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MYANMAR

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the Organization of American States, the European Commission and Parliament, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Myanmar must commit to the protection of religious freedom for all people, especially for historically persecuted ethnic and religious minorities.

a) Background

3. Myanmar has a population of over 56 million people with representation in several ethnic and religious groups. 68 percent of people in Myanmar are Burman, 9 percent Shan, 7 percent Karen, 4 percent Rakhine, 3 percent Chinese, 2 percent Indian, 2 percent Mon, and 5 percent other. 88 percent are Buddhist, 6 percent Christian, 4 percent Muslim, 1 percent Animist, and 1 percent other.
4. Ethnic and religious minorities in Myanmar have increasingly been the victims of discrimination, violence, and persecution across the country. The adoption, over the reporting period, of discriminatory laws targeting persons belonging to these minorities, compounded by the escalating internal conflict, has seriously aggravated the human rights situation in the country, particularly as it relates to freedom of religion.

b) Freedom of Religion and Belief

Constitutional Framework and Limitations

5. The 2008 Constitution recognises Buddhism as the main faith professed by the people of Myanmar. Despite the longstanding presence of Jewish and Jain communities among others, only Christianity, Islam, Hinduism, and Animism are recognised as "religions existing in the Union" at the time the Constitution took effect.¹ Article 363 provides that the government may "assist and protect" these recognised religions "to the utmost", with the result of favouring certain religions or belief systems and their adherents over others.²
6. Although it clearly occurs both in law and practice, the Constitution of Myanmar formally prohibits discrimination based on religion.³ However, its provisions contain major limitations that can gut the right to freedom of religion completely at the direction of the state.
7. Indeed, besides subjecting the manifestation of religion to public order, morality or health and, worryingly, "the other provisions of this Constitution," Article 34 of the Constitution

¹ Constitution of Myanmar, art 362.

² Ibid., art 363.

³ Ibid., 348.

falls short of internationally accepted human rights standards in that it permits authorities to deny the right to freedom of conscience as well as the freedom to have or adopt a religion or belief of one's choice.⁴

8. Article 360 places further limitations to the exercise of this right, stating that it “shall not include economic, financial, political or other secular activities that may be associated with religious practice” and “shall not debar the Union from enacting law for the purpose of public welfare and reform.”⁵

Ethnic and Religious Discrimination in Law and Practice

9. While people belonging to recognised ethnic and religious minorities face discrimination and persecution, people belonging to non-recognised ethnic groups often face even greater challenges in enjoying basic human rights such as freedom of movement, health, and education in addition to freedom of religion. Most vulnerable among these unprotected groups are the Rohingya people, who are regarded as neither citizens nor belonging to a minority, and thus rendered stateless by the law.
10. The 1982 Citizenship Act is a paradigmatic example of the historical exclusion, marginalization and persecution suffered by the Rohingya and other “non-indigenous” ethnic groups. After the 1962 Burmese coup d'état and the enactment of a new Constitution in 1974, the eligibility criteria for citizenship were heavily revised according to an official list of 135 so-called “national races”.
11. The Citizenship Act states that the abovementioned 135 recognized ethnic groups are entitled to automatic citizenship as the indigenous people (Taing Yin Tha) of the country. The law established three levels of citizenship. In order to obtain the most basic level (so-called “naturalised citizenship”), it required proof that a person's family lived in the country prior to 1948, in addition to fluency in one of the national languages. Since most Rohingya lacked or were denied documentation that would have provided proof for this requirement, they have been unable to obtain citizenship under the law.⁶
12. Although the law has been amended since its enactment, the almost one million Rohingya as well as other non-recognized ethnic groups native to Myanmar continue to be denied eligibility for full citizenship.⁷
13. Statelessness places persons in a situation of increased vulnerability to human rights violations. Indeed, because they are not citizens, they have no legal identity, and their rights to own property, secure bank loans, employment, or housing, or have access to basic services such as health care and education are heavily restricted, if not denied. In this respect, the Citizenship Act contributes to an increase of statelessness from

⁴ Ibid., art 34.

⁵ Ibid., art 360.

