

# Statelessness Network Asia Pacific and Institute on Statelessness and Inclusion

Joint Submission to the Committee on the Rights of Persons with  
Disabilities

22nd Session

**Myanmar**

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# Statelessness Network Asia Pacific and Institute on Statelessness and Inclusion

## Joint Submission to the Committee on the Rights of Persons with Disabilities

### Myanmar

#### Introduction

1. The Statelessness Network Asia Pacific<sup>1</sup> and the Institute on Statelessness and Inclusion<sup>2</sup> make this joint submission to the 22nd session of the Committee of the Rights of Persons with Disabilities (“Committee”) with respect to Myanmar’s obligations under article 18 of the Convention of the Rights of Persons with Disabilities (“CRPD”), specifically the right to a nationality.
2. The information detailed in this submission is based on desk and field research by the co-submitting organisations. The Institute on Statelessness and Inclusion has been researching the right to a nationality and statelessness in Myanmar since 2014 and the Statelessness Network Asia Pacific since 2017. This has included interviews with affected populations and key informants, such as representatives from civil society, UN agencies and government ministries, in Mon State, Yangon State, Tanintharyi Region, Kayin State, Kayah State, Mandalay Region and Kachin State, and has resulted in the publication titled, “A Gender Analysis on the Right to A Nationality in Myanmar”,<sup>3</sup> and a number of forthcoming publications.<sup>4</sup>

#### Myanmar’s International Obligations

3. Myanmar acceded to the Convention on the Rights of Persons with Disabilities (CRPD) on 7 December 2011 and did not make any reservations or declarations. Article 18 of the CRPD, provides that persons with disabilities have the right to a nationality on an equal basis with others. This includes ensuring that persons with disabilities have the right: to acquire and change a

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<sup>1</sup> The Statelessness Network Asia Pacific is a civil society coalition with the goal of promoting collaboration on addressing statelessness in Asia and the Pacific. Launched in November 2016, the Statelessness Network Asia Pacific seeks to promote collaboration through three focus areas: developing resources for evidence-based action, facilitating capacity strengthening opportunities and providing technical support to SNAP’s members. For more information, see <https://www.statelessnessnetworkasiapacific.org/>.

<sup>2</sup> The Institute on Statelessness and Inclusion is an independent non-profit organisation committed to an integrated, human rights-based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made numerous submissions on the right to a nationality and the rights of stateless persons, before the Universal Periodic Review and treaty bodies including the Committee on the Rights of the Child, Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination. For more information, see [www.institutesi.org](http://www.institutesi.org).

<sup>3</sup> UNHCR, UN Women, Norwegian Refugee Council, Statelessness Network Asia Pacific, The Seagull: Human Rights, Peace and Development and the Institute on Statelessness and Inclusion, 2018, “A Gender Analysis on the Right a Nationality in Myanmar”, page 5 <<https://reliefweb.int/report/myanmar/gender-analysis-right-nationality-myanmar>>.

<sup>4</sup> Institute on Statelessness and Inclusion and Norwegian Refugee Council, September 2019, *Navigating with a Faulty Map: Access to Civil Documents and Citizenship in South East Myanmar* (forthcoming); Statelessness Network Asia Pacific and Norwegian Refugee Council, August 2019, *Barriers to accessing civil documentation - Experiences of internally displaced persons in Kachin State, Myanmar* (forthcoming).

nationality and not be deprived of their nationality arbitrarily or on the basis of disability (article 18(1)(a)); not to be deprived, on the basis of disability, of their ability to obtain, possess and utilise documentation of their nationality or other documentation of identification (article 18(1)(b)), and, for children with disabilities, to be registered immediately after birth and have the right to acquire a nationality (article 18(2)).

