



BRIEFING PAPER

FEBRUARY 2016

Equality Myanmar

SITUATION OF FREEDOM OF RELIGION AND BELIEF IN MYANMAR

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Written and Published by
Equality Myanmar

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Contents

Introduction	1
Background	2
International Laws on the Rights to Freedom of Religion and Belief	4
2008 Constitution	6
The Race and Religion Protection Laws	8
Case Studies	16
Analysis	21
Recommendation	24

Introduction

This Briefing Paper is written by Equality Myanmar. Equality Myanmar (formerly “HREIB”) is a non-governmental organization (“NGO”) which facilitates a broad range of human rights education and advocacy programs. It was founded in 2000 with the goal of empowering the people of Myanmar through human rights education to engage in social transformation and promote a culture of human rights. Equality Myanmar envisions a peaceful, tolerant and democratic society built on respect for dignity and human rights for all.

This Briefing Paper provides an overview and in-depth analysis of the current situation of freedom of religion and belief in Myanmar. After an initial review of the political landscape in the country following the parliamentary elections on 8 November 2015 and the landslide victory of Daw Aung San Suu Kyi’s National League for Democracy (the “NLD”), it analyzes a controversial package of four repressive laws that were introduced during the second half of 2015, and contrasts them with international human rights laws on freedom of religion and belief. It goes on to examine some pertinent case studies from across the country, which demonstrate how the right to freedom of religion and belief is already being violated regardless of the new laws. After analyzing the trends, actors, motives and strategies at play, this Briefing Paper looks at the potential risks for Myanmar if it continues down its current path. It concludes by making a range of recommendations to relevant institutions and stakeholders, and by placing the situation of freedom of religion and belief in the wider context of Myanmar’s nascent political reforms.

Background

Over recent months, Myanmar has featured prominently in international news headlines around the world, drawing plaudits for its widely-praised political reform process that culminated in the landslide election victory of the NLD last November. Myanmar has been a very rare good news story over the last couple of years. Yet the risks of imposing an overly simplistic narrative are all too obvious: Myanmar's significant problems are being swept under the carpet, to the detriment of poor, vulnerable and marginalized communities across the country.

The Myanmar military still holds the levers of power, represented most flagrantly in their control of the three most powerful ministries – namely Defense, Home Affairs and Border Affairs – and in their guaranteed quota of 25% of seats in the Myanmar parliament (the “Hluttaw”). This legislative status quo cannot be altered without amendment of the notorious 2008 Constitution, which itself prescribes more than 75% of votes in the Hluttaw to secure constitutional amendment. The military can thus maintain a veto over constitutional issues, and thereby preserve its undemocratic representation in the Hluttaw.

Despite the release of many political prisoners in several presidential amnesties over the past few years, according to the Assistance Association for Political Prisoners (“AAPP”) many still remain languishing in prisons all over the country, with over 400 more awaiting trial for political actions.¹ Furthermore, notwithstanding a freer media environment than under the military junta pre-2011, journalists continue to be targeted, as do activists, peaceful protestors and human rights defenders (“HRDs”).² Fundamental freedoms – the rights to freedom of assembly, association and expression – are frequently restricted and civil society space continues to be stifled.³ Repressive laws, both outdated colonial laws and new post-2011 ones, establish a repressive framework which a

¹ AAPP, ‘AAPP Raises Concerns Despite Presidential Amnesty’ (Press Release), 22 January 2016, <http://aappb.org/2016/01/aapp-raises-concerns-despite-presidential-amnesty/>.

² AAPP and Burma Partnership's Progressive Voice Policy Research Project, ‘How to Defend the Defenders? A Report on the Situation of Human Rights Defenders in Burma and Appropriate Protection Mechanisms’ (Report), July 2015, http://www.burmapartnership.org/wp-content/uploads/2015/07/HRD_Report.pdf.

³ AAPP and Burma Partnership, ‘A Briefing Paper on the Shrinking Space for Civil Society in Burma/ Myanmar’ (Briefing Paper), 1 October 2014, <http://www.burmapartnership.org/wp-content/uploads/2014/10/BP-AAPP-UNGA-A-Briefing-Paper-on-the-Shrinking-Space-for-Civil-Society-in-Burma-Myanmar.pdf>.

dependent and incompetent judiciary enforce very willingly, in violation of international laws and standards on fair trial rights and due process,⁴ not to mention the principle of the separation of powers.

The peace process continues to stall and stagnate, with many non-state armed groups refusing to sign the long-awaited nationwide ceasefire agreement on 15 October 2015, and the Myanmar government seemingly content to push through an agreement that is not fully inclusive or representative. Those groups on the outside feel that the Myanmar government and military need to engage in inclusive and genuine political dialogue that contemplates significant compromises to thorny issues including political autonomy and representation, constitutional federalism, and use of natural resources in ethnic states and regions.⁵ Indeed, ethnic peoples from Kachin State in the north down to Tavoy in the south are being marginalized and disenfranchised from major infrastructure and natural resources projects, which put profits and centralized development before the needs of local people and communities.⁶ Even worse, gross human rights abuses – including systematic murder, torture, rape, disappearances, arbitrary detention and forced labor – and active conflict continue unabated in Kachin and northern Shan States.

Perhaps most worryingly of all, is the issue of race and religion, represented most graphically by harrowing scenes of inter-communal – and largely anti-Muslim – violence which erupted in June 2012 in Rakhine State, and which has simmered and periodically ignited across the country ever since. The Muslim communities of northern Rakhine State have borne the brunt of the violence. Yet the human rights abuses, discrimination and persecution that they have suffered has largely been ignored by the international community in its rush to celebrate the NLD's election victory and Myanmar's democratic transition. While the tragedy of the boat people from northern Rakhine State caught the world's attention in 2014 – first as they fled on rickety, dangerous, overcrowded boats, and then were exposed to human traffickers compounded by state apathy and disdain in supposed safe havens in Bangladesh, Malaysia and Thailand – they have now been mostly forgotten.⁷

⁴ *Ibid.*

⁵ Burma Partnership, 'Protection of People Must be Priority in Burma's Protracted Peace Process' (Briefing Paper), 12 February 2016, <http://www.burmapartnership.org/wp-content/uploads/2016/02/Peace-Process-Paper-20-October-2015-2016-FINAL-6.pdf>.

⁶ Dawei Development Association, 'Voices from the Ground: Concerns Over the Dawei Special Economic Zone and Related Projects' (Report), September 2014, <http://www.ddamyanmar.com/wp-content/uploads/2014/10/Voice-from-the-Ground-Engonline-1.pdf>.