⁶ Who are the Rohingya, April 2018, <https://www.aljazeera.com/indepth/features/2017/08/rohingya-muslims-170831065142812.html>

⁷ Burma: Amend Biased Citizenship Law, January 2015, <https://www.hrw.org/news/2015/01/13/burma-amend-biased-citizenship-law#>

generation to generation, and further entrench patterns of discrimination.⁸

14. In 2015, the Parliament of Myanmar passed a series of “Race and Religion Protection” Laws, focusing among other things on religious conversion and population control.
15. The Religious Conversion Law severely restricts one’s ability to change one’s religion. Under this law, in order to convert, a citizen of Myanmar has to obtain permission from a registration board, engage in religious study for 90 days and issue a certificate of conversion with the board.⁹
16. According to this law, criminal penalties are imposed to people who “apply for conversion to a new religion with the intent of insulting, degrading, destroying or misusing any religion.” Like much of the law in Myanmar, it is vaguely worded and leaves great discretion to the state on implementation. When the law was still under consideration by the parliament, the UN Special Rapporteur on Freedom of Religion or Belief warned this bill would “impose a cumbersome application and approval process for conversion and disproportionate criminal sanctions for the offense.”¹⁰
17. The law assumes that religious conversions and decisions are subject to scrutiny by the state as a matter of right. It leads inter alia to an invasion of privacy due to the extensive amount of personal information one must give to the registration board in order to obtain approval for the conversion.
18. The law also criminalizes applying for a religious conversion “with an intent to insult, disrespect, destroy, or to abuse a religion,” with a maximum penalty of two years’ imprisonment. How this determination can be made is unclear, and such ambiguity makes it easy for people to make claims of abuse if someone leaves their religion. The bill criminalizes “enticing” others to join a religion. Proselytism is protected as a component of the rights to freedom of religion and freedom of expression under articles 18 and 19, respectively, of the Universal Declaration of Human Rights.
19. It is evident that the Religious Conversion Law violates various provisions of Myanmar’s own Constitution, which purports to protect the rights to equality and non-discrimination as well as to religious freedom. It is also in direct conflict with Myanmar’s human rights commitments, including under the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and the ASEAN Human Rights Declaration.
20. The Population Control Law required women in selected, minority populated areas of the country to space the birth of their children three years apart and gives the government

⁸ *Id.*

⁹ Burma: Four “Race and Religion Protection Laws’ Adopted, <https://www.loc.gov/law/foreign-news/article/burma-four-race-and-religion-protection-laws-adopted/>

¹⁰ Ewelina Ochab, ‘The Law And Policy Reforms Myanmar Needs To Combat Intolerance And Discrimination Based On Religion Or Belief’, <https://www.forbes.com/sites/ewelinaochab/2019/11/18/the-law-and-policy-reforms-myanmar-needs-to-make-to-combat-intolerance-and-discrimination-based-on-religion-or-belief/#57cb193d78de> (Nov. 2019).

discretionary power to restrict reproductive rates if officials determined such action was needed to balance population growth and resource allocation.¹¹

21. Besides violating the basic right of women and men to decide freely and responsibly the number and spacing of their children, this law adversely affects already vulnerable ethnic and religious minorities under the guise of reducing the high maternal and child mortality rates in the country.

Violence Against Ethnic and Religious Minorities

22. Since gaining independence from the UK in 1948, numerous armed groups have engaged in armed conflicts with the Myanmar government with a view to achieving autonomy, self-government, or even territorial independence. While ethnicity is considered the primary driver of violence and persecution against minorities, religion is another critical aspect of the ongoing human rights crisis in the country.
23. State Counsellor Aung San Suu Kyi, who entered office in 2016, has received criticism from the international community for her failure to provide relief for religious minorities facing persecution. A former Nobel Peace Prize laureate, Suu Kyi carried a reputation for championing peaceful democratic reform. However, in her time as de facto leader of Myanmar, she has not delivered on her commitment to curb the widespread violence within the country.¹²

Rohingya People

24. Beginning in August 2017, persecution against the predominantly Muslim Rohingya people increased to genocidal levels in Myanmar's northern Rakhine State. The armed forces of Myanmar (Tatmadaw) launched a "clearance operation" against the Rohingya, which included mass shootings, aerial bombardments, gang rapes, torture, and attacks from flamethrowers led to over 700,000 Rohingya to flee their land and seek refuge in Eastern Bangladesh.¹³
25. The tactics mostly used against the Rohingya have been curfews and movement restrictions, property and land confiscation, food deprivation, family restrictions, violent extortion, forced labour, sexual violence, and widespread murder.¹⁴ In addition to violence against people, entire villages were raided and destroyed due to the presence of Rohingya leaders and Islamic symbols. As mosques and madrassas were burned, imams were publicly slaughtered and mutilated.¹⁵
26. The violence perpetrated by the military involved well-coordinated and planned operations across the entirety of the Rakhine State, which refutes the government's claims that these

¹¹ *Id.*

¹² Aung San Suu Kyi: Myanmar democracy icon who fell from grace, January 2020, <https://www.bbc.com/news/world-asia-pacific-11685977>

¹³ Documenting Atrocity Crimes Committed Against The Rohingya in Myanmar's Rakhine State, The Public International Law & Policy Group's 2018 Human Rights Documentation Mission, iv, (Dec. 2018).

