

Challenges to Freedom of Religion or Belief in Myanmar

Executive Summary and Recommendations
October 2019

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The right to freedom of religion or belief is guaranteed in a number of core international human rights instruments, and is also considered part of customary international law. It includes a broad range of rights, such as the freedom to have or to adopt a religion or belief of one's choice, and the freedom to manifest one's religion or belief in worship, observance, practice and teaching, either individually or in community with others, in public or private. Moreover, it places a duty on States to refrain from discriminating against individuals or groups of individuals because of their religion or belief, as well as the obligation to take necessary measures to prevent discrimination or violence by non-State actors.

Article 34 of the 2008 Constitution of Myanmar recognizes the freedom of religion or belief, and grants citizens the "right to freely profess and practise religion ... subject to public order, morality or health and to the other provisions of this Constitution." Article 364 further states that, "any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution."

Article 361 of the Constitution recognizes the "special position of Buddhism." In contemporary public discourse, Buddhism has been closely associated with the State in the Burman-dominated centre of the country. Public messaging by Buddhist nationalist groups often carries a strong anti-Muslim message. This has included depictions of Islam as in opposition to Burmese values, inherently violent and a threat to Buddhism. At times, Buddhist nationalist groups have also advocated or condoned violence towards Muslims. The growing popularity of these movements has made Muslims, Christians and to a lesser extent, other religious minorities, feel increasingly vulnerable.

A number of laws in Myanmar impair the enjoyment of the right to freedom of religion or belief. Colonial-era "offences related to religion", commonly referred to as "blasphemy" laws, are still part of the Penal Code in Myanmar and are used, effectively, to criminalize criticism of religion, particularly Buddhism. In recent years in Myanmar, courts have convicted individuals under "blasphemy" provisions even in the absence of any evidence of deliberate and malicious intent to insult a religion, let alone on the basis of irrefutable evidence of incitement to violence, hostility or discrimination on religious grounds. People have been held criminally responsible simply because what they had either said, written, depicted or otherwise expressed was judged to be at odds with religious interpretations of influential clerical or State authorities.

In addition to the use of colonial-era blasphemy laws to suppress legitimate criticism or harmless activity related to religion, a more recent set of four laws has been introduced that appear to specifically target non-Buddhists, and particularly the Muslim community. While these laws do not expressly refer to Muslims or Islam, statements made by those advocating for their enactment indicate their discriminatory intent. These laws relate to population control, polygamy, religious conversion and marriage of Buddhist women. While all four laws give rise to concerns about the right to freedom of thought, conscience, religion or belief, the laws related to conversion and marriage are the most problematic.

Furthermore, members of religious and ethnic minority groups have been the main victims of crimes under international law primarily perpetrated by State security forces, as concluded by the UN Independent International Fact-Finding Mission in its

September 2018 report to the UN Human Rights Council.¹ According to the Fact-Finding Mission, these have included crimes against humanity in Rakhine State, in Kachin State and in Shan State, and in the case of Rohingyas, possibly the crime of genocide.² The UN Security Council, General Assembly and Human Rights Council have all passed resolutions or statements calling for the implementation of the recommendations of the Government's own advisory commission,³ including lifting restrictions on freedom movement for all residents, particularly Rohingyas, and reviewing discriminatory laws with a view to ensuring their compliance with international human rights law and standards.

The International Commission of Jurists (ICJ) has identified a number of challenges related to the protection and promotion of the right to freedom of religion or belief in Myanmar. These include highly discriminatory legal arrangements for citizenship and the rights of residents in Myanmar, which target and most affect members of religious minorities (detailed in the ICJ's legal briefing published in June 2019). Arbitrary restrictions on places of worship, mostly for Christians and Muslims, also constitute a significant impediment to people's ability to practice their religion or belief in Myanmar (the subject of forthcoming research by the ICJ), as does preferential treatment of Buddhism, for example in the national school curriculum.

This paper will focus its analysis on two particular sets of laws: (i) colonial era "blasphemy" laws, which in recent years have also been used as one of several measures to restrict free speech, and (ii) controversial "race and religion laws" passed in the run up to national elections in 2015, particularly those related to religious conversion and marriage of Buddhist women.

