associate citizenship if:

- They applied for citizenship under the 1948 Citizenship Act, but they did not hear back about the government’s decision by 1982 (Section 23).



## Naturalised Citizenship

Individuals qualify for naturalised citizenship if they do not qualify for Full Citizenship, AND one of the following situations applies to them:

1. They can provide “conclusive evidence” that they or their parents lived in Myanmar before 1948, and they did not previously apply for citizenship under the 1948 Act (Section 42).
2. Both of their parents are naturalised citizens, or one parent is a naturalised citizen and the other parent is an associate citizen (Section 43). (See Figure 3)
3. One of their parents is a foreigner and the other parent is a full citizen, naturalised citizen, or associate citizen (Section 43). (See Figure 4)
4. They have been married to a full citizen, naturalised citizen, or associate citizen since before 1982 AND they got an FRC before 15 October 1982 (Section 45).<sup>41</sup>

**Applicants for Naturalised citizenship must also be (Section 44):**

- 18 years old or older
- able to speak a national language well
- of good character
- of sound mind

Figure 3:

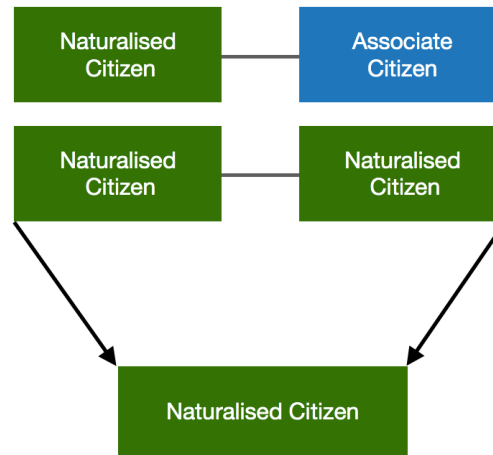
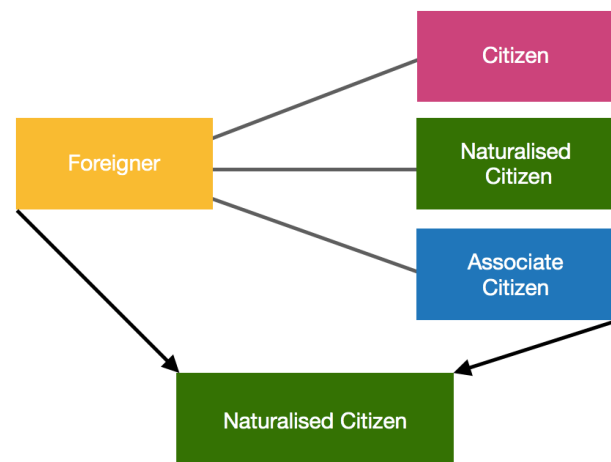


Figure 4:



<sup>41</sup> Applicants must also have resided continuously in Myanmar for at least three years as the lawful wife or husband of that full citizen, naturalized citizen or associate citizen.

## Citizenship Decision Tree

### Instructions:

This decision tree helps determine your citizenship. The first two questions are about whether you are Taingyintha and whether you had citizenship in the past. If you answered "No" to the first two questions, you can still apply for citizenship based on the status of your parents or your spouse. Please keep using this tree until you land on a Pink, Green or Orange box. Refer to the **blue box** at the bottom of the page for **Associate Citizenship**. Refer to the **green box** at the bottom of the page for **Naturalised Citizenship** based on your husband's or wife's citizenship status.



### You may be eligible for **Associate Citizenship** if:

- You applied for citizenship before 1982, or
- Your parents are both Associate Citizens and when you were born your name and details were on your parents' documents.

**If you already have Associate Citizenship** because of your parents, when you turn 18 years old you have to complete some more requirements to continue to be an Associate Citizen.

### You may be eligible for **Naturalised Citizenship by Marriage** if:

- You got an Foreign Registration Card before 15 October 1982, and
- You were married before October 1982, and
- Your husband or wife is a citizen, naturalised citizen or an associate citizen, and
- You are their only husband or wife, and
- You have been married for three years, and
- You have lived in Myanmar for at least three years.

# THE APPLICATION PROCESS

## Applying for a Scrutiny Card

At ages 10, 18, 30 and 45:

1. The applicant must travel to the Township Immigration and National Registration Department (“INRD”) office where they reside.
2. The applicant will be questioned and asked to fill out the relevant forms and submit a number of documents (please see the text box below).
3. Receipt of payment and submission of the documents should be given to the applicant and should be kept for his or her personal records.
4. If the application is approved, the applicant will receive a letter from the Township INRD office. He or she must then return to the office with the receipt of payment to sign and collect the Citizenship Scrutiny Card.

### Common Documents for Application

This is a list of documents that may be required at the INRD office when applying for an identity document, especially when applying for a first scrutiny card. However, not all of these documents are needed in all cases (in particular when renewing). Sometimes immigration officials may ask for other documents that are not listed below:

- Personal Record Form Naing-2 (3 copies)\*
- 1.4” x 1.2” Photos of the applicant (5 copies)\*
- Original, current scrutiny card (when replacing or renewing an existing scrutiny card at 18, 30 and 45)\*
- Family tree form
- Original birth certificate
- Parents’ original identity documents, and one copy of each
- Original household list and one copy (must include applicant’s name)
- Death certificates of some family members
- Letter of recommendation from the ward/village administrator as proof of the applicant’s residence in that ward/village
- Original blood test report
- A sworn affidavit to explain any missing information/ documentation

\*These documents are required in all cases.