4. Myanmar, as a member State of the UN, is obliged by the UN Charter to promote “universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”.<sup>5</sup> These human rights and fundamental freedoms are specified in the Universal Declaration of Human Rights (“UDHR”), many of which are also recognised as principles of customary international law.<sup>6</sup>
5. In addition to the CRPD, Myanmar has acceded to three other core UN human rights instruments:<sup>7</sup> the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), the Convention on the Rights of the Child (“CRC”) and International Covenant on Economic, Social and Cultural Rights (“ICESCR”).<sup>8</sup> Of these treaties article 9 of the CEDAW and articles 7 and 8 of the CRC provide for the universal right to a nationality without discrimination. Additionally, article 7 of the CRC, enshrines every child’s right to be registered immediately after a birth – a key protection against statelessness.
6. However, Myanmar is yet to ratify the Convention Against Torture, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>9</sup>
7. Myanmar is not a State party to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness or the 1951 Convention relating the Status of Refugees and its 1967 Protocol.
8. As a member State of the Association of South East Asian Nations (ASEAN), Myanmar a signatory to the 2012 ASEAN Human Rights Declaration.<sup>10</sup> Although this declaration is a non-binding document, it nonetheless reflects consensus as to the right to a nationality and the importance of human rights in the region.<sup>11</sup>
9. Myanmar has also adopted the 2030 Agenda for Sustainable Development, including the Agenda’s 17 Sustainable Development Goals.<sup>12</sup> Relevant to Myanmar’s obligations under article 18 of the

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<sup>5</sup> *Charter of the United Nations*, art 55(c). According to Article 56 of the Charter, it is the obligation of all member states of the UN to take “joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.

<sup>6</sup> Draft Articles on Diplomatic Protection with commentaries (2006) II(2) *Yearbook of the International Law Commission* 49.

<sup>7</sup> OHCHR, *The Core International Human Rights Instruments and their Monitoring Bodies* <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>>.

<sup>8</sup> OHCHR, *Ratification Status for Myanmar* <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN)>.

<sup>9</sup> Ibid.

<sup>10</sup> ASEAN, *ASEAN Human Rights Declaration* (18 November 2012) <<https://asean.org/asean-human-rights-declaration/>>.

<sup>11</sup> Ibid, article 18.

<sup>12</sup> <https://sustainabledevelopment.un.org/sdgs>

CRPD, 16.9 of the Sustainable Development Goals provides the target that all States “by 2030, provide legal identity for all, including birth registration”.<sup>13</sup>

### **Myanmar’s State Party report to the Committee on the Rights of Persons with Disabilities**

10. The Committee will review for the first time, at its 22<sup>nd</sup> Session in September 2019, Myanmar’s compliance with the CRPD since its ratification of the CRPD.

11. Myanmar’s State Party report, received by the Committee on 19 November 2015, states:

“Article (345) of the Constitution (2008) states that all persons who have either one of the following qualifications are citizens of the Republic of the Union of Myanmar: (a) person born of parents both of whom are nationals of the Republic of the Union of Myanmar; and (b) person who is already a citizen according to law on the day this Constitution comes into effect. That article also provides that every citizen shall have the right to settle and reside in any place within the Republic of the Union of Myanmar according to law that assure liberty of movement of the persons with disabilities. In addition, the persons with disabilities have the equal right to nationality as prescribe in Myanmar Citizenship Law (1982).<sup>14</sup> Article 9 (b) of the Child Law (1993) states that the parents or guardian shall register the birth of the child in accordance with the law. So, the children with disabilities are registered at birth. Article (10) state every child shall have the right to citizenship in accordance with the provisions of the existing law”.<sup>15</sup>

12. In response to Myanmar’s State Party report, the Committee’s list of issues with respect to article 18 of the CRPD states:

“Please provide information on the measures taken to ensure the rights of persons with disabilities to acquire a nationality and that persons with disabilities are not being deprived of their nationality arbitrarily or on the basis of disability. Please also provide information on the measures that exist to ensure that persons with disabilities, especially children with disabilities belonging to ethnic and religious minorities or living in rural and remote areas, such as Tanintharyi Region and Rakhine and Kayin states, have access to birth registration and certificates on an equal basis with others”.<sup>16</sup>

13. Myanmar’s citizenship and civil registration and documentation law and policy framework does not comply with Myanmar’s obligations under article 18 of the CRPD. First, the 1982 Citizenship Law does not provide equal nationality rights to all people living with disabilities on an equal basis with others. This includes the denial of the right to acquire a nationality and the right not to be deprived of their nationality arbitrarily or on the basis of disability. Second, persons with disabilities face significant barriers in obtaining, possessing and utilising civil documentation (including citizenship documentation and birth certificates). Third, the 2019 Child Rights Law (which replaces the 1993 Child Law) does not provide all children living with disabilities with the right to be registered immediately after birth and the right to acquire a nationality.

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<sup>13</sup> UN Sustainable Development Goals, Sustainable Development Goal 16 - Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), <https://sustainabledevelopment.un.org/sdg16>.

<sup>14</sup> Initial report submitted by Myanmar under article 35 of the Convention, received by the Committee on 19 November 2015, CRPD/C/MMR/1, paragraph 57.