Recommendations

In light of concerns detailed in the present legal analysis, and arising in connection with the above-mentioned challenges, the ICJ makes the following recommendations to the Government of Myanmar:

- Ensure that the right to freedom of thought, conscience, religion or belief and respect for culture and tradition are never used as pretexts to justify discrimination and violence;
- Repeal all blasphemy laws, particularly sections 295 and 295(a) of the Penal Code, or amend them substantially so that they are consistent with international human rights law and standards, including on freedom of expression; freedom of thought, conscience or religion; and equal protection of the law, as guaranteed under the ICCPR.
- Immediately and unconditionally release those imprisoned under section 295(a) or other laws for exercising their legitimate right to freedom of religion or belief.

¹ The Human Rights Council established its independent fact-finding mission in its resolution 34/22, adopted on 24 March 2017.

² See also: ICJ, "ICJ releases legal Q & A on crime of genocide," 27 August 2019, available at <https://www.icj.org/icj-releases-legal-q-a-on-crime-of-genocide/>. ICJ, "Achieving Accountability for Gross Human Rights Violations in Myanmar," 16 January 2019, available at: <https://www.icj.org/myanmar-reverse-laws-and-practices-that-perpetuate-military-impunity-new-icj-report/>. ICJ, "Questions and Answers on Human Rights Law in Rakhine State," 20 November 2017, available at: <https://www.icj.org/myanmar-rule-of-law-must-drive-responses-to-rohingya-crisis/>.

³ The Rakhine Advisory Commission, chaired by former UN Secretary General Kofi Annan, was established by the Government of Myanmar. See: Advisory Commission on Rakhine State, "Towards a peaceful, fair and prosperous future for the people of Rakhine State: Final Report of the Advisory Commission on Rakhine State," 25 August 2017.

- Ensure proper exercise of prosecutorial discretion, so as to avoid unwarranted selective prosecutions under section 295 and 295(a) of the Penal Code, pending their repeal or substantial amendment as recommended above.
- Repeal or substantially amend the 2015 Religious Conversion Law to ensure it is in line with international human rights law and standards on the right to freedom of thought, conscience, religion or belief.
- Repeal the 2015 Buddhist Women’s Special Marriage Law in its entirety as it discriminates on the ground of religion and gender, and review other laws such as the 1872 Christian Women’s Marriage Act.
- Take credible action to combat hate speech, in particular where it amounts to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Legislative measures could include, for example, an anti-discrimination law, and amendments to the penal code to align relevant provisions with applicable international human rights law and standards.
- Develop a comprehensive policy and action plan on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, and also based on race, ethnicity and nationality. These should be developed through a transparent and inclusive consultation with relevant civil society organizations and other stakeholders, including minority groups. Furthermore, it should ensure that the said policy and plan include implementation of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.⁴
- Produce a plan to review the discriminatory 1982 Citizenship Law, in line with the recommendations of the Government’s advisory commission, ensuring compliance with democratic principles, the rule of law and international human rights law obligations binding on the country; and direct ministries to interpret and implement current domestic legal provisions in line with the State’s international human rights law obligations;
- Through the constitutional reform process, expand the narrow definition of “fundamental rights” in the 2008 Constitution to legally protect the rights of all persons in Myanmar, without discrimination (with limited exceptions restricted to specific political rights). To give this effect in line with section 347 of the Constitution, the term “citizens” should be replaced with “any persons”, in section 34 of the Constitution, and in Chapter 8 on “fundamental rights.” to protect the right of all persons to freedom of religion or belief.⁵
- Ratify all core international human rights instruments, including the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention Relating to the Status of Refugees.

⁴ Legislative measures need align with Human Rights Council resolution 16/18.

⁵ This change could be applied to constitutional provisions including: sections 21 (right to equality, liberty and justice); 348 (non-discrimination); 349 (equal opportunity); 354 and its subsections (freedom of assembly, expression and association); 356 (property); 357 (privacy); 366 (education); 367 (health); and 370 (livelihoods). See also: International Commission of Jurists, “Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible,” 25 June 2019, accessed at: <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf>.

The ICJ also recommends that Myanmar civil society and media organizations play a leadership role in promoting an inclusive, pluralistic, democratic Myanmar, in which the human rights of all are fully respected, protected and fulfilled.

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