

# RIGHTS OF RELIGIOUS MINORITIES IN MYANMAR

APRIL 2023

## Forward

This document is intended as a broad overview of religious discrimination in Myanmar from an international and domestic rights perspective. It outlines the legal landscape and presents examples of the impact of discriminatory laws, thereby illuminating areas for future reform. This is not intended as a definitive and exhaustive overview of all discriminatory laws that impact religious minorities; there are many areas of law that may greatly impact religious minorities that are not discussed in depth here, including land law and education. Instead, this document is intended as an introduction and overview as a starting point for understanding how the law differentially impacts religious minorities in Myanmar.

This document is divided into three sections. The first section (Section I: Laws Related to Religious Freedom) provides an overview of the laws that interfere with religious freedom and expression. The second section (Section II: Laws Related to Citizenship) provides overview of citizenship law and several fundamental rights and restrictions that are determined by citizenship status. The third, and final, section (Section III: Appendices) contains a list of resources, an overview of international law concepts, an overview of citizenship documents, a decision tree for determining citizenship, a table of penal code offenses relating to criminal offences against religion, and a glossary.

The main objective of this document is to promote awareness of the law and its impact on religious minorities in Myanmar. Additionally, this document seeks to promote legal reform through empowering individuals with the necessary knowledge to enhance dialogue across different stakeholders and backgrounds and strategically advocate for reform, wherever possible.

Although Myanmar has seemingly taken a sharp turn away from democratic values with the military takeover on 1 February 2021, an overwhelmingly large portion of the population continue to oppose the military regime. Recognizing that any discussions regarding democracy must also necessarily take minority rights and pluralism into consideration, the intended users are all persons interested in fostering a genuine democracy in Myanmar.

## How to use this document

This document is separated into 10 chapters. In general, each chapter includes an overview of international standards, Myanmar law, and examples of how the laws operate in practice.

Each section begins with a summary in a blue box. Direct quotes from international and domestic legal sources are highlighted by a red or green box, respectively. Many sections also include yellow boxes in which a subtopic is discussed in greater depth or a case study is presented.

Whenever a glossary term is first mentioned in a chapter, the term will be underlined. You can refer to Appendix F: Glossary for a definition.

Footnotes are extensively included throughout the document, these footnotes not only provide citations but links to further resources, explanations, or key clarifications that are not incorporated into the body of the document.

Refer to the beginning of this document for unfamiliar abbreviations and acronyms.

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## Disclaimer and Note on Terminology

This document provides broad overview of religious discrimination in Myanmar from both an international and domestic rights perspective. Although Myanmar is not a party to many treaties cited herein, such as the International Covenant on Civil and Political Rights (ICCPR), these laws are nonetheless considered for the purposes of understanding specific rights from an international human rights perspective. To the extent that peremptory norms are not implicated, any reference to documents or treaties to which Myanmar is not a party, while not binding, do carry authoritative weight concerning international standards.<sup>1</sup>

Any terminology relating to religious identity is culturally-embedded and may vary depending on the context. Outdated and essentialist conceptions of race, ethnicity, and religion are misleading, particularly in the Myanmar context.<sup>2</sup> For example, *lumyo*<sup>3</sup> is Burmese term often translated as ‘ethnicity’ but this usage does not capture the broad scope of its meaning. *Lumyo* may be used to refer to ethnicities, such as Shan, Bamar, and Mon, but it may also refer to religious identity, such as Muslim or Christian.<sup>4</sup> While religious identity is the central focus of this document, it is often inevitably intertwined with ethnic identity in Myanmar.<sup>5</sup>

The governance of Myanmar has always been contested. Reference to the ‘state’ or ‘Union Government’ in Myanmar generally refers to the central state operating under the rubric of the Republic of the Union of Myanmar.<sup>6</sup> Since the military coup on 1 February 2021, both the military-led State Administration Council (SAC) and the National Unity Government (NUG) claim control of the Myanmar state. Below the Union (national) level, there are various other contested areas. Where further clarification is needed, the state may also be referred to as the ‘central state’ to distinguish it from other regionally contested areas. Ultimately, there is no authority in Myanmar that can claim complete control of the country.<sup>7</sup>

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<sup>1</sup> A peremptory norm is a principle of international law binding on all countries without exception. See [APPENDIX B: KEY CONCEPTS IN INTERNATIONAL LAW](#) for a brief overview of international law.