## Applying for a Household List

If an individual does not have a household list, he or she must apply for one in order to get his or her scrutiny card.

To apply for a household list, the head of household needs to go to the MoLIP office in the township where his or her family lives. The head of household must also update the list if the family moves to a different township or if there are changes in the family such as a birth, death or marriage. In order to transfer the household lists from one township to another, the head of household should complete the Form 10.

If the head of household cannot go to the MoLIP office, another family member who is 18 years old or older can be sent instead. This requires the following documentation:

- A signed letter from the head of household that the family member is allowed to apply for a list or update the list; and
- The signature of the ward/village administrator on the letter.

## Applying for a New Household List

If an individual starts a new household, such as after getting married or divorced, he or she may need to remove him or herself from the current household list and apply for a new list of their own. To do this, he or she will need:

- A letter of approval from the head of household of the current household list;
- An original copy of the household list;
- A letter of recommendation from the ward/village administrator saying that the individual lives in the ward/village; and
- Proof that the individual has an income and residence, which has separate rooms and a kitchen.

## Registering a Newborn Child onto a Household List

The registration of a newborn child is important to begin creating the child's legal identity and to ensure he or she can access identity documents in the future. Registration is also required under a number of laws, most notably the 1982 Law,<sup>42</sup> 1983 Procedures,<sup>43</sup> and the 1993 Child Law.<sup>44</sup>

Parents or legal guardians must register a newborn child on their household list at the local MoLIP office within 7 days of the child's birth.<sup>45</sup> The registration process requires the parents to submit the following documents to the MoLIP office:<sup>46</sup>

1. Application forms, which are available at the MoLIP office
2. Birth Certificate of Child (Form 103)
  - If the child does not have a birth certificate, a parent may instead write a letter indicating the name of the person who carried out the birth
3. Identity cards (e.g. CSC) of parents/legal guardian (original and one copy)
4. Household list (original and one copy)

An officer will review the application, and upon approval, the child will be added to the family's household list.

## Applying for a Birth Certificate

**If an individual is born in a hospital or a midwife assists with the birth:** the midwife and hospital staff should complete the relevant birth registration and birth certificate paperwork for submission to the Township Medical Officer (TMO) who will formally register the birth and sign and issue the birth certificate.

**If an individual was not registered at birth:** his or her legal guardian must complete a birth registration application and have it signed by a local authority. The legal guardian must travel to a local hospital and request that the hospital staff fill out birth registration Form 101. The legal guardian must then submit all documents to a local TMO office.

**If an individual has lost his or her birth certificate:** it is possible to swear an affidavit in court before a judge. The affidavit signed by the judge can be used as supporting evidence in the absence of a birth certificate.

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<sup>42</sup> 1982 Citizenship Law, Sections 9 and 10.

<sup>43</sup> 1983 Procedures to the Citizenship Law, Section 12.

<sup>44</sup> 1993 Child Law, Chapter III, Section 9.

<sup>45</sup> 1983 Procedures to the Citizenship Law, Section 12(a)(1)(aa).

<sup>46</sup> See 1983 Procedures to the Citizenship Law, Section 12(a)(1).

## Helpful Tips to Tell Clients

- You can get the application forms from the Immigration and National Registration Department (INRD), which is part of MoLIP. There is an INRD office in every township.
- You may need an additional form if you are applying for an ID card in a different township than the original township of your household list (see page 20 on how to update your household list).
- Start gathering documents early. You may need to get documents from your or your parents' home township office, even if you do not live there now.
- Be truthful when you fill out the application forms. Incorrect information may cause problems later.
- Save copies of every document in your application.
- Make paper copies of your pink card or other identity documents, and keep them in a safe, dry place. You can also save electronic copies of your card on a computer, phone, or in email.
- Use the same name in all official documents, including household lists, school lists, and in your application forms.

## Gaps in Supporting Documentation/Information

In some cases, an applicant may not have access to specific prescribed documentation, or may not know information that is generally required for the application or family tree. These applicants may still be able to apply for citizenship, but will need to explain why they do not have those documents and/or information, with evidence to support their explanation.

Types of evidence that might be considered to fill these gaps include:

- Affidavits/Witness statements
- Letters from third parties
- Official records and other documentation (e.g. school records, medical records, photographs)
- Expert/NGO reports
- Other objective evidence

### Affidavits / Witness Statements

Affidavits are made “on oath” and sealed by the court.

Witness statements are signed by the writer. They can usually be tested in court by cross-examination.

These can be given by the applicant him/herself, family members, teachers, doctors, other professionals or reliable witnesses from the community.

Examples of how an applicant might use a witness statement or affidavit include:

- To establish facts, such as the applicant’s long residence in his/her hometown;
- To explain why a document is unavailable; or
- To explain any discrepancy with a previous application or a family member’s application.