⁷ Amnesty International, 'Southeast Asia: Deadly Journeys – The Refugee and Trafficking Crisis In Southeast Asia' (Report), 20 October 2015, <https://www.amnesty.org/en/documents/ASA21/2574/2015/en/>.

Meanwhile, a swathe of repressive laws relating to the supposed protection of race and religion – known collectively as the “Race and Religion Protection Laws” – has exacerbated the persecution and discrimination at home, an agenda driven by an extremist nationalist movement. As election euphoria fades, Daw Aung San Suu Kyi and her NLD party have rather a lot on their collective plate.

International Law on the Right to Freedom of Religion and Belief

Before this Briefing Paper considers the situation of freedom of religion and belief under domestic law – most notably the 2008 Constitution and the Race and Religion Protection Laws – it will first establish how it is protected under international law:

Article 18 of the Universal Declaration of Human Rights (the “UDHR”) states:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”⁸

Furthermore, Article 2 of the UDHR provides for complete equality and a lack of discrimination:

“Everyone is entitled to all the rights and freedoms set forth in [the UDHR], 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.”⁹

⁸ UDHR, <http://www.un.org/en/universal-declaration-human-rights/>.

Moreover, Article 19 of the UDHR protects the right to freedom of opinion and expression without interference, while Article 20 protects the right to freedom of association.

The International Covenant on Civil and Political Rights (the “ICCPR”) goes into more detail, and also legally binds all states which have signed it. Myanmar, however, has always refused either to sign or to ratify the ICCPR. It remains to be seen whether becoming a state party to the ICCPR is one of the new NLD government’s legislative priorities. It is important, though, to examine the ICCPR, so as to establish a global benchmark and to analyze to what degree Myanmar conforms to it.

In other words, the ICCPR may not be binding upon Myanmar, but it should always be considered legally persuasive for the purposes of assessing a state’s actions in the field of civil and political rights.

Article 2 of the ICCPR echoes the language of Article 2 of the UDHR:

“Each State Party [...] undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the [ICCPR], 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.”¹⁰

Likewise, Article 18 of the ICCPR closely follows Article 18 of the UDHR:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the

¹⁰ ICCPR, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

fundamental rights and freedoms of others.

4. The States Parties to the [ICCPR] undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”¹¹

It is clear, therefore, that every human being has the right, whether recognized by nation states or not, to his or her freedom of religion and belief, and shall not be forced to practice a religion that is different to the one which they want to practice.

States may, however, limit this right, though passing legislation to that effect is not sufficient; any such limitations, as with limitations on the right to freedom of expression and opinion under Article 19 of the ICCPR, must satisfy specific requirements in special circumstances.

The Myanmar government may try to argue that the Race and Religion Protection Laws are “*necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others*”, but it would be very difficult to argue that case successfully, and the onus is on the Myanmar government to make the case. Arguably the legislation increases the risk to public safety, order and/or morals, rather than protecting them. And, as discussed below, they certainly violate the right to equality under Article 2 of the ICCPR, by discriminating against a broad range of groups, including on the basis of gender, sexual orientation and gender identity, race and religion.

2008 Constitution

The flawed and undemocratic 2008 Constitution does seem to protect the fundamental right to freedom of religion and belief – at least superficially. Article 34 says: “*Every citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion...*”. However, limitations on this fundamental right are then introduced, namely that such right must be subject to “*public order, morality or health and to the other provisions of this Constitution*”. These limitations are inconsistent with the right as enshrined in international law (under Article 18(1) of the ICCPR) – and only slightly qualified (under Article 18(3) of the ICCPR) by virtue of any limitations having to be “*necessary*” (please see the section on International Law on the

¹¹ *Ibid.*

Right to Freedom of Religion and Belief above). Moreover, there is no indication as to which constitutional provisions are being alluded to. In any case, as stated in the Background section above, the 2008 Constitution itself is fundamentally flawed and undemocratic, which means that this stated right to freedom of religion and belief is undermined from the very outset by virtue of its being explicitly trumped by constitutional provisions that are so inconsistent with human rights and democracy in their content and creation.

Indeed, Article 360(a) continues the process of limiting the right, by clarifying that “[t]he freedom of religious right given in Section 34 shall not include any economic, financial, political or other secular activities that may be associated with religious practice”, while Article 360(b) goes still further: “The freedom of religious practice so guaranteed shall not debar the Union from enacting law for the purpose of public welfare and reform.” Article 361 then states: “The Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union.” While this provision reflects the fact that the majority of Myanmar’s citizens are Buddhists, it fundamentally undermines recognition of the right to freedom of religion and belief in Article 34.

Moreover, Article 363 states: “The Union may assist and protect the religions it recognizes to its utmost.” Although Article 362 explicitly mentions Christianity, Islam, Hinduism and Animism as “the religions existing in the Union at the day of the coming into operation of this Constitution”, there may be other religions – such as Jainism and Judaism – which are not mentioned and are therefore by implication excluded from protection under Article 363 on this discriminatory and discretionary basis that is so inconsistent with international law.

Interestingly, Article 364 is actually very progressive – and ironically prophetic – given the Race and Religion Protection Laws: “The abuse of religion for political purposes is forbidden. Moreover, 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. A law may be promulgated to punish such activity.” Yet, despite this constitutional provision, the Buddhist extremist groups have done just that – abused Buddhism for political purposes, namely to disenfranchise and persecute the Muslim community in Myanmar. Furthermore, they have promoted feelings of hatred, enmity and discord between Buddhist and Muslim communities. Such actions explicitly contradict Article 364 of the 2008 Constitution. And yet, laws which further these negative and destructive forces have just been enacted, to the detriment of Myanmar, its development and political reforms.

