

# Burma Briefing

## Rohingya citizenship: now or never?



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The denial of citizenship to the Rohingya people is one of the foundation stones which underpins prejudice and violence against the Rohingya. By denying Rohingya citizenship, the government is officially saying that they are foreign to Burma, and do not belong in the country. In the mind of many in Burma this in turn justifies prejudice against them, and for some, even justifies the most horrific human rights violations. Challenging prejudice and changing attitudes may take generations to address but this process cannot begin until the citizenship issue is addressed. The single most important step the government of Burma can take to begin a process of ensuring safe return for Rohingya is to reform or replace the 1982 Citizenship Law and give citizenship to all Rohingya.

Rather than insisting on this, the international community has now returned to compromise language about 'pathways to citizenship' for the Rohingya.

There is no time left for this approach. In practice there may now only be a window of 12-18 months where the Rohingya citizenship issue could finally be addressed. After this time, the election cycle and political changes in the country may mean there will never again be the opportunity that exists right now.

Aung San Suu Kyi is probably at the peak of her powers. She won the last election with a huge landslide. As State Counsellor she is the most powerful person in the NLD-led government. Government Ministers are afraid to act within their portfolios without specific instructions from her. NLD MPs in Parliament are unable or unwilling to challenge or criticise government policies. She has an iron grip over her Ministers, her MPs and the NLD, the most popular political party in the country. Her reputation has fallen internationally, but within Burma she has not just the respect but also the trust and love of a huge number of people. She enjoys a level of admiration politicians in other countries can only dream of.



It is clear that Aung San Suu Kyi doesn't want to change the 1982 Citizenship Law. If she wanted to, she could push through a change in the law at any time. She has the parliamentary majority she needs and the military could not stop her. The military have no desire for a coup over this issue. They know they would lose everything they have gained if they did. Sanctions would be re-imposed, the population would turn against them, their future at risk once again.



Aung San Suu Kyi in Parliament

Credit: Mizzima

There is no doubt that the majority of people in the country would be unhappy at Rohingya being given citizenship. It will cost votes, but how many? If it is in the direct run-up to the election it would have more of an impact. But if the law is changed this year, will it be what people are thinking about when they go to the polling stations in two years' time? Unlikely. The uproar will have died down. People will find their lives haven't changed for the worse because the Rohingya now have citizenship.

The military backed government tried to use Buddhist nationalism against the NLD in the last election, with Ma Ba Tha travelling the length and breadth of the country preaching how the NLD were servants of Muslims. It didn't work. As one Rohingya activists described it, people went to the polls with hope, not hate, in their hearts. Prejudice against the Rohingya is endemic, but it isn't the first concern people have when they wake up in the morning. If the government were to change the law enabling all Rohingya to have citizenship, and at the same time took action on those promoting hate speech as well as stopping their own anti-Rohingya and anti-Muslim propoganda, it would start to change the political atmosphere as well. This is essential for peace and reconciliation.

Only international pressure will persuade Aung San Suu Kyi to act on citizenship, but pressure is not being applied in the right direction. Instead, the focus regarding citizenship has been on implementing recommendations of the Rakhine Advisory Commission chaired by Kofi Annan.

On citizenship, the Rakhine Advisory Commission recommendations made last year were a compromise. The Commission was dominated by members from Burma, and Rohingya were excluded. At the time, it may have seemed like a success to get the recommendations on citizenship as strong as they were, and to have Aung San Suu Kyi commit to implementing them.

One year on though, the situation is different. One factor is the attitude of Aung San Suu Kyi herself, now more clearly revealed. Aung San Suu Kyi's response to the two military offensives against the Rohingya and subsequent international criticism has been extreme. She has banned the UN Fact Funding Mission,

the UN Special Rapporteur, and human rights activists and journalists from the country. She has supported repression of media and journalists critical of government policy or exposing human rights violations. She has gone ahead with plans for giant prison camps for returning Rohingya, built in part with money stolen from a World Bank grant intended for disaster relief. It is clear the intention is not to implement this recommendation, but rather draw out the process as long as possible. Government officials repeatedly state that they will not change the Citizenship Law.

These facts make it clear that the argument previously made that Aung San Suu Kyi was being restrained from action by public opinion are false. She and senior members of her government clearly share prejudice against the Rohingya. They are part of the problem. They are keeping and implementing discriminatory laws and policies against the Rohingya. Efforts to implement the Rakhine Commission recommendations lack transparency and do not appear to be being implemented beyond a tick box exercise to placate the international community.

Another factor is the political calendar within Burma.

Instead of a clear recommendation to reform or repeal the Citizenship Law and grant citizenship to Rohingya, the Rakhine Advisory Commission recommends that the Burmese government implements the current 1982 Citizenship Law.

This law violates international law and Burma's treaty obligations, such as those in the UN Convention on the Rights of the Child. The Rakhine Commission itself admits this, stating: "Several aspects of the 1982 Citizenship Law are not in compliance with international standards and norms – such as the principle of non-discrimination under international law – as well as international treaties signed by Myanmar. Most notably, the Convention on the Rights of the Child (CRC)."

The Rakhine Commission, is therefore, urging the government of Burma to more fully implement a law that violates international law.



The Rakhine Commission recommendation of an “acceleration of the citizenship verification process... under the 1982 Citizenship Law” is unacceptable to Rohingya. There is no legal requirement for the government of Burma to have to go through this process. It’s another delaying tactic. A process that could be drawn out for years.

The Rakhine Commission recommendations on reform or repeal of the 1982 Citizenship Law are far too vague and weak when it comes to implementation.