A witness statement should contain the following:

- Name, address, and profession/qualifications of the witness
- Who the statement is written for (the applicant) and the witness’ relationship to the applicant
- Reasons for providing the statement
- A concise explanation of the relevant information, specifying how the witness has come to know the information given
- A signed, dated “Statement of truth” confirming that the witness believes that the facts stated in the witness statement are true

## Letters from Third Parties

A professional or other credible member of the community, such as a teacher, doctor or other healthcare professional, may be able to provide a letter to corroborate the applicant's account of missing information. As with witness statements, a letter should contain details of the writer's identity, professional background and experience, his or her relationship to the applicant, and any relevant information the writer can provide.

## Official Records and Other Documentation

These can help to provide evidence of an applicant's or his or her ancestor's long-term residence in Myanmar, or to support other facts for the family tree, such as dates and places of birth or death.

Examples include: school records, educational certificates, hospital records, employment records, bank records, company accounts, land registration, property records, tenancy agreements, utility bills, tax receipts and photographs (e.g. of celebrations, funerals, or gravestones).

In some cases, it might be appropriate to provide a witness statement to support or explain the official records or other documents, including how they were obtained and what they prove.

## Expert / NGO Evidence

A qualified expert or a non-governmental or civil society organisation (NGO/CSO) worker could provide a report on information within their knowledge and expertise.

For example, an NGO/CSO worker with experience of working in the applicant's area might be able to provide a letter confirming that standards of record-keeping are very poor in that area, which might help to explain an applicant's inability to provide the required documents with his or her application. As a further example, a medical expert could provide a report where there are medical or psychological reasons for which an applicant cannot provide certain information.

## Articles / Reports

This could include reports from the public domain that support the applicant's account, such as newspaper articles, journal reports, or publications from NGOs or CSOs. For instance, where an applicant is unable to provide details of his or her parents because he or she is a victim of trafficking, an NGO report documenting trafficking in the region could serve as useful evidence to corroborate the applicant's account. Similarly, if due to ongoing conflict, an applicant is unable to return to his or her hometown to obtain documents or to apply at the local INRD, newspaper articles documenting the conflict could be useful evidence.



## ASSISTING CLIENTS WITH REFUSED OR DELAYED APPLICATIONS

Individuals may come to you for advice or assistance when their applications have been refused or pending for long periods of time.

The law does not require that immigration officers give reasons for refusing an application for citizenship documentation,<sup>47</sup> which makes it even more difficult for applicants to understand the reasons why they might have been refused. In some cases, it may be that an applicant does not meet the criteria for citizenship, but in many cases, it may be due to the absence of relevant information or documentation. It is also possible that an application might be refused due to arbitrary decision-making and/or as a result of discrimination. Similarly, the law does not set out specific timeframes for processing applications. As such, applicants may have trouble persuading the INRD office to consider their application more quickly or to ascertain the status of their pending applications.

A 2017 study revealed a clear pattern of discrimination in the processing of applications for citizenship documentation.<sup>48</sup> In particular, Muslims, Christians, and Hindus, as well as individuals of perceived South Asian heritage, suffered discriminatory treatment including: demands for additional paperwork, greater evidence of family members' citizenship status, and higher informal fees with longer processing times. Many applicants reported having to wait for months or years for their application to be processed—in some cases, applicants reported never receiving any decision at all. In addition to more onerous requirements being placed on them in the application process as compared with other applicants, many racial and religious minority applicants for scrutiny cards reported being issued different cards rather than those they were entitled to under the law.

This section identifies some strategies you might consider when representing or advising clients faced with these kinds of problems.

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<sup>47</sup> Section 71 of the 1982 Citizenship Law states: "Organisations conferred with authority under this Law shall give no reasons in matters carried out under this Law."

<sup>48</sup> Smile Education and Development Fund & Justice Base, "Access to Documentation & Risk of Statelessness," at 31-34 (Dec. 2017).

## The Right to be Protected from Discrimination

The right to be protected from discrimination is guaranteed by Sections 347 and 348 of the 2008 Constitution.

### Section 347

Section 347 provides that “[t]he Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.”

### Section 348

Under Section 348, “[t]he Union shall not discriminate [against] any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.”

Courts in other jurisdictions commonly consider the following elements when determining whether the right to non-discrimination has been violated: whether (1) one or more individuals has suffered discrimination (2) on the basis of a constitutionally protected status (e.g. race, religion, sex) and (3) the differential treatment lacks a reasonable and objective basis.

## Dealing with Delays in Processing Applications

Clients may come to you complaining that they have been waiting for their application to be considered for many months or, in some cases, even years.

As a first step, you might consider writing to the local INRD office, requesting that it process the application promptly, emphasizing that the delay is unreasonable and explaining any negative impact the delay is having on the applicant. You could accompany your client to the INRD office to hand in the letter, and make oral representations setting out your client’s position. In the letter, you could request a response by a specified time. Please see the sample in Appendix 3.

If there is no response or decision after the specified time, you may wish to petition for a writ of mandamus, requesting that the Supreme Court order that the INRD office decide on the application by a specified date. If you believe that the delay is a result of discrimination, you may include grounds to that effect (citing the 2008 Constitution) in the application. Please refer to the text box below for more details. You may also write to the INRD office prior to petitioning for a writ, informing it that you intend to take this action, and urging it to decide on the application so that a writ is not necessary. Again, you can give the INRD office a deadline to respond, such as 14 days, after which date you will proceed to petitioning for a writ.