<sup>15</sup> Ibid, paragraph 58.

<sup>16</sup> Committee on the Rights of Persons with Disabilities, 14 May 2019, List of issues in relation to the initial report of Myanmar, CRPD/C/MMR/Q/1, paragraph 14.

## Right to acquire a nationality and not be deprived their nationality arbitrarily - Article 18(1)(a)

14. The acquisition, confirmation and loss of nationality in Myanmar is codified by the 1982 Citizenship Law and the 1983 Citizenship Procedures.
15. There are three different types of citizenship provided by the 1982 Citizenship Law: “citizens” (also referred to as “full citizens”), “associate citizens” and “naturalised citizens.”<sup>17</sup> Each type of citizenship is afforded different entitlements.<sup>18</sup> For example, “associate citizens” and “naturalised citizens” do not have the same access as “citizens” (“full citizens”) to various rights, such as the right to political participation, education, health, freedom of movement and property.<sup>19</sup>
16. Eligibility for all three types of citizenship, pursuant to the 1982 Citizenship Law, primarily follows an ethnicity and *jus sanguinis*, descent-based criteria.<sup>20</sup> Therefore the ability to acquire or confirm citizenship in Myanmar is usually dependent on the applicant demonstrating their ethnicity and the citizenship of their ancestors. In practice, this is often demonstrated through documentary evidence, such as the applicant’s parent’s citizenship documentation<sup>21</sup> and a household registration list.<sup>22</sup> Birth certificates can also provide evidence of the links between a child and its parents.<sup>23</sup>
17. A list of the “135 recognised ethnic groups” is currently provided for by administrative instruction<sup>24</sup> and is applied with respect to an assessment as to whether a person is a “citizen” under the 1982 Citizenship Law.<sup>25</sup>

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<sup>17</sup> Each type of citizenship evidenced by specific documentation - the Citizenship Scrutiny Card (CSC), Associate Citizenship Scrutiny Card (ACSC) or Naturalised Citizenship Scrutiny Card (NCSC), respectively. The cards are differently coloured. The CSC is pink in colour, the ACSC is blue and the NCSC is green.

<sup>18</sup> 1982 Citizenship Law, ss. 30(c) and 53(c).

<sup>19</sup> José María Arraiza and Olivier Vonk, Report on Citizenship Law: Myanmar (Country Report 2017/14, October 2017)

[http://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS\\_GLOBALCIT\\_CR\\_2017\\_14.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/48284/RSCAS_GLOBALCIT_CR_2017_14.pdf?sequence=1) pp. 5-6.

<sup>20</sup> A Gender Analysis on the Right a Nationality in Myanmar, page 5.

<sup>21</sup> In Myanmar, a person’s ethnicity is detailed in various forms identity documentation, such as citizenship documentation, household registration lists and birth certificates.

<sup>22</sup> A household registration list (also known as a family registration list, household registration card, family household list, Form-66/6 or Form 10) is a record of the individuals residing in each household in Myanmar, including newborn children.

<sup>23</sup> Gender Analysis on the Right to A Nationality, page 28.

<sup>24</sup> Ibid, page 5.

<sup>25</sup> “Citizenship” (type 1) is acquired automatically via one of six criteria. First, if the person is deemed to be of a specified ethnicity and their ancestors are determined to have “settled” in Myanmar “as their permanent home” prior to 1823 and have since remained in Myanmar (1982 Citizenship Law, s.3 and 1983 Procedures Relating to Citizenship, s. 5). Persons who meet this criteria are referred to as “Nationals” and are also considered “citizens by birth”. (1983 Procedures Relating to Citizenship, ss. 5 and 6). Second, children born in or outside of Myanmar to “National” parents (i.e. both the mother and father meet the prior mentioned first criteria for “citizenship”) are “citizens by birth” (1982 Citizenship Law, s. 5 and 1983 Procedures Relating to Citizenship, s. 6.) Third, if the applicant was a citizen pursuant to the 1948 Union Citizenship Act or the 1948 Union Citizenship (Election) Act before the enactment of the 1982 Citizenship Law.<sup>49</sup> Fourth, persons born in or outside of Myanmar whose parents are both “citizens” (1982 Citizenship Law, s. 7(a) and 1983 Procedures Relating to Citizenship, s. 8(a). Fifth, persons born in or outside of Myanmar whose one parent is a citizen and the other parent is either an “associate citizen” or “naturalised citizen” (1982 Citizenship Law, s. 7(b) and (c), and 1983 Procedures Relating to Citizenship, ss. 8(b) and (c). Sixth, persons born in or outside of Myanmar whereby one parent is either a “citizen”, “associate citizen” or “naturalized citizen” and the other parent has at