The Race and Religion Protection Laws

The controversial legislative package of the four Race and Religion Protection Laws was submitted to the Hluttaw in December 2014, before the individual laws were approved by the Hluttaw and enacted over the course of 2015. The four Race and Religion Protection Laws are: (1) the Law Regarding Population Control and Health (the “Population Control Law”);¹² (2) the Buddhist Women Special Marriage Law (the “Interfaith Marriage Law”);¹³ (3) the Law Concerning Religious Conversion (the “Religious Conversion Law”);¹⁴ and (4) the Law on the Practice of Monogamy (the “Monogamy Law”).¹⁵

It is worth pointing out that, although many of the legislative provisions do not explicitly concern freedom of religion or belief, it is important to keep the bigger picture in mind, namely that the Race and Religion Protection Laws can – and most likely will – be used as a legislative tool to fundamentally undermine and restrict the rights of certain religious and ethnic minorities – particularly Muslims. Indeed, the Race and Religion Protection Laws have for the most part been grouped together and slated as one – principally on the grounds that they provide a legal framework to exacerbate ethnic, religious and communal tensions, incite violence, and perpetuate institutionalized discrimination against Muslims in Myanmar.¹⁶ Yet it is the purpose of this Briefing Paper, and this section in particular, to analyze them one by one, and to highlight the main concerns and risks that each one presents in terms of the right to freedom of religion and belief in Myanmar:

¹² The Law Regarding Population Control and Health, No. 28/2015, 19 May 2015, http://www.burmalibrary.org/docs21/2015-05-19-Law_regarding_Population_Control_and_Health_28-bu.pdf. All quotations are taken from an unofficial English translation.

¹³ The Buddhist Women Special Marriage Law, No. 50/2015, 31 August 2015, http://www.burmalibrary.org/docs21/2015-08-31-Buddhist_Women_Special_Marriage_Act-50-bu.pdf. All quotations are taken from an unofficial English translation.

¹⁴ The Law Concerning Religious Conversion, No. 48/2015, 28 August 2015, http://www.burmalibrary.org/docs21/2015-08-26-Law_Concerning_Religious_Conversion-48-bu.pdf. All quotations are taken from an unofficial English translation.

¹⁵ The Law on the Practice of Monogamy, No. 54/2015, 31 August 2015, http://www.burmalibrary.org/docs21/2015-08-31-Law_on_the_Practice_of_Monogamy-54-bu.pdf. All quotations are taken from an unofficial English translation.

¹⁶ Human Rights Watch, ‘Burma: Discriminatory Laws Could Stoke Communal Tensions’ (Press Release), 23 August 2015, <https://www.hrw.org/news/2015/08/23/burma-discriminatory-laws-could-stoke-communal-tensions>.

1. **The Population Control Law** was adopted by the Hluttaw on 27 April 2015 and signed by then-President U Thein Sein on 19 May 2015. The main concern with it is that it enables the Myanmar government to control population growth through “*birth spacing*”, in other words it requires women to wait 36 months (three years) after the birth of one child before giving birth to another (Article 2(c)). While there is no provision that enforces or punishes violation of this prescription – nor any indication of what will happen to a child born within the three-year timeframe – there is a danger that it will be used arbitrarily against certain religious or ethnic minorities to harass, charge, arrest, sentence or jail them for a breach. Furthermore, this provision applies to “*married women*”; there is no word of what happens to unmarried women who give birth, whether or not they abide by this “*birth spacing*” provision.

Article 4 allows national, regional or state authorities to conduct surveys to ascertain whether “*the high population density, increasing population growth rate, high birthrate, high maternal and child mortality rate, and high migration rate cause or risk the cause of imbalance between population and resources, declining socio-economic indicators, and food insufficiency in their respective regions*”. Articles 5 and 6 then allow for such “*causes and risks*” to be reported, which will lead to any area in breach of the Population Control Law being issued with a notification designating it as a “*zone for healthcare*”. Article 7 stipulates that “*healthcare activities*” would then be implemented in that area, which means “*safe population control healthcare*” – including birth spacing (under Article 2(b)). Furthermore, Article 2(a) explains that “*population control*” means “*attempting to control over high population density, high population growth rate, and high birth rate in the nation*”. Finally, Article 14 contains similar provisions that may be problematic: for example, the duties of the township level population control healthcare officials include “*educating and organizing [underlining added for emphasis] married couples to practice birth spacing*” and “*submitting monthly work reports to Region or State group concerned*”. Taken together, these duties are sinister, to say the least.

Article 3 of the Population Control Law does state many noble and lofty objectives: “*improving living standards while alleviating poverty*”, “*ensuring sufficient quality healthcare*” and “*developing maternal and child health*”. Yet the motives that lie behind it, and the potential for abuse in practice, mean that the Population Control Law should be seen as a massive potential threat against religious and ethnic minorities. For example, there is no prescription or

transparent guidance as to how such surveys should be conducted; there is therefore nothing to stop authorities from targeting Muslim communities in a discriminatory manner while ignoring others, thereby contravening Article 2 of the ICCPR and the UDHR. In addition, the Population Control Law is hugely discriminatory against women, which contravenes the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).

2. **The Interfaith Marriage Law** was adopted by the Hluttaw on 7 July 2015 and signed by then-President U Thein Sein on 26 August 2015. The main concern with it is that it is fundamentally discriminatory, imposing, as it does, rights and obligations on people on the sole basis of their gender and/or religion: indeed its overall objective is to regulate the marriage of Buddhist women to non-Buddhist men. Under Article 3 (b), a “*Buddhist woman*” is defined not only as “*a Myanmar citizen who professes the Buddhist faith*” but also “*a woman born of parents who are Buddhist*”, even though it goes on to exclude “*a woman who has manifestly and officially converted to another religion and is practicing that religion*”. In other words, a woman may be branded a Buddhist, purely on account of her parents, unless she explicitly and manifestly identifies herself as following a different religion. This definition therefore attacks at the very heart of the right to freedom of religion and belief (please see the section on International Law on the Right to Freedom of Religion and Belief above).

Furthermore, under Article 28, if a non-Buddhist woman converts to Buddhism after her marriage to a non-Buddhist man, the Interfaith Marriage Law suddenly becomes retrospectively applicable, which means that (under Articles 25 and 26), both parties will be treated as “*Myanmar Buddhists*” – for the purposes of important matters such as ownership of property, inheritance, divorce and custody of children – meaning that Myanmar Customary Law therefore applies. That fundamentally violates the man’s right to freedom of religion as prescribed by international law, and also raises the thorny legal issue of the retrospective applicability of legislation, in that the man is suddenly exposed to legal provisions that did not affect him when he entered into the marriage. Indeed, there is a general legal presumption under

common law that “*statutes are not intended to have retroactive effect unless they merely change legal procedure*”.¹⁷

The Interfaith Marriage Law contains many intrusive and discriminatory provisions that regulate marriages between Buddhist women and non-Buddhist men – for example, the stipulation under Article 9(c) that if a woman is under 20 years old she must obtain the express consent of her parents – which presumably do not apply to marriages between Buddhists, between a Buddhist man and a non-Buddhist woman, or between two non-Buddhists. This provision thus discriminates against both women and non-Buddhists.