In some cases, it may help to enclose evidence of the impact that the delay is having on the applicant. For instance, you could prepare a witness statement from the applicant or a family

member setting out the applicant's situation. If the applicant is suffering from a medical condition that is exacerbated by the distress caused by the INRD's delay, you may seek a report or letter from a doctor or medical expert to support this. Please see above at page 24 for more details. If the applicant has been unable to receive a graduation certificate as a result of the delay in processing his or her citizenship application, a letter from the school or university could be provided as evidence of this.

## Dealing with Refusals/Rejections

When an applicant has had his or her application refused, you can take a number of possible steps.

1. You should review the application and try to establish the reasons for which it might have been refused. Under the law, the INRD office is not required to give express reasons for refusing an application, so you will need to help the applicant understand why it might have been refused. Check for any obvious gaps in the applicant's documentation or information in the applicant's forms or family tree. If you find problems in the application, you may consider assisting the applicant to re-apply, making sure to address the issues you have identified. Discuss the issues and seek an explanation or clarification from the applicant. Consider providing further evidence or information with the new application to rectify the problems.
2. After reviewing the applicant's application, you may take the view that the INRD office made a mistake, or that its decision was arbitrary or discriminatory, and the applicant should be entitled to a card under the 1982 Citizenship Law and/or was issued the wrong card. If so, you may consider submitting an informal appeal letter to the Township or District INRD Office, explaining what happened with the application, why the decision was wrong and requesting it to overturn the decision. The letter should enclose a copy of the original application and all supporting documentation. Please see sample letter in Appendix 3.
3. Under the law, it is also possible to formally appeal a decision of the Central Body, by submitting an appeal to the Council of Ministers (Section 70(a) of 1982 Citizenship Law). Any letter of appeal must be submitted (Section 70(a)) through the Township INRD Office within 60 days of the applicant receiving the Central Body's decision according to Rule 50(a) of the 1983 Procedures for Citizenship, 56(a) of the 1983 Procedures for Naturalised Citizenship and 51(a) of the 1983 Procedures for Associate Citizenship.

You might consider petitioning for a writ of certiorari or a writ of mandamus, asking the Supreme Court to order the INRD office to act on the citizenship application.

## Writ Petitions to the Supreme Court

The 2008 Constitution empowers the Supreme Court to issue writs to ensure the protection of constitutional rights (Sections 18(c), 296, 378). There are two types of writs that you may consider petitioning for to challenge government inaction or an incorrect decision on a citizenship application.

First, a writ of certiorari allows the Supreme Court to quash or cancel the decision of a lower court, government official, or agency that is in violation of the law.<sup>1</sup> If you believe that the INRD office, Central Body, or Council of Ministers incorrectly refused the application, you may try submitting a petition for a writ of certiorari to the Supreme Court. The Court has the authority to review and decide the merits of the case and issue the writ to quash the decision, if the Court agrees that the application was improperly refused.

A second type of writ, a writ of mandamus, gives the Court the authority to compel a lower court, government official, or agency to reconsider its decision or take some other action.<sup>2</sup> Unlike certiorari, mandamus cannot compel the official or agency to reach a specific legal decision, such as deciding to grant the citizenship application. But this writ may still be useful to address problems such as inaction by immigration officials or a refusal to give an explanation for the denial of an application.

The Supreme Court has the authority to issue writs related to citizenship applications, even though the 1982 Law appears to deny applicants access to courts. Specifically, the 1982 Law grants the Central Body decision-making authority related to citizenship (Section 68). Determinations of the Central Body may be appealed only to the Council of Ministers, whose decisions are “final” (Section 70), and thus, arguably not subject to judicial review.

However, the Supreme Court’s jurisdiction over petitions for writs is clear. Under the principle of constitutional supremacy, no law may contradict or be inconsistent with the Constitution (*See* 2008 Constitution, Sections 446, 447). The Constitution protects the Supreme Court’s authority to issue writs related to constitutional rights, and this protection is superior to any contrary provision in the 1982 Law (Sections 18(c), 296, 378).

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<sup>1</sup> *See* Melissa Crouch, “Access to Justice and Administrative Law in Myanmar,” at 2 (Oct. 2014).

<sup>2</sup> *See id.*

## ADVOCACY AND REFORM

As lawyers, you can play an important role in advocacy and reform of both the law itself and the way the law is practiced and implemented by immigration officials.

In addition to achieving positive outcomes for your client, every time you help a client to appeal a refused application or challenge unreasonable delay or unlawful discrimination, you may be contributing to reform by raising awareness and changing the practices of staff in the INRD offices.

Filing petitions for writs before the Supreme Court also holds potential for contributing to case law which may become a precedent under common law principles, leading to better practice by INRD office staff and possible reform of the 1982 Law.

If you wish to participate in more direct advocacy efforts, through a lawyers' network or CSO you may be able to engage in:

- consultations relating to legislative reform;
- campaigns for changes in the law;
- developing reports for public information and awareness raising; and
- submitting shadow reports to the human rights treaty monitoring bodies for their consideration in state reporting procedures (see Appendix 1).

As an individual lawyer, you can accumulate knowledge and understanding of poor practices and shortcomings in the law by keeping good records of challenges faced by your clients, which can then inform your contribution to campaigning and advocacy efforts.

## APPENDICES

### Appendix 1: Monitoring States' Compliance with International Human Rights Law

When signing and ratifying a treaty, a State becomes legally bound by it. Two types of mechanisms monitor the implementation of international human rights law: U.N. Charter-based bodies and treaty-based bodies.