18. At least 50 ethnic groups residing in Myanmar are not included in the list of “135 recognised ethnic groups”.<sup>26</sup> This is despite their intergenerational links to Myanmar. In fact, a large proportion of ethnic groups that are excluded from eligibility for “citizenship” (or “full citizenship”) under the 1982 Citizenship Law were previously eligible for the equivalent of “full citizenship” under the former citizenship law regime (pursuant to the 1948 Union Citizenship Act and the 1948 Union Citizenship (Election) Act).<sup>27</sup> The former citizenship law regime also only had one type of citizenship.
19. Therefore, any person from an ethnic minority that is excluded from eligibility for “citizenship”, under the 1982 Citizenship Law, and who is also living with a disability will not enjoy the right to a nationality on an equal basis with others. This includes denial of the right to acquire a nationality. Those of this cohort who were eligible for the equivalent of “full citizenship” under the former citizenship law regime, face the additional violation of the right to not be arbitrarily deprived of their nationality.<sup>28</sup>

**Right to acquire a nationality and the right to not be deprived of their nationality on the basis of disability - Article (18)(1)(a)**

20. The 1982 Citizenship Law expressly denies a cohort of persons living with disabilities (“PLWD”) from eligibility for “naturalised citizenship”, namely persons of “unsound mind”.<sup>29</sup> Therefore, contrary to article 18 of the CRPD, people of “unsound mind” in Myanmar do not enjoy the right to a nationality on an equal basis with others, including the right to acquire a nationality and not to be deprived of nationality on the basis of disability.
21. There is no definition of “unsound mind” provided in the 1982 Citizenship Law or 1983 Citizenship Procedures. Therefore, the term could potentially be applied to persons with a wide range of impairments, including intellectual and psychosocial disabilities, acquired brain injuries and degenerative brain conditions, such as dementia.
22. It must also be noted that the term “naturalised citizen” in the 1982 Citizenship Law does not adopt the terms usual meaning and instead is a discretionary means of acquiring citizenship, eligible to those: (1) who are not from the 135 recognised ethnic groups, but who have been born in and lived their entire lives in the country (as have their predecessors dating back at least to 1948), or (2) who are the children of one citizen, associate citizen or naturalised citizen and one foreigner; one associate and one naturalised citizen; or two naturalised citizens.<sup>30</sup>

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least one set of grandparents who are either both “associate citizens” or “naturalized citizens” or a combination of these (1982 Citizenship Law, s. 7(d)-(f) and 1983 Procedures Relating to Citizenship, s. 8 (d)-(f).

<sup>26</sup> Navigating with a Faulty Map: Access to Civil Documents and Citizenship in South East Myanmar, (forthcoming)

<sup>27</sup> The 1982 Citizenship Law repealed the 1948 Union Citizenship Act and the 1948 Union Citizenship (Election) Act.

<sup>28</sup> The Committee on the Rights of the Child, in 2012, made a number of recommendations to Myanmar with respect to addressing gaps in the citizenship legislation which can lead to statelessness, to “abrogate the legal provisions providing for different categories of citizenship”, and “remove any indication of ethnic origin on identity card” – Committee on the Rights of the Child, 14 March 2012, “Consideration of reports submitted by States parties under article 44 of the Convention”, CRC/C/MMR/CO/3-4, para 42.

<sup>29</sup> 1982 Citizenship Law, s. 44 and 1983 Procedures Relating to Naturalised Citizenship, s.4.

<sup>30</sup> That is, typically, naturalisation is a process through which foreigners – persons who either have citizenship of another country or are stateless migrants – can apply to become citizens of a country. Naturalisation is usually available to those who have established a link with the country through criteria such as marriage to a citizen, residence in the country, adoption by citizens or their protection status. See *Navigating with a Faulty Map: Access to Civil Documents and Citizenship in South East Myanmar*.