Moreover, under Article 8, in order to perform the act of marriage, only the non-Buddhist man – and not the Buddhist woman – shall sign in the presence of the Registrar. Again, under Article 19, the non-Buddhist man must observe a raft of rules relating to respecting the freedom of religion and belief of his Buddhist wife, though there are no equivalent obligations requiring the wife to respect her husband’s freedom of religion and belief. Equally, a non-Buddhist woman is under no obligation to respect the freedom of religion and belief of her Buddhist husband – nor, of course, vice versa. And there is certainly no concern from the state about marriages between non-Buddhist faiths respecting each others’ right to freedom of religion and belief.

Under Article 20, if a non-Buddhist man is deemed – by his wife, rather than by a court of law – to have breached any of the obligations under Article 19 (relating to respecting his wife’s freedom of religion and belief), the woman is free to divorce her husband with immediate effect, while the husband must: (1) “*forego his vested right to the ownership of properties of the parties*”; (2) pay his wife compensation; (3) hand over custody of all their children; and (4) continue to pay child support for all his underage children. Similarly, under Article 27, if a non-Buddhist man decides to divorce his Buddhist wife, and he “*causes emotional stress or pain to his wife*”, then, as with Article 20, he will be penalized in the same multiple ways. However, “*emotional stress or pain*” is subjective, hard to quantify and verify, and very open to

¹⁷ Elizabeth A Martin (ed), Oxford Dictionary of Law fourth edition, 1997, p.406.

vague interpretation and manipulation.

Furthermore, under Article 23, if a Buddhist woman and a non-Buddhist man are “*cohabiting*” (undefined and therefore open to vague and loose interpretation) and fail to register under the Interfaith Marriage Law, a complaint may be made by a relative of the woman to the local Registrar. If either or both parties fail to appear before the Registrar on being summonsed, or are unwilling to marry, then the Registrar will file a report with the court. The court will then commence a lawsuit to determine whether “*the marriage is proper*” under Article 22(a). Under Article 23(f), should the court decide that it is indeed proper, the Registrar will then record the couple as being married, despite the fact that one or neither of them may want to be married.

Under Article 26, if a non-Buddhist man who marries a Buddhist woman under the Interfaith Marriage Law is a Hindu, Sikh or Jain, he will be deemed to have achieved legal severance from his family, with all of his property and estate passing to his wife and children automatically upon his death. This provision raises all kinds of problems, including discrimination against specific faiths and religions, discrimination based on gender, and, on a practical and policy level, increasing threats to the security of men of such faiths who are married to Buddhist women.

Generally speaking, the Interfaith Marriage Law panders to very old, established gender stereotypes, whereby women receive custody of the children, and men have to pay for their upkeep (Article 29); whereby women suffer emotional pain and distress, and men behave cruelly to cause it (Article 30). The Interfaith Marriage Law also represents discrimination across the board: most obviously gender discrimination towards both genders in different places, but also racial and religious discrimination towards non-Buddhists. It also severely restricts the right to freedom of religion and belief. In doing so, it flouts a raft of international human rights laws, including CEDAW and the ICCPR (please see the section on International Law on the Right to Freedom of Religion and Belief above).

3. **The Religious Conversion Law** was adopted by the Hluttaw on 21 August 2015 and signed by then-President U Thein Sein on 26 August 2015. The main concern with the Religious Conversion Law is that it enables the Myanmar government to regulate individuals people's freedom of religion and belief, rather than recognizing that the right to choose one's religion – or to convert to another – is a very private, personal matter.

The Religious Conversion Law begins by acknowledging the right under Article 34 of the 2008 Constitution for every citizen to “*have equal rights to freedom of religious belief and freedom of worship*”. Yet it goes on to say that the purpose of the law is “*so that every citizen shall have the right to choose their religion freely, transparently and systematically*”, when that right is already – at least superficially – provided for by the 2008 Constitution and by international human rights law.

There is indeed an inherent contradiction between the idea of “*religious conversion*” – which Article 2(b) states to be “*people voluntarily [underlining added for emphasis] discarding the religion they believe in and converting to another religion, or people without a religion voluntarily [underlining again added for emphasis] converting to a religion*” – and a “Registration Board”, which, according to Article 2(d), “*scrutinizes and registers religious conversions*”. Again, Article 4 quite clearly states: “*Everyone has the freedom to convert from one religion to another, or a person without a religion has the freedom to convert to a religion.*” Nevertheless, Article 5(c) states that a person who wants a religious conversion must submit an application for religious conversion to the Registration Board – apparently without acknowledging the irony.

At that point, the person who wants to convert will be interviewed by the Registration Board “*to find out whether there is genuine belief in the religion he or she is converting to*”. In other words, the state will apparently be able to read people's hearts and minds and know the truth of their intentions. Moreover, under Article 6, there are various bureaucratic hurdles, which might slow down or prohibit the provision of the certificate for religious conversion.

Under Article 7(c), in order to receive the certificate of religious conversion, the applicant must study factors such as the “*essence of the*

religion”, “*marriage, divorce, and division of property practices in that religion*”, and “*inheritance and parenting practices in that religion*”, as well as consult with “*experts on the essence and traditions of that religion*”. It is not stated who might appoint such experts, but one can only imagine that they would be government-appointed, and would not respect, represent or cater to the full range of religions and beliefs in Myanmar.

Nor is it ever said explicitly that people cannot begin practising another religion if they have not received the certificate for religious conversion from the authorities, but it is assumed to be the case from the general gist of the provisions taken as a whole. Indeed, Article 11 states: “*The person shall be considered to have converted to another religion starting the date a certificate is issued by the Registration Board in accordance with the requirements.*” Most notably, Article 27 stipulates: “*Religious conversions shall be carried out only according to this law.*” In other words, as far as the Myanmar state is concerned, any religious conversion not recognized and approved by the certificate is not valid under Myanmar law.

Finally, Article 14 warns that “[n]o one shall apply for a religious conversion with an intent to insult, disrespect, destroy or to abuse a religion”, which represents such vague language that this prohibition could easily be abused and manipulated to refuse to allow someone who wanted to change religion from, say, Buddhism to another religion. However, Article 16 says that “[n]o one must deter, stop, or harass another from a religious conversion” – except, it would seem, the Myanmar government.