#### *U.N. Charter-based mechanisms relevant to Myanmar:*

- **Human Rights Council (HRC)** replaced the Commission on Human Rights in 2006. It is made up of 47 Member States, which are elected by the U.N. General Assembly. In 2017, through resolution A/HRC/RES/34/22, the HRC decided to establish the Independent International Fact-Finding Mission on Myanmar.
- **Universal Periodic Review (UPR)** was established in 2006. The UPR mechanism has reviewed the situation of human rights in Myanmar twice already, in 2011 and in 2015. The next review will take place in November 2020.
- **Special Procedures of the Human Rights Council** can be either thematic or country-specific. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established in 1992.<sup>49</sup>

#### *Treaty-based mechanisms relevant to Myanmar:*

There are 10 human rights treaty bodies, made up of independent experts who address States' compliance with the rights contained in specific treaties. Treaty-based mechanisms generally use the following tools to evaluate States' compliance with international standards (non-exhaustive): State reports, individual complaints mechanisms, and recommendations.

- **Committee on Economic, Social and Cultural Rights.** Under Articles 16 and 17 of the ICESCR, State Parties are required to submit a report in accordance with a programme established by the Committee. Myanmar has not yet acceded to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights allowing for individual complaints procedures.<sup>50</sup>
- **Committee on the Rights of the Child.** Monitors the implementation of the Convention on the Rights of the Child and the two Optional Protocols to the Convention. Under Article 44 of the Convention, State Parties have to submit a report

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<sup>49</sup> UN Office of the High Commissioner for Human Rights, "Human Rights Bodies – Country Mandates," (last accessed 28 Aug. 2018),

[https://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx](https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx).

<sup>50</sup> *Id.*

every five years on the implementation of the Convention. Myanmar has not yet acceded to the Optional Protocol to the Convention on the Rights of the Child allowing for individual complaints procedures.<sup>51</sup>

- **Committee on the Elimination of Discrimination against Women.** Under Article 18, State Parties are bound to submit a report on their implementation of the Convention every four years. The Committee can consider individual complaints relating to violations that happened within the jurisdiction of a State that has signed the Optional Protocol. Myanmar has not ratified nor acceded to the Optional Protocol to the Convention.
- **Committee on the Rights of Persons with Disabilities.** Under Article 35, State Parties are bound to submit a report on their implementation of the Convention at least every four years. Myanmar has not yet acceded to the Optional Protocol to the Convention on the Rights of Persons with Disabilities allowing for individual complaints procedures.<sup>52</sup>

## State Reports and Civil Society Shadow Reports

States are required to submit reports to the treaty-based mechanisms charged with monitoring human rights compliance with the particular treaty/convention the States have ratified. The first report submitted by States after ratification is called the Initial Report. States are subsequently required to submit Periodic Reports, usually every four years. Periodic Reports are publicly available, usually on the webpage of the concerned treaty-monitoring mechanism. After reviewing the State's Periodic Report, the treaty-monitoring mechanism publishes Concluding Observations, which include recommendations.

Shadow reports, also called "alternative reports," can be submitted by non-governmental organisations to treaty-monitoring bodies as an additional and/or alternative source of information. Shadow reports are usually submitted after the official governmental report is made public, while alternative reports are submitted beforehand. They are a powerful tool for promoting government accountability regarding the human rights situation in a country. They also help treaty-monitoring mechanisms to establish issues of concern and recommendations for their Concluding Observations.

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

## Appendix 2: UN Resources Relating to the Right to Citizenship<sup>53</sup>

### ***Human Right Council Resolutions:***

- Resolution 32/5 (2016) on human rights and arbitrary deprivation of nationality
- Resolution 26/14 (2014) on human rights and arbitrary deprivation of nationality
- Resolution 20/5 (2012) on human rights and arbitrary deprivation of nationality
- Resolution 20/4 (2012) on the right to a nationality: women and children
- Resolution 13/2 (2010) on human rights and arbitrary deprivation of nationality
- Resolution 10/13 (2009) on human rights and arbitrary deprivation of nationality
- Resolution 7/10 (2008) on human rights and arbitrary deprivation of nationality

### ***Reports:***

- Report of the Secretary-General on human rights and arbitrary deprivation of nationality - A/HRC/10/34
- Report of the Secretary-General on human rights and arbitrary deprivation of nationality - A/HRC/13/34
- Report of the Secretary-General on human rights and arbitrary deprivation of nationality - A/HRC/19/43
- Report on discrimination against women on nationality-related matters, including the impact on children - A/HRC/23/23
- Report of the Secretary-General on human rights and arbitrary deprivation of nationality - A/HRC/25/28
- Report of the Secretary-General on the impact of the arbitrary deprivation of nationality - A/HRC/31/29

### **General Comments:**

- UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women – CEDAW/C/GC/32 (2014)

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<sup>53</sup> UN Office of the High Commissioner for Human Rights, “Right to a Nationality and Statelessness,” (last accessed on 15 Aug. 2018), <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.



## Appendix 3: Sample Letters

Below are two example letters that may be used as templates when representing clients who face challenges obtaining citizenship documentation. Given the diversity of these types of cases, there is no one-size-fits-all solution. As such, these letters should only be used as a guide, and lawyers should tailor their clients' letters to the specific facts and law relevant to those clients' citizenship cases.