¹⁴ *Id.* at v.

¹⁵ *Id.* at 34.

attacks were necessary in response to large scale counter-insurgency attacks by Rohingya rebel groups. In fact, the military action taken against the Rohingya has been described as “designed to terrorize refugees into leaving their homeland” of Myanmar.¹⁶

27. While attempting to render humanitarian aid to internally displaced persons (IDP) camps, intergovernmental and nongovernmental organizations have reported access issues in Rakhine State, particularly in its northernmost areas. While the government has claimed that the reason for denying access has been the continuation of security operations by the army, such restrictions have severely affected civilians and further exacerbated the ongoing humanitarian crisis.¹⁷
28. A network of Buddhist nationalist monks known as Ma Ba Tha have been able to successfully incite violence against the Rohingya through its influence on government and military institutions. Since the beginning of the crisis, members of the group have been engaging in xenophobic propaganda against all Muslims under the guise of national protection from Islamist terrorist groups. The teachings of these monks are also premised on the belief that to be from Myanmar is to be Buddhist.¹⁸
29. Members of Ma Ba Tha as well as military personnel have extensively used Facebook as a powerful tool to fuel anti-Muslim and more specifically anti-Rohingya violence throughout the country. Before Facebook deleted most of the pages from its platform, the social media campaign was able to reach the country’s 18 million internet users with posts alleging Islam to be a global threat to Buddhism and portraying Muslims as rapists and terrorists.¹⁹ Much like the incitement from the Ma Ba Tha, the disinformation spread on social media stoke up widespread hatred against the Rohingya and thus contributed to the escalation of violence.
30. As of November 2019, the allegations of deportation and persecution on the grounds of ethnicity or religion against the Rohingya, which constitute crimes against humanity according to the Rome Statute of the International Criminal Court (ICC), have become the subject of an official investigation led by ICC Prosecutor Fatou Bensouda. Although Myanmar is not a State Party, the ICC determined that it has jurisdiction over the crimes committed across the Myanmar-Bangladesh border, given that Bangladesh ratified the Rome Statute in 2010.

Kachin People

31. About 90% Kachin People living in Myanmar are Christian. Conflict between the Myanmar Army and the Kachin Independence Army (KIA) has continued since June 2011 in Kachin

¹⁶ *Id.* at 50.

¹⁷ Rakhine state: IRC, Aid Agencies Blocked From Access to Most Vulnerable, <https://www.rescue.org/press-release/rakhine-state-irc-aid-agencies-blocked-access-most-vulnerable> (Sept. 2017).

¹⁸ Burma’s Identity Crisis, CSW (May 2019).

¹⁹ Sam Aung Moon and Yimou Lee, ‘Myanmar hardline monks vow to stay on Facebook despite ban’, <https://www.reuters.com/article/us-myanmar-facebook/myanmar-hardline-monks-vow-to-stay-on-facebook-despite-ban-idUSKCN1J41HP>; Paul Mozur, ‘A Genocide Incited on Facebook, With Posts From Myanmar’s Military’, <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html> (Oct. 2018).

and northern Shan States, with around 100,000 civilians internally displaced as a result. Attacks targeting ethnic and religious minorities have increased recently. The KIA engages in rampant restrictions of religious freedom, including forced labour and not allowing churches to be constructed.

32. Specific anti-Christian violence has included the destruction of churches, the desecration of sanctuaries, the looting of offerings, as well as sexual violence inside church buildings.²⁰ More subtle forms of persecution against Kachin Christians include Christian teachers being removed from schools, the study of Christianity being forbidden, limitations in being promoted in public office, and outlawing the construction of new churches.²¹
33. Sexual violence is routinely used by the armed forces as a weapon of armed conflicts.²² The Kachin Women's Association Thailand (KWAT) reported that on 19-20 January 2015, two Kachin women were raped and murdered by Army soldiers in their Baptist church compound in northern Shan State. The police in the area have reportedly not taken any action.²³ Over 70 cases of sexual violence have reportedly occurred in Kachin and northern Shan States since that period, with only two instances of punishment of the perpetrators.