- 4. The Monogamy Law** was adopted by the Hluttaw on 21 August 2015 and signed by then-President U Thein Sein on 31 August 2015. The Monogamy Law is fundamentally discriminatory towards a range of groups, though particularly non-Buddhists, women, and lesbian, gay, bisexual, transgender, intersex and queer people (together, “LGBTIQ” people). For example, transgender people are in no way taken into account within the definitions of “*man*” and “*woman*” in Article 3. Furthermore, the objectives of the Monogamy Law are stated in Article 4 to be “[t]o build a peaceful and harmonious family faithfully between legally married husband and wife [underlining added for emphasis]”, which actively discriminates against LGBTIQ

people. Again, Article 5 – which states that “[u]nless contrary to the provisions of this law, any man or woman [underlining again added for emphasis] can legally enter into a marriage in accordance with the existing law or religion or custom” – only anticipates traditional, heterosexual marriages between a man and a woman.

Article 6 then contains the main provision of the Monogamy Law: “... any marriage between a man and a woman in accordance with any law or any religion or any custom shall be legitimate only if monogamous.” Monogamy is generally considered a positive requirement for any marriage, and according to many cultures, traditions, societies, beliefs and religions, is a fundamental rule that must not be broken. Yet, as with the Religious Conversion Law, it should not be a matter for the state to regulate. Furthermore, Articles 10 and 12 prohibit illegal extramarital affairs and punish them as a criminal matter, as well as establishing them as a civil matter under Article 18.

Articles 7–9 betray religious discrimination, categorizing married people according to their religion and whom they are marrying, and then subjecting each to different rules. Buddhist couples fall under “Myanmar Customary Law”; meanwhile, a married couple comprising a non-Buddhist man and a Buddhist woman fall under the Interfaith Marriage Law (please see (2) above); and non-Buddhist couples seem to represent a class that are freer in some ways but only because the Myanmar government appears to have no interest in them as citizens with equal rights. But, in all three provisions, it is made clear that in order for any of these marriages to be recognized, they must not contravene any of the provisions of the Monogamy Law.

Sanctions for breach of Articles 10 and 12 (prohibitions on bigamy and extramarital affairs) are seven years’ imprisonment and a fine (and, under Article 17, ten years’ imprisonment if the first marriage is undisclosed), an extraordinarily draconian sentence, and one which could be used arbitrarily against anyone on the basis of hearsay, rumor or gossip. It could also be used to target specific groups, such as religious minorities, LGBTIQ people, political activists, HRDs, critics of the government, and so on. The Monogamy Law is a dangerous weapon in the hands of the Myanmar judiciary, and is completely at odds with international human rights law, including the ICCPR (please see the section on International Laws above).

Case Studies

However, regardless of the significant threat that the Race and Religion Protection Laws pose to the people and communities of Myanmar, it is apparent that the right to freedom of religion and belief is already being violated on the ground, in local communities, on a daily level. Various different vulnerable groups are suffering deep-rooted and systematic religious discrimination and persecution. For the purposes of including some illustrative case studies in this Briefing Paper which demonstrate this trend of violations, Equality Myanmar conducted several interviews of victims of abuses of the right to freedom of religion and belief over the month of February 2016. Out of a range of case studies, Equality Myanmar has decided to focus upon the following three, which provide an overwhelming indication of the current situation in a variety of contexts:

A. The Mandalay Interfaith Network Case

Two interfaith and peace activists, Zaw Zaw Latt and Pwint Phyu Latt, were arrested on 14 July 2015 at V Café in Mandalay by the Mandalay Criminal Investigation Department (the “CID”). A CID officer asked the activists to come to V Café on the pretext of having a chat, but later called in many police and CID officers and arrested the activists. The CID officers forcibly arrested and threw Zaw Zaw Latt into a truck, and both of them were taken to the No.3 CID office. They were presented with no warrant for arrest. Zaw Zaw Latt was interrogated until 4am the next day, and was then transferred to the No. 8 police station on 15 July 2015. On 16 July 2015, CID officers came and searched Zaw Zaw Latt’s house and confiscated DVDs, a laptop, a camera, a USB stick and other paper documents. Pwint Phyu Latt was released at 11pm on the same day, 14 July 2015, only to be re-arrested on 19 July 2015.

Zaw Zaw Latt and Pwint Phyu Latt are facing charges under articles 17 (1) of the Unlawful Associations Act 1908 for taking part in a mission to the Kachin Independence Army controlled areas to deliver a Christian cross and Buddha statue made from bullet shells in order to call for peace in Kachin State. The two are also charged under 13(1) of the Immigration (Emergency Provisions) Act 1947 along with five other activists, including a Buddhist monk, for an alleged illegal border crossing during a humanitarian visit to the Myanmar-India border. All the other

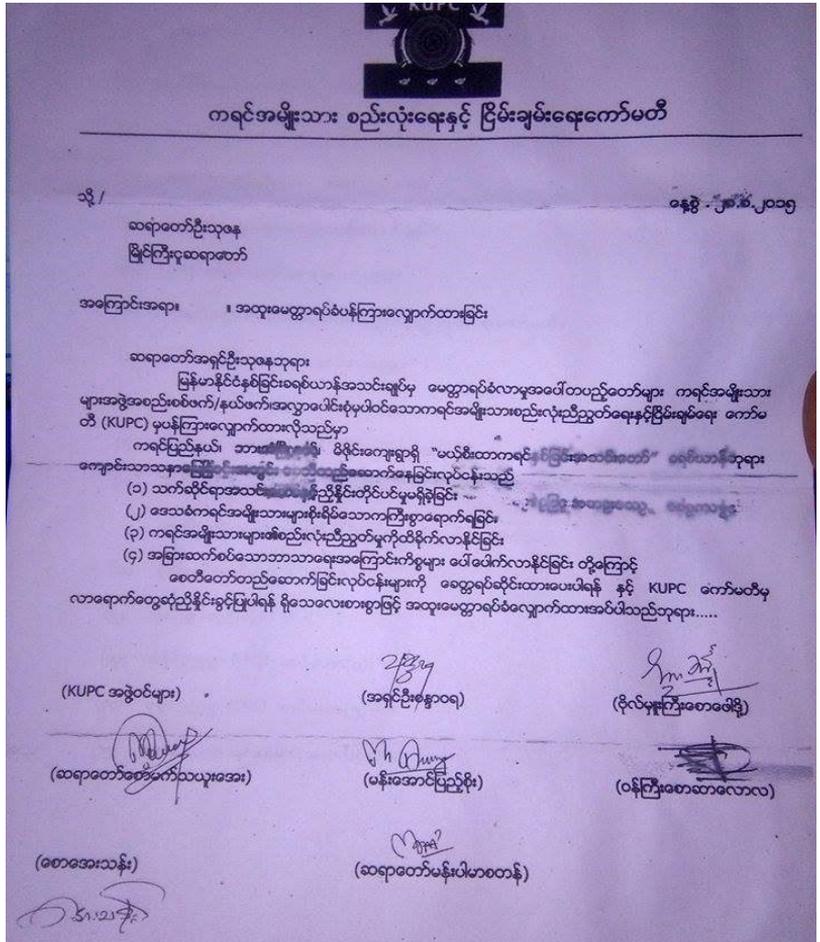


*Zaw Zaw Latt (second from left) seen during humanitarian visit to Chin State
© Private*

five activists are in hiding except Zaw Win Bo, a 22-year old Hindu man, who was subsequently arrested on 22 July 2015.