**Right not to be deprived on the basis of disability of their ability to obtain, possess and utilise documentation of their nationality and other documentation of identification - Article 18(1)(b))**

23. The analysis in this submission with respect to Myanmar's compliance with article 18(1)(b) of the CRPD is limited to the right not to be deprived, on the basis of disability, of the ability to obtain, possess and utilise both citizenship documentation and birth certificates.
24. Contrary to Myanmar's obligations under article 18 of the CRPD, PLWD face significant barriers in obtaining, possessing and utilising citizenship documentation and birth certificates.
25. The Myanmar Government is in the process updating its current paper-based civil registration and documentation system to a digitalised system.<sup>31</sup> It is imperative that the barriers to accessing Myanmar's civil registration and documentation system (including the specific barriers faced by PLWD) are taken into account and addressed by the Myanmar Government throughout the digitalisation process, so as prevent further entrenching such barriers.
26. As long as PLWD are unable to obtain, possess and utilise citizenship documentation and birth certificates on an equal basis with others, Myanmar will be unable to meet the Sustainable Development Goals, particularly target 16.9 to "provide legal identity for all including birth registration" by 2030.<sup>32</sup>

**Citizenship Documentation**

27. In Myanmar, citizenship documentation is required to enjoy a number of fundamental rights. Without citizenship documentation, a person does not enjoy the right to freedom of movement. This is because citizenship documentation is required to travel within Myanmar. Undocumented persons can apply for a "travel authorisation" from their local township administrator in order to travel.<sup>33</sup> However, travel authorisations are provided only at the discretion of the township administrator.<sup>34</sup> Citizenship documentation is also required to graduate from university, gain employment with registered businesses or the Myanmar Government, open a bank account and obtain loans from financial institutions or the Myanmar Government.<sup>35</sup>

*Access to the Ministry of Labour, Immigration and Population (MoLIP)*

28. The Ministry of the Labour, Immigration and Population (MoLIP) is responsible for issuing citizenship documentation. Applicants for citizenship documentation must physically attend a MoLIP office to apply for and receive citizenship documentation.
29. There are a number of barriers that PLWD specifically face in attending the offices of MoLIP to apply for citizenship documentation.

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<sup>31</sup> Htoo Thant, 9 May 2019, "Govt begins digitalising personal information for ID cards", *Myanmar Times*, <https://www.mmtimes.com/news/govt-begins-digitising-personal-information-id-cards.html>

<sup>32</sup> UN Sustainable Development Goals, <https://sustainabledevelopment.un.org/sdg16>

<sup>33</sup> A Gender Analysis on the Right to a Nationality in Myanmar, page 17.

<sup>34</sup> Ibid, page 17.

<sup>35</sup> Ibid, footnote 134.

30. First, the design and construction of MoLIP offices often does not meet the needs of people living with disabilities. For example, MoLIP offices often do not have wheelchair accessibility or accessibility for people with vision and hearing impairments.<sup>36</sup>
31. Second, PLWD often face barriers in travelling to MoLIP offices, due to poor public transportation in Myanmar. This is particularly an issue for PLWD in remote and rural areas, where MoLIP officers can be a significant distance away. For example, in a remote village in Loikaw in Kayah State, in 2017 the Institute on Statelessness and Inclusion interviewed the mother of a 16-year old female who is physically disabled and who has been unable to obtain a CSC. She explained: *“There is no help for a disabled person. Government offices are far, we need to ask people for help to give us a lift in their car because my daughter cannot walk or sit on motorcycle”*.<sup>37</sup>
32. Applicants for citizenship documentation may be required to travel several times to MoLIP. This is because MoLIP may request the applicant to provide supplementary documentation or information in support of their application.<sup>38</sup> In such circumstances the physical distance to MoLIP offices may be an insurmountable barrier to obtaining documentation.<sup>39</sup> This is especially the case for marginalised communities who may not have the resources to take time off work to travel to attend appointments with MoLIP.<sup>40</sup>

#### *Attitudes and assumptions by MoLIP*

33. The report by the Myanmar Federation of Persons with Disabilities and Myanmar Disabled People Organizations to the Committee states *“Some PWDs<sup>41</sup> are not allowed to register for national identity cards and they are not recognized as citizens and they have no opportunity to enjoy these rights”*.<sup>42</sup>
34. This was confirmed during interviews by the Statelessness Network Asia Pacific with PLWD, parents of PWLD and with representatives from disability rights organisations in Yangon State, Mandalay Region, Mon State and Kachin State in 2017 and 2018. For example, in August 2017, a disability rights organisation in Mandalay reported to that it is common for *“MoLIP to refuse a PLWD a citizenship card, saying the person doesn’t need to travel or work”*. Similar assumptions were reported as being held by township administrators when considering whether to issue a travel authorization to a PLWD without citizenship documentation.<sup>43</sup>

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<sup>36</sup> Interviews by Statelessness Network Asia Pacific with disability rights organisations in Yangon in 2018 and 2019 and Mandalay in 2018.