### A. Sample Letter to Challenge Delay

Dear Yangon Immigration and National Registration Department, Dagon Township:

We write in respect of our client, Aung Soe, to request a prompt decision in relation to his application for a Citizenship Scrutiny Card (CSC), which was submitted on 20 July 2015, and has now been outstanding for over 3 years.

Please find enclosed:

1. Witness statement of Aung Soe, dated 15 July 2018
2. Letter from university refusing admission, dated 18 June 2016
3. Copy of Aung Soe's application for a CSC, including:
  - a. Personal history form
  - b. Family tree
  - c. Household List
  - d. Birth certificate
  - e. Copy of father's CSC
  - f. Copy of mother's Naturalised Citizenship Scrutiny Card (NCSC)
  - g. Copy of mother's birth certificate
  - h. [INSERT OTHER DOCUMENTS HERE]

Aung Soe is a citizen under Section 7(c) of the 1982 Citizenship Law by virtue of being the son of a full citizen and a naturalised citizen. Aung Soe's father is a citizen under Section 7(a) of the 1982 Citizenship Law, and he holds a CSC that identifies him as Bamar-Buddhist. Aung Soe's mother is a naturalised citizen as evidenced by her NCSC. She identifies as Myanmar-Muslim.

Aung Soe applied for a CSC on 10 July 2015 after he turned 18 years of age. Aung Soe is now 21 years old. To date, he has received no decision in relation to his application, despite having visited your office in person on multiple occasions over the past 3 years to request an update. No reasons have been given for the delay in processing this application.

It is our submission that a delay of over 3 years in determining an application for a CSC is unreasonable. This delay had a severely negative impact on our client's circumstances, most importantly that he has been unable to pursue an undergraduate degree at his desired university due to his lack of documentation. Please refer to the enclosed letter from [Insert name] University as evidence of this. In turn, this is causing him and his family significant mental distress. We refer you to the enclosed witness statement of Aung Soe for further details of the impact of this delay.

We therefore write to request an urgent decision on our client's application for a CSC.

In view of the significant time that has already passed since his application, we would be most grateful for a decision by 1 September 2018.

[Optional: We also hereby put you on notice that, in the event that no decision is reached within 2 months from the date of this letter, we intend to file a petition for a writ of mandamus with the Supreme Court, to request an order that your office process this application without delay.]

## B. Sample Letter to Challenge Refusal

Dear Yangon Immigration and National Registration Department, Dagon Township:

We write in relation to our client, Aung Soe, to request a review of the decision of 26 August 2018 to refuse his application for a Citizenship Scrutiny Card (CSC).

Please find enclosed:

1. Copy of Aung Soe's application for a CSC, including:
  - a. Personal history form
  - b. Family tree
  - c. Household List
  - d. Birth certificate
  - e. Copy of father's CSC
  - f. Copy of mother's Naturalised Citizenship Scrutiny Card (NCSC)
  - g. Copy of mother's birth certificate
  - h. [INSERT OTHER DOCUMENTS HERE]

Aung Soe is a citizen under Section 7(c) of the 1982 Citizenship Law by virtue of being the son of a full citizen and a naturalised citizen. Aung Soe's father is a citizen under Section 7(a) of the 1982 Citizenship Law, and he holds a CSC that identifies him as Bamar-Buddhist. Aung Soe's mother is a naturalised citizen as evidenced by her NCSC. She identifies as Myanmar-Muslim.

Aung Soe applied for a CSC on 10 July 2015 after he turned 18 years of age. Aung Soe is now 21 years old. On 1 August 2018, he received a decision from your office stating that he was not eligible to receive citizenship documentation.

With respect, this decision is an inaccurate interpretation of the law. It is clear from the above and the enclosed evidentiary documents that Aung Soe is a citizen under Section 7(c) of the 1982 Law and should be issued with a CSC accordingly. We therefore write to appeal the decision to refuse Aung Soe's application for citizenship. We respectfully request that you urgently review your decision and issue a new decision granting him with a CSC in line with the 1982 Citizenship Law and the 1983 Procedures.

In view of the significant delay Aung Soe has already experienced in waiting for his application to be processed, we would be most grateful for your response to this letter by 1 September 2018.

## Appendix 4: Personal Record Form Naing-2

Form Citizen-2

### Personal History Form of Citizenship

#### Part (1)

From age ten to eighteen

To affix  
photo at the  
age of  
completion ten

1. Child's name-
2. Citizenship Registration Card at the age of completion ten and Citizenship Scrutiny Card at the age of completion ten -
3. Date and place of birth-
4. Informing date -
5. Date of completion age ten-
6. Male/Female-
7. Race-
8. Religion-
9. Prominent mark-
10. Residential address -
11. School and Standard attending -
12. Date and place of death if death occurred-
13. Father's biography
  - (a) Name-
  - (b) No. and date of the holder's certificate-
  - (c) Date of birth and place of birth-
  - (d) Race and type of citizen-
  - (e) Religion-
  - (f) Education-
  - (g) Date of marriage-
  - (h) Tradition of marriage-
  - (i) Occupation-
  - (j) Residential address-
  - (k) Still alive or not-
  - (l) Date and place of death if death occurred-