Prior to their arrests, Ashin Wirathu of Ma Ba Tha reportedly tried to convince Pwint Phyu Latt on a few occasions to join his campaign for peace. She, however, wanted to adopt her own approach and turned down the proposal, leaving Ashin Wirathu unhappy. On 9 June 2015, an article was published in Ahtu Mashi, a journal run by Ma Ba Tha Mandalay, calling for actions against Zaw Zaw Latt for insulting religion. The article featured various photos of Zaw Zaw Latt taken during his missions to Laiza and the Indian border, which were later used to bring criminal cases against him. When these cases proceeded to court, Ma Ba Tha representatives attended the first few court hearings so as to monitor the process, although they then decided not to attend later court hearings.

Zaw Zaw Latt and Pwint Phyu Latt are among prominent Muslim peace activists in Mandalay who have been actively involved in mediation, conflict prevention and other peace and interfaith activities. They are founders of Thint Myat Lo Thu Myar, a leading interfaith activist network based in Mandalay. Zaw Zaw Latt was also an information focal person of the Mandalay Region NLD social support sub-committee, a member of the Committee for the Prevention of Conflict in Mandalay, and a member of the Mandalay Peace-Keeping Committee.



Karen National Unity and Peace Council letter to Sayadaw U Thuzana © Private

B. The Mae See Hta Church Case

On 21 August 2015 at around 7am, Myain Gyi Ngu Sayadaw U Thuzana suddenly came and marked out an area within the Mae See Hta Church compound in Mi Zine village in Myiang Gyi Ngu area and erected a temporary fence around it. He then went to Ka Ma Maung to visit a pagoda. On the same day he came back and laid foundations for a 9-foot tall pagoda in the area of the church compound that he had marked out.

Many people attempted to convince Sayadaw by various different means to put a stop to his actions: for example, on 22 August 2015, Myanmar Baptist Convention members came to see Sayadaw and requested him to remove the pagoda. The visit was followed by many other organizations and relevant authorities, including the Hpa-An interfaith group, the Karen



The Pagoda built by Sayadaw U Thuzana next to Mae See Hta Church. © Private

State General Administration Department, the Karen National Union Brigade 1, the Karen Unity and Peace Council, and the Ministry of Religious Affairs, many of whom sent him letters and paid him visits to formally request that he remove the pagoda. However, he refused to comply with any appeal, request or directive, and the pagoda remains in the church compound today.

Myiang Gyi Ngu is predominantly home to ethnic Karen people. The majority of the Karen people living in the area are Buddhist, although there are a small number of Christian and Muslim people living in the area too. Indeed, Sayadaw claimed that Hpa Pun township was a Buddhist area in the past, and that ancient Buddhist heritage needs to be preserved otherwise it will be consumed by other religions and races. Sayadaw also said that an ancient pagoda used to exist on the same spot inside the Mae See Hta Church compound where he built the new pagoda. Sayadaw has also built many other pagodas around the Myaung Gyi Ngu area.

C. Shwedagone Pagoda Street Vendors Case

On 28 October 2015, a small shop selling slippers and mobile phone accessories run by Muslim street vendors was closed down by unidentified Buddhist monks. At 4pm, seven monks showed up and demanded to know the religion of shop owner [Name], his wife and daughter. When Myint Htay replied that they were Muslims, the monks said to them that “Ka Lar” (a pejorative word for Muslims) were not allowed to sell things there. The monks confiscated all the materials in the shop, and took [...] and his family to nearby the Shwe Kyin Monastery for questioning. As they arrived in the monastery, [...] noticed property confiscated from other street vendors. The monks took photos of the three and began questioning them, asking for their names, house address, national registration card (“NRC”) number and other information. Before the monks let them go through the back door of the monastery, they said to [...] that if he wanted his property back, he must provide recommendation letters from the ward administrator’s office, the police station and a mosque, along with his NRC.

The same day, earlier in the morning, three monks had come and closed down a different mobile phone accessories shop near Bahan market, east of the Shwedagon Pagoda, and confiscated all property. That street shop was owned by [...], a middle-aged Muslim man. At 9am, as the day became hotter, [...] went back home to pick up his umbrella and asked his helper to watch the shop. While he was away, the three monks came to the shop and asked the helper if he was a Muslim. When they found out that the shop was run by Muslims, the monks took the helper and the shop’s property to nearby Shwe Kyin Monastery and questioned him. The monks said to the helper that they would return the property only when [...] provided his NRC, recommendation letters from the ward administrator’s office, the police station and a mosque. At least three street shops run by Muslims were closed down near the Shwedagon Pagoda on that same day and none of them felt able to reclaim their property for fear that such actions would exacerbate the situation and trigger a broader communal or religious conflict.

Analysis

This section aims to provide an analysis of the trends, actors, motives and strategies at play, both in the instances of repression of the right to freedom of religion and belief on the ground that has been documented in the Case Studies above, and in the enactment of the Race and Religion Protection Laws. It also looks at the potential risks for Myanmar if it continues down its current path.

The first point to be made is to re-emphasize that the above Case Studies are not illustrations of the Race and Religion Protection Laws being used to target religious and ethnic minorities; rather, they show how the right to freedom of religion and belief is being violated already, regardless of the enactment of the Race and Religion Protection Laws. In fact, there are already a sufficient number of repressive “criminal” laws that can be used to target minorities, such as the Unlawful Associations Act 1908 (please see Case Study 1 above). Since the political reforms were initiated in 2010/11, the Myanmar authorities have used a range of criminal laws against their political opponents – including activists, HRDs and peaceful protestors – to stifle political freedoms and civil society space while disguising the fact that such judicial harassment is essentially political in nature.

There is little doubt, however, that the Race and Religion Protection Laws will be used at some stage, for they represent just another tactic of the same strategy, namely to repress certain minorities in violation of their human rights and, in particular, to stifle their right to freedom of religion and belief. However, as yet, it is not clear when the Race and Religion Protection Laws will be used; for now, they are threatening and abusive enough merely by virtue of having been enacted and entered into Myanmar’s statute books. They are a very clear statement of intent.