<sup>37</sup> Navigating with a Faulty Map: Access to Civil Documents and Citizenship in South East Myanmar (forthcoming).

<sup>38</sup> A Gender Analysis on the Right to A Nationality in Myanmar, page 16.

<sup>39</sup> Navigating with a Faulty Map: Access to Civil Documents and Citizenship in South East Myanmar, (forthcoming).

<sup>40</sup> A Gender Analysis on the Right to A Nationality in Myanmar, page 16.

<sup>41</sup> Persons with disabilities (“PWD”).

<sup>42</sup> Report by the Myanmar Federation of Persons with Disabilities and Myanmar Disabled People Organizations to the Committee on the Rights of Persons with Disabilities, 10 July 2018, INT\_CRPD\_ICO\_MMR\_31739\_E, para 3.9, page 23.

<sup>43</sup> “Travel authorisations” are issued by township administrators to persons without citizenship documentation and have a specified timeframe in which a person can travel to and from particular locations. See A Gender Analysis on the Right to A Nationality in Myanmar, footnote 126.



### *Attitudes and assumptions by families of PLWD*

35. The Report by the Myanmar Federation of Persons with Disabilities and Myanmar Disabled People Organizations to the Committee also states that “families hold superstitious beliefs and neglect their children with disabilities by denying their rights to access to job openings and family inheritance”.<sup>44</sup>
36. Similar attitudes by families of PLWD were also reported during interviews by the Statelessness Network Asia Pacific with PLWD, parents of PLWD and with representatives of disability rights organisations in Yangon State, Tanintharyi Region, Mon State, Mandalay Region and Kachin State in 2017 and 2018. For example, in Kachin State in November 2018, the mother of a physically disabled son reported that she will not obtain citizenship documentation for her son, based on her belief that “*he doesn’t need a citizenship card because he will never need to work, study or travel*”.
37. During interviews by the Statelessness Network Asia Pacific with disability rights organisations in Yangon State and Mandalay Region in 2017, it was also reported that families of PLWD often have gender-discriminatory attitudes with respect to obtaining citizenship documentation for their children. For example, families would be more likely to obtain citizenship documentation for a male PLWD in their family than for a female PLWD. This is because PLWD men often have better employment prospects in Myanmar than female PLWD. Families may also not obtain citizenship documentation for their female PLWD children due to concerns that female PLWD face heightened risks of abuse and exploitation when working and travelling within Myanmar. In response, families believe it is in their child’s best interests to not obtain citizenship documentation (so as to hinder their ability work and travel). However, without citizenship documentation, female PLWD are in fact likely to face heightened risks of abuse and exploitation, particularly trafficking risks.<sup>45</sup>

### **Birth certificates**

38. Birth certificates are usually required for a child to attend primary and secondary school and access some health care services in Myanmar.<sup>46</sup> Further and as detailed above, for citizenship applications, MoLIP often accepts birth certificates as evidence of the links between a child and its parents. Therefore, birth registration and birth certificates are a vital tool for ensuring a child’s ability to acquire a nationality in Myanmar.<sup>47</sup>
39. Some of the barriers that marginalised populations face in obtaining birth certificates in Myanmar are listed below. A number of these barriers are specifically faced by PLWD.
40. First, the process for obtaining a birth certificate requires the initial step of registering the birth. An applicant for birth registration must provide a number of supporting documents, such as both

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<sup>44</sup> Report by the Myanmar Federation of Persons with Disabilities and Myanmar Disabled People Organizations to the Committee on the Rights of Persons with Disabilities, 10 July 2018, INT\_CRPD\_ICO\_MMR\_31739\_E, para 3.13, page 25.

<sup>45</sup> A Gender Analysis on the Right to A Nationality in Myanmar, page 21.

<sup>46</sup> Ibid, page 32.