14. Particulars of Mother

- (a) Name-
- (b) Holder's certificate no. and date-
- (c) Date and place of birth-
- (d) Race and type of citizen-
- (e) Religion-
- (f) Education-
- (g) Date of marriage-
- (h) Tradition of marriage-
- (i) Occupation-
- (j) Residential address-
- (k) Still alive or not-
- (l) Date and place of death if death occurred-

15. Particulars of paternal grandfather

- (a) Name-
- (b) Holder's certificate no. and date-
- (c) Date and place of birth-
- (d) Race and type of citizen-
- (e) Religion-
- (f) Education-
- (g) Occupation-
- (h) Address-
- (i) Still alive or not-
- (j) Date and place of death if death occurred-

16. Particulars of paternal grandmother

- (a) Name-
- (b) Holder's certificate no. and date-
- (c) Date and place of birth-
- (d) Race and type of citizen-
- (e) Religion-
- (f) Education-
- (g) Occupation-
- (h) Residential address-
- (i) Still alive or not-
- (j) Date and place of death if death occurred-

17. Particulars of maternal grandfather
- (a) Name-
  - (b) Holder's certificate no. and date-
  - (c) Date and place of birth-
  - (d) Race and type of citizen-
  - (e) Religion-
  - (f) Education-
  - (g) Occupation-
  - (h) Address-
  - (i) Still alive or not-
  - (j) Date and place of death if death occurred-
18. Particulars of maternal grandmother
- (a) Name-
  - (b) Holder's certificate no. and date-
  - (c) Date and place of birth-
  - (d) Race and type of citizen-
  - (e) Religion-
  - (f) Education-
  - (g) Occupation-
  - (h) Address-
  - (i) Still alive or not-
  - (j) Date and place of death if death occurred-
19. Wife / husband (if exist)
- (a) Name-
  - (b) Holder's certificate no. and date-
  - (c) Date and place of birth-
  - (d) Race and type of citizen-
  - (e) Religion-
  - (f) Education-
  - (g) Date of marriage-
  - (h) Type of marriage-
  - (i) Occupation-
  - (j) Residential address-

20. Offsprings

Name	Date and place of birth	Race and Type of citizen	School class	Remark
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.....  
.....

21. Acknowledge that, if default, the prescribed fine shall be paid.

22. Status of paying fine or fee-

Date	Fine	Fees	No. of Chalan/ receipt	Remark
------	------	------	------------------------	--------

.....  
.....

23. Child's finger prints-

- (a) right: thumb, index finger, middle finger, ring finger and little finger
- (b) left: thumb, index finger, middle finger, ring finger and little finger

24. Child's toe prints-

- (a) right: first toe, second toe, third toe, fourth toe, little toe
- (b) left first: toe, second toe, third toe, fourth toe, little toe

25. Verified that the statements are true.

Signature of parents or guardian .....  
Name .....  
Residential address .....  
Date .....



Person who recorded

Signature .....  
Name .....  
Designation .....  
Township .....  
Date .....

26. Organization participated year by year up to eighteen years old

.....  
.....  
.....

27. Changes year by year up to eighteen years old

.....  
.....  
.....



Signature of parents or guardian.....  
Name .....  
Residential address .....  
Date .....

Person who recorded

Signature .....  
Name .....  
Designation .....  
Township .....  
Date .....

UNOFFICIAL TRANSLATION



Part (2)

From the age of eighteen to thirty years

To affix  
photo of  
age  
completion  
eighteen  
y  
~

1. Name-
2. Name of childhood-
3. Number of Citizenship Registration Card for completion of age ten, and Citizenship Scrutiny Card for completion of age ten -
4. Date of giving information to exchange with Citizenship - Certificate -
5. Number of Citizenship Certificate and Citizenship Scrutiny Card -
6. Date of completion eighteen years of age -
7. Height-
8. Weight-
9. Hair color-
10. Prominent mark-
11. Blood group-
12. Race-
13. Religion-
14. Residential address-
15. If death occurred, date and place of death-
16. Education-
17. School, college, University attended-  
from to School, college, University Standard  
.....  
.....  
.....
18. Occupation-
19. Employment-  
from to Department/organization position  
.....  
.....  
.....

20. Particulars of Father

- (a) Name-
- (b) Certificate number of holder and date-
- (c) Race and type of citizenship-
- (d) Occupation-
- (e) Address-

21. Particulars of Mother

- (a) Name-
- (b) Certificate number of holder and date-
- (c) Race and type of citizenship-
- (d) Occupation-
- (e) Address-

22. Siblings

Name	Race and type of nationality	Relationship	Certificate number of holder and date	Occupation	Residential address
------	---------------------------------------	--------------	--	------------	------------------------

.....

.....

23. Married or not-

(to mention if divorced or death occurred)

24. Wife / husband

- (a) Name-
- (b) Certificate number of holder and date-
- (c) Date and place of birth-
- (d) Race and type of citizenship-
- (e) Religion-
- (f) Education-
- (g) Date of marriage-
- (h) Tradition of marriage-
- (i) Occupation-
- (j) Residential address-

25. Offsprings (if any)-

Name	Date and place of birth	Race and type of citizen	occupation	residential address
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.....

.....

26. Status of fee payment-

Date    fee    Receipt no:    Remark  
.....  
.....