Indeed, both actions – the judicial harassment of religious activists on other legislative grounds and the enactment of the Race and Religion Protection Laws – point towards a unified strategy, actors and motives. Both indicate the involvement of the Ma Ba Tha movement. This movement of nationalist, extremist Buddhist monks has evidently wielded surprising influence with the outgoing Thein Sein government, and potentially with the Myanmar military as well. Its predecessor, the 969

movement, took no pains to hide its role during the bouts of inter-communal, inter-religious violence in 2012 and 2013; beginning in early 2012, it encouraged boycotts of Muslim-owned businesses, incited hatred and violence against Muslim communities, promoted the view that Islam was threatening to overrun Myanmar, and encouraged Myanmar Buddhists to stand up and save their country, religion and way of life.

This narrative has unfortunate and sinister overtones not only of 1930s Nazi Germany, but also of some of the current rhetoric emanating from the US party candidate nomination process and from several European countries in the face of unprecedented immigration from the Middle East and the ongoing threat from Islamist terrorist organizations such as Islamic State and Al Qaeda. And yet Myanmar is not really exposed to any of the same problems. Many Muslim communities have been living in Myanmar for generations, and there is very little evidence that Muslim immigrants are arriving in Myanmar in any significant numbers. In fact, due to ongoing political, racial and religious persecution, they are fleeing in huge numbers to Muslim-majority countries such as Malaysia, Indonesia and Bangladesh. Furthermore, any attacks that have occurred in Myanmar in recent years have been almost exclusively perpetrated against Muslim communities, with the connivance or acquiescence of the Myanmar authorities.

More recently, the 969 movement's successor, the Ma Ba Tha movement, has lobbied for all kinds of exclusionary and discriminatory policies and laws, including a ban by the 2014 population census on people registering as Muslim Rohingya, a discriminatory 2015 citizenship law that explicitly deprives a targeted minority population of citizenship, and a denial of their right to vote in the 8 November 2015 national elections. The enactment of the Race and Religion Protection Laws is just the latest stage in the persecution of Myanmar Muslims

Yet, as the Case Studies above demonstrate, it is not only religious and ethnic minorities who are being targeted; those who defend them are also being harassed, arrested and jailed by the Myanmar authorities. Looking at the broader picture in Myanmar, it is apparent that HRDs more generally are being targeted. The fact that female HRDs in particular are on the receiving end should not come as a surprise given the discriminatory nature of the Race and Religion Protection Laws, which gravely undermine the provisions of CEDAW.

This persecution of activists and HRDs suggests that anyone who obstructs, criticizes or questions the nationalist and discriminatory agenda of the powerful Ma Ba Tha movement can expect to be targeted – physically, judicially or legislatively – whether or not they are Muslim themselves. Thus far the NLD has not stood up for the rights of Muslims people in the face of their persecution; it remains to be seen whether its policies will change now that it is in government. If Daw Aung San Suu Kyi does decide to defend the rights of Muslims and other religious and ethnic minorities who do not fit the Ma Ba Tha profile of a pure Burman Buddhist, then she will have to perform a serious volte face and tackle these powerful interests head on.

However, if the situation were to continue as it is, it can only be expected that the persecution of religious and ethnic minorities will only increase with the enactment of the Race and Religion Protection Laws. Such an agenda, driven by the powerful Ma Ba Tha movement, will exacerbate the risk of further violence as ordinary people blindly buy into the prejudice and rhetoric propagated by the powers-that-be. Further violence risks undermining and reversing the political reforms achieved thus far; it would provide a pretext for the Myanmar military to launch a coup d'état and reassert political control of the country, just like its neighbor Thailand did on 22 May 2014; it would gravely affect Myanmar's moral standing in the international community if violence, discrimination or genocide were perpetrated against specific groups; it would threaten nascent economic, trade and investment opportunities; and it would further destabilize the region with boatload upon boatload of refugees fleeing persecution in Myanmar. The NLD government cannot afford to turn a blind eye and allow the status quo to continue. It must take immediate action now that it has a popular mandate, as must other relevant actors, decision-makers and stakeholders.

Recommendations

In response to the dire situation of freedom of religion and belief in Myanmar, this Briefing Paper proposes a range of policy recommendations to the full spectrum of relevant actors, decision-makers and stakeholders:

The NLD government must:

- Initiate the process in the Hluttaw of immediately repealing all four of the Race and Religion Protection Laws;
- Take immediate steps to sign and accede to the ICCPR;
- Ensure that all legislation enacted is consistent with Myanmar's state obligations under CEDAW;
- Actively promote and protect the right to freedom of religion and belief;
- Take active steps to protect and promote the civil and political rights of all religious and ethnic minorities in the country
- Reject all religious extremist and nationalist agendas to instil fear in the country, divide communities, persecute minorities, foment unrest and violence, and derail the ongoing political reforms in Myanmar;
- Encourage faith-based dialogue and tolerance between different minorities, religions, faiths and communities in Myanmar;
- Investigate all instances of religious violence, persecution, discrimination, intolerance and hate speech, whether perpetrated by individuals, communities, community leaders, local authorities, soldiers or monks;
- Ensure that all instances of hate speech, discrimination, violence or persecution grounded in prejudice of any kind, whether based on gender, sexual orientation or gender identity, race, religion or otherwise are severely penalized;
- Insist that the judiciary respects all civil and political rights, including fair trial rights, in the handling of those arrested on supposed criminal charges whose activities are solely political or human rights in nature; and

- Ensure that all enforcement agencies, including the police and military intelligence, respect all human rights in their work, including rights to freedom of religion and belief; rights to freedom of assembly, association and expression; fair trial rights relating to arrest and judicial harassment; and rights to be free from discrimination, among others.

The Hluttaw must:

- Immediately repeal all four of the Race and Religion Protection Laws;
- Enact legislation that explicitly criminalizes religious extremist and nationalist agendas to instil fear in the country, divide communities, persecute minorities, foment unrest and violence, and derail the ongoing political reforms in Myanmar; and
- Ensure that all legislation enacted is consistent with Myanmar's state obligations under CEDAW.