<sup>47</sup> See generally UNHCR, *Birth Registration – Child Protection Brief* (August 2013) Refworld <<http://www.refworld.org/docid/523fe9214.html>>; *Guidelines on Statelessness No 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness*, UN Doc HCR/GS/12/04 (21 December 2012) 12 [55].

parent's identity documentation.<sup>48</sup> With almost a third of the population in Myanmar being without any form of identity documentation, such a requirement is likely to be a significant barrier to obtaining a birth certificate.<sup>49</sup>

41. Second, the process for registering a birth (and then obtaining a birth certificate) is a complicated, multiple-step process. Applicants must physically attend various appointments with a number of government departments of the Ministry of Health and Ministry of Home Affairs. Such requirements are particularly difficult for PLWD in rural and remote areas, due lack of public transport and long travelling distances to relevant government offices. This is similar to the barriers for PLWD detailed above with respect to citizenship documentation.
42. Third, and again similar the barriers for PLWD to obtaining citizenship documentation, the design and construction of the government offices of the Ministry of Health and Ministry of Home Affairs, often does not meet the needs of people living with disabilities and in turn is a barrier to birth registration and obtaining birth certificates.
43. Fourth, there is limited awareness as to the importance of birth registration amongst Myanmar's most marginalised populations, including populations living in rural and remote areas and conflict-affected areas, such as Kachin State and Northern Shan.<sup>50</sup> This results in low birth registration rates in these areas.<sup>51</sup>
44. Fifth, children born abroad, and who are registered by foreign authorities, must have their births registered again with the Myanmar authorities when their parents return.<sup>52</sup> Given that Myanmar is one of the Asia-Pacific region's largest source countries for migrants and refugees, this extremely problematic. For example, returned migrants and refugees interviewed by the Statelessness Network Asia Pacific in Mon State in 2017 reported that Thai birth certificates are not accepted by the Myanmar authorities as proof of identity or birth. One village leader reported that there were over 30 children in his village that were born in Thailand.<sup>53</sup> It was also reported that if the mother or father is not of one of the "135 recognised ethnic groups" and the child was born abroad, the family are also likely to face difficulties in registering the child's birth for the first time as well as re-registering the birth upon return to Myanmar.<sup>54</sup>
45. Sixth, the Ministry of Planning and Finance's Manual for the Birth and Death Registration System prescribes that a child can only be registered up to 10 years of age.<sup>55</sup> However, in practice, without paying bribes (also referred to as "unofficial fees"), families are usually unable to register a child that is older than a newborn. For example, an internally displaced mother in Kachin State in 2018

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<sup>48</sup> The Republic of the Union of Myanmar, Ministry of Planning and Finance, Manual for the Birth and Death Registration System (July 2017), page 19. See also, A Gender Analysis on the Right to A Nationality in Myanmar, pages 31-33.

<sup>49</sup> The Republic of the Union of Myanmar, 2014 Myanmar Population and Housing Census, The Union Report: Census Report Volume 2 (May 2015) <http://myanmar.unfpa.org/publications/union-report-volume-2-main-census-report>, pp. 2, 208 and 209.

<sup>50</sup> A Gender Analysis on the Right to A Nationality in Myanmar, page 33, and Barriers to accessing civil documentation - Experiences of internally displaced persons in Kachin State, Myanmar (forthcoming).

<sup>51</sup> Barriers to accessing civil documentation - Experiences of internally displaced persons in Kachin State, Myanmar (forthcoming).

<sup>52</sup> The Republic of the Union of Myanmar, Ministry of Planning and Finance, Manual for the Birth and Death Registration System (July 2017), p. 17.

<sup>53</sup> A Gender Analysis on the Right to A Nationality in Myanmar, page 28.

<sup>54</sup> Ibid, page 28.

<sup>55</sup> The Republic of the Union of Myanmar, Ministry of Planning and Finance, Manual for the Birth and Death Registration System (July 2017), page 17.

explained to the Statelessness Network Asia Pacific: *“My son’s birth was not registered when we lived in our home village. He was only one years old when we fled and sought protection in the IDP camp. I had to pay 45,000 Kyat (approximately 30USD) in “unofficial fees” to the midwife in the IDP camp to register our child and receive a birth certificate. The midwife in the IDP camp told me that I had to pay the fee because “I was out of time to register my son’s birth”.*”

**Children with disabilities shall be registered immediately after birth and shall have the right to acquire a nationality - Article 18(2)**