<sup>2</sup> Race refers to a category of people that supposedly share ‘inheritable’ physical attributes. By contrast, ‘ethnicity’ can be understood as referring to a social group which shares culture and language.

<sup>3</sup> လူမျိုး

<sup>4</sup> Groups in Myanmar may also have different terms and categories other than what has been imposed by the State. See “Identity Crisis: Ethnicity and Conflict in Myanmar,” International Crisis Group, 2008.

<sup>5</sup> For a more nuanced discussion on the concept of race and ethnicity in Myanmar, see Cheesman, N., “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary Asia* 7(3), 2017, pp.461-483.

<sup>6</sup> The area now known as *Republic of the Union of Myanmar* has undergone many different name changes. Most notably, the state was referred to as the *Union of Burma* after independence in 1948. Since then, there have been variations on *Burma* until the name changed to *Union of Myanmar* on 18 June 1989. The state changed to its current name, the *Republic of the Union of Myanmar*, on 31 January 2011. A minority of sources cited herein continue to use the name *Burma* instead of *Myanmar*.

<sup>7</sup> For further information, see Burke, A., et al., “The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development,” The Asia Foundation, 2017.

Since the coup, there has been a slew of new legislation,<sup>8</sup> all of which are problematic due to the illegitimacy of the takeover.<sup>9</sup> In April 2021, the Committee Representing Pyidaungsu Hluttaw (CRPH), a legislative body comprised of lawmakers elected in 2020 elections and formed in opposition to the military takeover, announced the abolishment of the military-drafted 2008 Constitution.<sup>10</sup> The legitimacy of the 2008 Constitution has been challenged since its inception.<sup>11</sup> Therefore, reference to any law herein, including the 2008 Constitution, is for the purpose of analysing the current legal situation as put forth by the existing military regime. Any references to a law or political organisation should not be considered an endorsement of any kind.

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<sup>8</sup> From 1 February 2021 to 17 November 2022, 48 new laws and amendments have been introduced under military rule.

<sup>9</sup> Strangio, S., "Melissa Crouch on Myanmar's Coup and the Rule of Law," *The Diplomat*, 23 March 2021.

<sup>10</sup> Committee Representing Pyidaungsu Hluttaw (CRPH) *Federal Democracy Charter*, available in English at: <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf>

<sup>11</sup> The 2008 Constitution, which was drafted by the military government and adopted in a highly problematic referendum, includes an immunity clause for former military officials, reserves 25 percent of the parliamentary seats for military officers (therefore securing veto power), and leaves the military in full control of three key ministries covering defence, border, and home affairs. Over time, the Constitution has secured and sustained military control over state institutions. For more discussion on the flawed referendum process and analysis of the immunity clause and other aspects of the 2008 Constitution, see "Impunity Prolonged: Burma and its 2008 Constitution," International Center for Transitional Justice (ICTJ), September 2009.

## Abbreviations and Acronyms

<b>ACSC</b>	Associate Citizenship Scrutiny Card
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of People with Disabilities
<b>CRPH</b>	Committee Representing Pyidaungsu Hluttaw
<b>CSC</b>	Citizenship Scrutiny Card
<b>EAG</b>	Ethnic Armed Group
<b>EAO</b>	Ethnic Armed Organisation
<b>FRC</b>	Foreign Residency Certificate
<b>GAD</b>	General Administration Department
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IDP</b>	Internally Displaced Person
<b>NCSC</b>	Naturalized Citizenship Scrutiny Card
<b>NLD</b>	National League for Democracy
<b>NRC</b>	National Registration Card
<b>NUG</b>	National Unity Government
<b>PDF</b>	People's Defence Force
<b>RNDP</b>	Rakhine National Development Party
<b>SAC</b>	State Administration Council
<b>TRC</b>	Temporary Residency Certificate
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UEC</b>	Union Election Commission
<b>UN</b>	United Nations
<b>USDP</b>	Union Solidarity and Development Party

