

Myanmar's Child Rights Bill and the right of a child to acquire a nationality

The International Commission of Jurists (ICJ) welcomes the stated objectives of the Child Rights Bill, particularly the commitment to implement Myanmar's obligations under the Convention on the Rights of the Child (CRC). The ICJ has submitted its views on the Bill to the Office of the President of the Union and to the Joint Bill Committee of the Union Parliament (on 19 June and 2 July, respectively). This briefing note is intended to share the ICJ's analysis with Members of Parliament with a view to informing their likely discussion of the Bill in the Union Parliament in mid-July 2019.

Based on drafts of the Bill that the ICJ has reviewed, the organization is concerned that if passed into law as presently formulated, the Union Parliament would miss a significant opportunity to protect the rights of those children throughout Myanmar who face discrimination based on race or ethnicity, and who experience human rights violations as a result. In its current form, the Bill does not sufficiently protect the right of a child to acquire citizenship of Myanmar. Therefore, not only does the present framing of the Bill fail to meet its stated objectives, but it also fails to comply with and implement the State's international human rights law obligations under the CRC.

Article 7 of the CRC protects the right of a child to acquire a nationality/citizenship, and obliges States to ensure that national laws do not result in a child being stateless:

1) The child shall be registered immediately after birth and shall have the right from birth to a name, *the right to acquire a nationality* and as far as possible, the right to know and be cared for by his or her parents; 2) *States Parties shall ensure the implementation of these rights* in accordance with their national law and their obligations under the relevant international instruments in this field, *in particular where the child would otherwise be stateless* [emphasis added].

Notwithstanding the clear State obligations enshrined in Article 7 of the CRC, and the Child Rights Bill's stated objective to implement the Convention, according to a recent draft of the Bill viewed by the ICJ, section 22 of the Bill states that:

Every child registered for birth shall have the right to citizenship only in accordance with provisions under existing law (ICJ's unofficial translation).

Currently, section 10 of the existing 1993 Child Law is formulated in a similar manner (although without recognizing the right to registration at birth), and authorities have widely interpreted this to mean that a child can only acquire citizenship upon fulfilling requirements of the 1982 Citizenship Law and its bylaws. The content and implementation of the 1982 Law, which primarily confers citizenship on the basis of membership of a "national race" is highly discriminatory and arbitrary. This has contributed to statelessness throughout the country. According to the 2014 Census, more than 25 percent of persons in Myanmar do not have a legal identity. This situation undermines the rule of law and is in violation of the constitutional guarantee for equal rights and equal protections of "all persons" before the law (section 347).

Throughout Myanmar, children experience human rights violations because they are not recognized as citizens of the country. Contrary to international human rights law obligations and rule of law principles, many of the "fundamental rights" in the 2008 Constitution are only conferred upon citizens. Children who are not recognized as citizens, because of discriminatory law or practice, face significant barriers to enjoying a variety of human rights, including but not limited to the rights to health and to education, which are rights guaranteed by the International Covenant on Economic, Social and Cultural Rights, among other treaties binding upon Myanmar. Effectively, children not recognized as a "citizen" are not afforded a variety of human rights.

In its current form, section 22 of the Bill will likely render similar outcomes. The ICJ therefore proposes an amendment to section 22 with a view to ensuring recognition of a child's right to acquire citizenship, regardless of provisions in existing discriminatory laws, such as the 1982 Law. An amended provision could read, for example:

"Every child shall have the right to be registered immediately after birth and the right to acquire citizenship of Myanmar in accordance with the Constitution of Myanmar and the Convention on the Rights of the Child."

Given the Bill's stated objective to protect the rights of the child, if passed into law in its current form, its provisions with respect to child rights should nonetheless prevail over any conflicting provisions in domestic law, in accordance with legal principles. However, to avoid confusion, and to conform to the principle of legality, which requires laws to be formulated clearly and precisely, the ICJ recommends removing the term "in accordance with provisions under existing law" in section 22 of the Bill.

Background

The Child Rights Bill has been under development since at least 2011, and has gone through various drafts. On 7 June 2019, the Union Parliament passed and submitted the Bill to the President of the Union for review. The President returned the Bill with comments, which are now being considered by the Joint Bill Committee of the Union Parliament. The ICJ does not know if these comments or discussions include consideration of section 22 of the Bill. The Bill is likely to be tabled again during the upcoming session of the parliament in mid-July, during which time Members of Parliament may be able to participate in a discussion on the Bill. If adopted by the parliament in this session and submitted again to the President, depending on whether or not substantive amendments are made, the Bill would likely become law.

"Citizenship" is a legal concept describing an individual's relationship to the State. In contrast, "statelessness" is when somebody does not have citizenship of any State. Terms such as "nationality," "race" or "ethnicity" are generally culturally embedded concepts, understood differently by different people and in different contexts. These terms are often, but not uniformly, conflated or used interchangeably. In many countries, particularly those with diverse populations, the right to citizenship is defined broadly to include persons with different ethnicities and even nationalities. In post-independence Myanmar, the concept of being a "national" or "indigenous" had a generally broad definition, allowing persons of different backgrounds to become citizens, including but not limited to the descendants of persons who immigrated to Myanmar. In 1982, the current narrow definition of citizenship was introduced, which generally links citizenship acquisition to membership of a prescribed "national race."

For a more detailed analysis of Myanmar's legal framework for citizenship, and recommendations on how to align this with rule of law principles and international human rights law, see the ICJ's report published on 25 June 2019, entitled: "Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible."

The ICJ promotes and protects human rights through the rule of law, by using unique legal expertise to develop and strengthen both national and international justice systems. The ICJ's first report on Myanmar was published in 1963, and the ICJ has had an in-country presence since early 2014. The ICJ engages with a variety of actors including government, judges, civil society groups, legal professionals and UN organs.

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See also:

ICJ, "Citizenship Law and Human Rights in Myanmar: Why Law Reform is Urgent and Possible," 25 June 2019, available at: <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf>

The Burmese language version of this legal briefing is available at: <https://www.icj.org/country/asia-pacific/southeast-asia/Myanmar>.