46. The abovementioned barriers to birth registration in Myanmar demonstrate that not all children in Myanmar enjoy the right to be registered immediately after birth and the right to acquire a nationality.
47. This disproportionately impacts children of ethnic minorities and therefore also children of ethnic minorities with disabilities. One of the reasons for this disparity is that Myanmar’s citizenship and civil registration and documentation law and policy framework does not guarantee immediate registration and the right to acquire a nationality for all children in Myanmar. That is, the Child Rights Law 2019, enacted on 24 July 2019, provides that “every child registered for birth shall have the right to citizenship only in accordance with provisions under existing law”.<sup>56</sup> This adopts the formulation of the previous 1993 Child Law, although of which did not recognise the right to registration at birth.<sup>57</sup>
48. In practice, the 1993 Child Law has been interpreted by authorities to restrict the right to a nationality in accordance with the 1982 Citizenship Law’s discriminatory and arbitrary criteria.<sup>58</sup> The result is that a number of ethnic groups are excluded from the right to a nationality and other groups only acquire the lesser types of citizenship (“naturalised” or “associate”).<sup>59</sup> The formulation of the Child Rights Law 2019, by deferring to the 1982 Citizenship Law, undermines the aims of the Child Rights Law 2019, particularly the objective of implementing the Convention on the Rights of the Child and the principle of the best interests of the child.<sup>60</sup>
49. The various barriers to the immediate registration of all children, including the limitations of the 2019 Child Rights Law, must be considered in any roll out of online, mobile birth registration systems by the Myanmar Government and its partners (such as UNICEF and Telenor), so as to prevent further entrenching such barriers.<sup>61</sup>

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<sup>56</sup> International Commission of Jurists, 9 July 2019, “Myanmar’s Child Rights Bill and the right of a child to acquire a nationality” <https://www.icj.org/wp-content/uploads/2019/07/Myanmar-Child-Bill-Advocacy-Analysis-brief-2019-ENG.pdf>.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid, and International Commission of Jurists, “Citizenship Law and Human Rights in Myanmar: Why Law Reform is Urgent and Possible,” 25 June 2019, available at: <https://www.icj.org/wpcontent/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief2019-ENG.pdf>. The Committee on the Rights of the Child, in 2012, made a number of recommendations to Myanmar with respect to addressing barriers to birth registration – Committee on the Rights of the Child, 14 March 2012, “Consideration of reports submitted by States parties under article 44 of the Convention”, CRC/C/MMR/CO/3-4, para 44.

<sup>61</sup> Pyae Thet Phyo, 29 August 2018, “Online Registration of births and deaths trialled in Mon State”, *Myanmar Times*, <https://www.mmtimes.com/news/online-registration-births-and-deaths-trialled-mon-state.html>

## Recommendations

50. Based on the above analysis, the co-submitting organisations urge the Committee on the Rights of Persons with Disabilities to make the following recommendations to Myanmar:

- 50.1. Reform the 1982 Citizenship Law in accordance with Myanmar's international obligations under the Convention on the Rights of Persons with Disabilities, including removing any eligibility criteria for citizenship that excludes people based on their ethnicity or a disability, and remove the hierarchised three-types of citizenship.
- 50.2. Reform the 2019 Child Rights Law in accordance with Myanmar's international obligations under the Convention on the Rights of Persons with Disabilities, so as to guarantee all children the right to immediate birth registration and the right to acquire a nationality.
- 50.3. Ensure the process of digitalising Myanmar's civil registration and documentation system acknowledges and responds to the barriers that persons living with disabilities face in registering births and obtaining citizenship documentation and birth certificates to prevent entrenching these barriers.
- 50.4. Facilitate access to birth registration and citizenship documentation through mobile offices, particularly in conflict-affected areas and remote and rural areas.
- 50.5. Retro fit existing government buildings of the Ministry of Labour, Population and Immigration, Ministry of Health and Ministry of Home Affairs to meet the needs of disabled people.
- 50.6. Facilitate information campaigns that seek to raise awareness as to the importance of birth registration, particularly amongst populations living in conflict-affected areas and remote and rural areas.
- 50.7. Provide public transport for persons living with disabilities to travel to government offices.
- 50.8. Facilitate training programs that raise awareness amongst relevant government officers as to the barriers persons living with disabilities face in obtaining citizenship documentation, registering births and obtaining birth certificates and the right of persons living with disabilities to a nationality (and to obtain citizenship documentation and birth certificates) on an equal basis with others.
- 50.9. Facilitate information campaigns that seek to address attitudes and assumptions by families of persons living with disabilities, including gender-discriminatory attitudes which impact the ability of persons living with disabilities to enjoy the right to a nationality on an equal basis with others.
- 50.10. Ratify and fully implement the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.