27. Finger prints

- (a) Right: thumb, index finger, middle finger, ring finger, and little finger
- (b) Left: thumb, index finger, middle finger, ring finger, and little finger

28. Toe prints-

- (a) Right: first toe, second toe, third toe, fourth toe, and little toe
- (b) Left: first toe, second toe, third toe, fourth toe, and little toe

29. Verified that the statements are true.



Signature .....  
Name .....  
Residential Address .....  
Date .....

Person who recorded

Signature .....  
Name .....  
Designation .....  
Township .....  
Date .....

30. Organizations participated from age eighteen to thirty years

.....  
.....  
.....  
.....

31. Yearly process changes from the age of eighteen to thirty years

.....  
.....  
.....  
.....



Signature .....

Name .....

Residential Address .....

Date .....

**Person who recorded**

Signature .....

Name .....

Designation .....

Township .....

Date .....

**Part(3)**

**Autobiography from the age of thirty and above**

To affix  
photo of  
age  
thirty  
years  
completion

1. Name-
2. Citizenship Certificate and Citizenship Scrutiny Card-
3. Date of applying to exchange Citizenship Certificate and Citizenship Scrutiny Card-
4. Father's name and his certificate no:-
5. Mother's name and her certificate no:-
6. Residential address-
7. Education-
8. School, College/University attended-  
from to School/College/ Standard  
University  
.....  
.....
9. Occupation-

10. Department at where employed-

from to department/ position  
organization

.....  
.....

11. Social / political organizations participated

From To Social/political Rank  
organizations

.....  
.....

12. Wife / Husband-

- (a) Name
- (b) Date and number of previous certificate -
- (c) Date and place of birth-
- (d) Race and type of citizenship-
- (e) Religion-
- (f) Education qualification-
- (g) Date of marriage-
- (h) Tradition of marriage-
- (i) Occupation-
- (j) Residential address-

13. Offsprings-

Name	Date and place of birth	Race and Nationality	School, Standard	Remark
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.....  
.....

14. Yearly process changes from the age of thirty to forty-five

- (a) Changes in educational qualification

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.....

- (b) Changes in occupation-

.....

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.....  
.....

(c) Punishment-

.....  
.....  
.....  
.....

(d) Change in residential address-

.....  
.....  
.....  
.....

(e) Process changes relating to parents-

.....  
.....  
.....  
.....

(f) Process changes relating to wife or husband-

.....  
.....  
.....  
.....

(g) Process changes relating to offsprings-

.....  
.....  
.....  
.....

(h) Other changes of personal process

.....  
.....  
.....  
.....

UNOFFICIAL TRANSLATION



signature .....  
Name .....  
Residential address .....  
Date .....

Person who recorded

Signature .....  
Name .....  
Designation .....  
Township .....  
Date .....

15. Yearly life process changes from the age of forty-five and above-

To affix  
photo of  
age  
completion  
forty-five  
years

(a) Changes in educational qualification

.....  
.....  
.....  
.....

(b) Changes in occupation-

.....  
.....  
.....  
.....

(c) Punishment-

.....  
.....  
.....  
.....

(d) Changes of residential address-

.....  
.....  
.....  
.....

(e) Process changes relating to parents-

.....  
.....  
.....  
.....

(f) Process changes relating to wife / husband-

.....  
.....  
.....  
.....

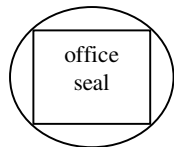
(g) Process changes relating to offsprings-

.....  
.....  
.....  
.....

(h) Other changes in personal history

.....  
.....  
.....  
.....

UNOFFICIAL TRANSLATION



signature .....  
Name .....  
Residential Address .....  
Date .....



Person who recorded

Signature .....

Name .....

Designation .....

Township .....

Date .....

UNOFFICIAL TRANSLATION

..... Family Tree

great grandfather great grandmother  
grandfather

great grandfather great grandmother  
grandmother

great grandfather great grandmother  
grandfather

great grandfather great grandmother  
grandmother

Name.....  
Date of birth .....  
Place of birth .....  
Race and Nationality .....  
Holder's certificate number .....  
Date of death .....  
Place(if already died) .....

Name.....  
Date of birth .....  
Place of birth .....  
Race and Nationality .....  
Holder's certificate number .....  
Date of death .....  
Place(if already died) .....

Name.....  
Date of birth .....  
Place of birth .....  
Race and Nationality .....  
Holder's certificate number .....  
Date of death .....  
Place(if already died) .....

Name.....  
Date of birth .....  
Place of birth .....  
Race and Nationality .....  
Holder's certificate number .....  
Date of death .....  
Place(if already died) .....

Father

Mother

Father's name.....  
Date of birth .....  
Place of birth .....  
Race and Nationality .....  
Holder's certificate number .....  
Occupation .....  
Whether alive or not .....  
Address .....

Mother's name.....  
Date of birth .....  
Place of birth .....  
Race and Nationality .....  
Holder's certificate number .....  
Occupation .....  
Whether alive or not .....  
Address .....

son/daughter  
(applicant)

Signature of person who recorded  
(name)

Rank.....  
Township .....  
Sate/division .....  
Date .....

Name.....  
Date of birth .....  
Place of birth .....  
Race and Nationality .....  
Holder's certificate number .....  
Occupation .....  
Address .....

Applicant's signature  
(name)