Chin People

34. The Chin Human Rights Organization (CHRO) has documented numerous cases of discrimination against Christian Chins in Chin State.²⁴ Identity cards state ethnicity and religion, easily identifying minorities for discrimination. Although Chin State is 90 percent Christian, the government appoints Buddhist senior civil service workers and sends Buddhists to live there in order to ensure a Buddhist presence. Meetings of civil servants are often scheduled for Sunday morning, when local churches meet for worship.
35. Chin Christians experience forced conversions to Buddhism at special Government Border Areas National Development Training Schools (Na Ta La). Although located throughout the country, a large number of these are situated in Chin State. Christian parents unable to afford education for their children are induced to send them to these schools, where students must participate in Buddhist rituals and some are forced to shave their heads and dress as monks. Students are only able to receive government positions

²⁰ Hollie McKay, 'Myanmar Persecutes Christians, Too', <https://www.wsj.com/articles/myanmar-persecutes-christians-too-1544138518> (Dec. 2018).

²¹ *Id.*

²² Press Release by Kachin Women's Association Thailand (KAWT) and Legal Aid Network (LAN) and syndicated by Asian Human Rights Commission (AHRC) <http://www.humanrights.asia/news/forwarded-news/AHRC-FRP-001-2016>.

²³ Kachin Women's Ass'n Thailand, Ongoing Sexual Violence Highlights Urgent Need for Burma to Stop Offensives and Pull back Troops from Kachin Areas, 22 Jan. 2015, <http://www.kachinwomen.com/publications/statements/136-ongoing-sexual-violence-highlights-urgent-need-for-burma-army-tostop-offensives-and-pull-back-troops-from-kachin-areas>.

²⁴ Unless otherwise noted, the information on persecution of Chin Christians in this section is from a September 2012 CHRO report. See CHIN HUMAN RIGHTS ORGANIZATION, "THREATS TO OUR EXISTENCE": PERSECUTION OF ETHNIC CHIN CHRISTIANS IN BURMA, available at http://www.chro.ca/images/stories/files/PDF/Threats_to_Our_Existence.pdf.

after graduation if they are Buddhist.

36. According to several reports, including by the United Nations High Commissioner for Refugees, a sharp rise in tension between the Myanmar Armed Forces and Arakan Army, a Rohingya rebel group has caused a sharp upward trend in civilian casualties, and further worsened the already large humanitarian and displacement crisis. Indiscriminate bombings have killed civilians and forced families to seek refuge in IDP camps. Humanitarian aid has also been restricted due to the COVID-19 pandemic and the presence of army officials. As of March 2020, 4,800 displaced Chin People have been denied desperately needed aid.²⁵

Karen People

37. One of the largest minority ethnic groups in Myanmar, the Karen people live in the hilly eastern border region of the country, primarily in Karen State, along the border with Thailand. Approximately 40 percent of this minority population are Christian.

38. The Karen people have been the target of attacks by government-allied military forces as a result of the Karen National Union's longstanding claims for independence. Karen Christians have suffered the burning of their villages and churches, which show the attacks are a part of a coordinated plan to oppress.²⁶

39. Karen Christians are forced to porter for the Army and face torture and murder at the hands of the military. As a result of intense violence persecution, over 25,000 Karen have been internally displaced and many have sought refuge in Thailand.²⁷

40. Persecution against Karen Christians also extends into social restrictions. The printing of Bibles is forbidden and people seeking new jobs or promotions are told they must convert to Buddhism.²⁸

(e) Recommendations

41. Given the lack of protection of freedom of religion and the evidence of violence and discrimination against ethnic and religious minorities, ADF International urges that the following recommendations be made to Myanmar:

- i) Ensure the protection of the human rights of all ethnic and religious minorities, both in law and practice;
- ii) Review and amend the Constitution to fully guarantee the right to freedom of religion of all people, in line with article 18 of the Universal Declaration of Human

²⁵ UNHCR concerned at mounting civilian casualties and displacement in western Myanmar, <https://www.unhcr.org/en-us/news/briefing/2020/3/5e7dbca44/unhcr-concerned-mounting-civilian-casualties-displacement-western-myanmar.html> (March 2020).

²⁶ Burma's Identity Crisis, CSW

²⁷ *Id.*

²⁸ The Persecuted Church in Burma, <https://www.thegospelcoalition.org/article/the-persecuted-church-in-burma/>

Rights;

- iii) Repeal the 2015 Religious Conversion and Population Control Laws;
- iv) Amend the 1982 Citizenship Law to give the Rohingya and all other religious minorities and ethnic groups access to full citizenship rights.
- v) End all institutionalized discrimination against Christians, including in civil service employment, the military, the granting of construction permits for houses of worship, and education;
- vi) Cease attacks on ethnic and religious minorities in conflict areas and ensure the prompt and effective investigation of all crimes committed against them, with a view to ensuring full accountability for perpetrators and justice for victims.



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