The Judiciary must:

- Resist interference from any other government or non-governmental bodies, and enforce legislation with independence and integrity;
- Ensure that all instances of hate speech, discrimination, violence or persecution grounded in prejudice of any kind, whether based on gender, sexual orientation or gender identity, race, religion or otherwise are severely penalized;
- Take international law, such as the ICCPR and CEDAW, into account when reaching judgments on cases involving freedom of religion and belief and all kinds of discrimination; and
- Respect all civil and political rights, including fair trial rights, in the handling of those arrested on supposed criminal charges whose activities are solely political or human rights in nature.

The Myanmar National Human Rights Commission must:

- Thoroughly and independently investigate any grave violations of human rights, including instances of violence, discrimination,

persecution or abuse targeting any individuals or communities based on their religion, race, gender, sexual orientation or gender identity, or otherwise.

Civil Society – including international and domestic NGOs, community based organizations, associations and grassroots movements – must:

- Advocate strongly and vociferously against any actions that violate human rights, including instances of violence, discrimination, persecution or abuse targeting any individuals or communities based on their religion, race, gender or otherwise;
- Advocate strongly and vociferously in favor of repealing the Race and Religion Protection Laws that are so repressive to the right to freedom of religion and belief;
- Document all instances and cases of violations of the right to freedom of religion and belief and devise media and communications strategies to help raise awareness of the current situation in Myanmar; and
- Lobby all relevant stakeholders and decision-makers, including international governments and embassies, the Myanmar government, the Hluttaw, businesses operating in Myanmar, *etc.*

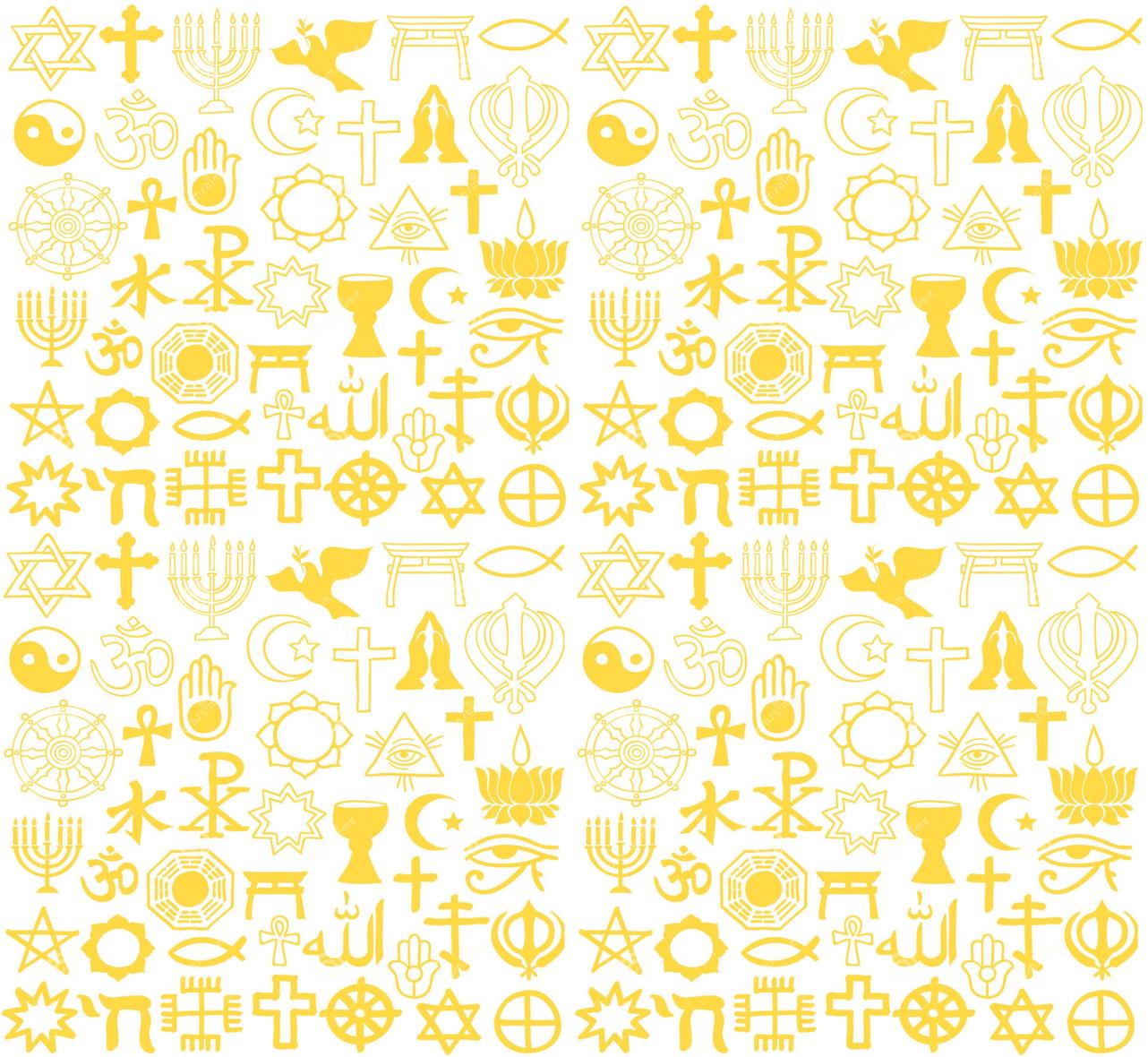
The International Community – including international embassies in Myanmar, international governments, international businesses operating in Myanmar, the United Nations and the Association of Southeast Nations – must:

- Advocate strongly, vociferously and consistently with the new NLD government to ensure that it takes the relevant steps highlighted above, before the political, human rights or security situation in Myanmar deteriorates once again.

Conclusion

The current situation of freedom of religion and belief in Myanmar is very troubling indeed. Amid all the euphoria of the NLD's election victory, this point has been forgotten. The Race and Religion Protection Laws severely restrict the fundamental right to freedom of religion and belief under international law, while at the same time further stoking religious and racial tensions within the country. Not only are the Race and Religion Protection Laws a grave threat to the human rights of various groups, but it is clear from the selection of Case Studies above that people's rights to freedom of religion and belief are already being violated on the ground. It is deeply concerning that the Ma Ba Tha, an extremist Buddhist and nationalist minority group, should be wielding such a degree of influence within the country that the national government is pandering to their wishes and initiating such discriminatory, repressive and hateful legislation.

It is hoped that the new NLD government of Daw Aung San Suu Kyi recognizes this issue as one of urgent priority, and takes immediate action to rectify the situation in line with the recommendations set out in this Briefing Paper, including initiating the process of repealing all of the Race and Religion Protection Laws in the Hluttaw and investigating all violations of the right to freedom of religion and belief, however



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