It states: “... the Commission recommends the Government set in motion a process to review the law. As part of such a review, the Government might wish to consider the following: ... Within a reasonable timeline, the Government should present a plan for the start of the process to review the Citizenship Law.”

There is no urgency, timeline or deadline given. They ask for another process, another review, to add to the many processes, committees and reviews which already exist. They suggest the government ‘might wish’ to consider recommendations regarding changing the law which should be considered essential. The diplomatic language could be considered understandable, but it gives the Burmese government too much wiggle room to avoid taking the urgent action required.

One year on, no moves have been made to set up a review and government officials are still stating the law will not be changed.

If there ever was time for this drawn out process, it has run now out.

Arguments that the problem is the implementation of the 1982 Citizenship Law, and that many Rohingya could get citizenship under the current law miss the point.

First, ‘many’ or ‘most’ Rohingya isn’t good enough. All Rohingya have the right to citizenship.

The 1982 Citizenship Law is illegal. It does not meet Burma’s legal obligations under international law and treaties Burma has signed.

A change in the law is also essential for the political message it sends. That Rohingya are citizens and have rights and that they belong in Burma. This is something the government has to say to start a process of reconciliation and address root causes.

In giving the Rohingya their right of citizenship, Aung San Suu Kyi and her government will take a political hit, but that’s a fact that comes with leadership and responsibility. The alternative, pursuing a policy of doing nothing hoping things will calm down, and making long-term plans for economic development hoping this will address the problem, have not worked. Failing to tackle this issue head on has led to a catastrophic escalation of the problem to a degree where the UN says the most horrific of all crimes, genocide, may have taken place, and where Burma’s international reputation lies shattered. Carrying on as before is simply stoking up more problems for the future.

There is no time left for pathways to citizenship or implementing the Rakhine Commission recommendations on citizenship. Further delay not only risks a new crisis, but also risks there never being substantive change regarding citizenship, causing instability within Burma and for its neighbours.

Burma's next elections are due in November 2020. By early 2020 all political attention in Burma will be on the upcoming election, even if the election campaign won't formally start until later in the year. The political hit of changing the Citizenship Law during this period will be considered too high by the NLD leadership.

So then we are looking at 2021, three years from now, before any possible change.

What will the make-up of government or Parliament be then? Expectations of what her government could achieve in terms of economic development and changing people's lives were always going to be impossible to meet, but even so most people accept the government is underperforming on the economic front. People outside the cities say they do not feel things have significantly improved for them under the NLD-led government.

In ethnic states the dissatisfaction appears to be stronger. The NLD surprised many observers with its strong showing in ethnic states at the last election, but the mood appears to be changing. The strong showing was based on Aung San Suu Kyi's personal popularity, and that appears to be falling.

Aung San Suu Kyi is perceived as being too close to the military on ethnic issues. A range of concerns are being expressed, including her silence over human rights violations committed by the military in ethnic states (not including Rakhine), continuing with the now stalled peace process devised by the former military backed government, using Presidential powers to impose Chief Ministers rather than allowing state legislatures to choose their own, lack of development and continued restrictions on humanitarian aid, statues of her father being erected, and her own attitude on her rare visits to ethnic states, such as basically telling Kachin IDPs to go and find a job instead of expecting government help.

In politics there is always a risk of election upsets. The NLD is not guaranteed to win the next election, and there is zero chance that a military led or coalition government would be willing to act on citizenship for the Rohingya. The NLD losing the elections is a highly unlikely outcome though. The NLD will probably win the next election, but it may not have the same majority in Parliament that it does now, making controversial legislation harder to pass.

Within that future Parliament, will NLD MPs be willing to keep being as compliant to the wishes of Aung San Suu Kyi? Many NLD MPs share the same prejudice against the Rohingya as the general population. Returning MPs may become more confident and assertive, and new MPs may not be as compliant. At the present time, only Aung San Suu Kyi's personal authority is likely to compel them to vote for a change that gives citizenship to the Rohingya. How long will that authority last to this degree?

It is not even clear how long Aung San Suu Kyi herself will play a leading role in government. No other leader will have the authority she does to push through a change in the Citizenship Law.

Language about pathways to citizenship was always designed as a delaying tactic by the government of Burma. The international community went along with it in part because it avoided their having to confront and take action over the government's prejudiced policies, and in part as it might have meant at least some progress. It was an avoidance tactic used by both sides. This approach has to end now. Not only does more delay mean further risk of atrocities, it also means a solution may never be achieved.

'Pathways to citizenship' instead of immediate action means the international community is letting the Burmese government off the hook. At the most optimistic it means they are accepting at a minimum three more years without a change in the law, but realistically probably never.

'Pathways to citizenship' means the international community are gambling that Aung San Suu Kyi will remain in her leadership role after the election, that she will maintain her absolute control over her MPs, and that that she will win a majority large enough to push through unpopular changes in the face of strong

opposition. It's a big gamble to take on an issue so critical to the future of Burma and the rights of the Rohingya. To the British government and rest of the international community it might seem like an easier path, a path of least resistance, where at least some progress can be made, but in fact it's the option which perhaps carries the most risk. It is certainly not the option which Rohingya want. Citizenship now is their right.

As far as the Burmese government and many people in Burma are concerned, there will never be a good time to give Rohingya their citizenship. The coming 12-18 months however, may be the only time it is possible, and will certainly be the easiest time to make it happen. The window of opportunity to change this law, helping to start a process of creating conditions for safe return, is closing. There needs to be a sense of urgency in making this happen. This should be the top focus of international pressure on Aung San Suu Kyi and her government. Without that pressure, it will not happen, protracting the refugee crisis, delaying the start of a solution, and prolonging an unstable situation which could erupt into a new crisis at any time.

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