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# SECTION I: LAWS RELATED TO RELIGIOUS FREEDOM

## CHAPTER 1: INTRODUCTION

### 1.1 Religious Minorities in Myanmar: An Introduction

Religious minorities in the majority Buddhist country of Myanmar face persistent infringements on their freedom of religion and expression alongside many other human rights violations. Myanmar is the home of to a wide diversity of religious communities, particularly Muslim, Christian, and Hindu, who continue to face persecution, discrimination, and abuse on the basis of religious identity.<sup>12</sup> As the identity of religious minorities in Myanmar often overlap with one or more ethnic minority categories, individuals with intersecting religious and ethnic minority identities are likely to be doubly marginalized, leaving them even more vulnerable to discrimination and abuse.

Colonial powers, successive regimes, and quasi-civilian governments have long been unable to properly address the grievances of the diverse religious and ethnic populations residing in present-day Myanmar.<sup>13</sup> This has led to decades of protracted civil war and ongoing armed conflict in the so-called ethnic areas.<sup>14</sup> The historical causes for the ongoing conflict along ethnic and religious lines are multi-varied and complex; dating from not only actions taken under the British colonial administration in Burma<sup>15</sup> but also to existing power dynamics before and after the colonial period.<sup>16</sup> Notably, during the colonial era, the British left upland Burma as relatively self-governing ‘frontier areas,’ while separately governing the lowlands (Burma Proper).<sup>17</sup> Unlike other ethnic groups, Bamar<sup>18</sup> people were specifically excluded from the colonial army and civil servant positions.<sup>19</sup> Instead, religious and ethnic minorities filled these positions, with the British administrators facilitating the migration of labour from India to fill civil servants positions in particular. The legacy of this “divide and rule” tactic, along with other colonial governance practices which specifically excluded and marginalized Bamar people, continues to resonate in present-day ethnic and religious tensions.

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<sup>12</sup> “2022 Annual Report of the U.S. Commission on International Religious Freedom: Burma,” U.S. Commission on International Religious Freedom (USCIRF), April 2022, pp.14-16.

<sup>13</sup> For an overview of Burmese/Myanmar history, see Charney, M., *A History of Modern Burma*, Cambridge University Press, 2009.

<sup>14</sup> “Identity Crisis: Ethnicity and Conflict in Myanmar,” Report No. 312, International Crisis Group, 28 August 2020.

<sup>15</sup> The name *Burma* was changed to *Myanmar* in 1989.

<sup>16</sup> For a detailed introduction to ethnic identity and armed conflict in Burma/Myanmar, see Smith, M., *Burma: Insurgency and the Politics of Ethnicity*, Bloomsbury Publishing, 1999.

<sup>17</sup> “Identity Crisis: Ethnicity and Conflict in Myanmar,” Report No. 312, International Crisis Group, 28 August 2020, p.4.

<sup>18</sup> The Bamar are the dominant ethnic group of Myanmar. While Bamar people embrace a wide variety of religious and non-religious beliefs and opinions, the majority identify as Buddhist.

<sup>19</sup> *Id.*



After independence from British rule, the conflict between the central state and insurgent groups – the latter were largely comprised of religious and ethnic minorities residing in the previously referenced ‘frontier areas’ of the country - took centre stage. This conflict was later used to justify a military coup in 1962. After assuming power, General Ne Win and Myanmar’s armed forces (commonly referred to as the *Tatmadaw*) took a relatively straight-forward approach to statecraft: to establish the military state as the ‘guardian of the nation,’ invoking patriarchal and ethno-nationalistic (Bamar-centric) ideologies to justify and sustain military power.<sup>20</sup> The *Tatmadaw* has employed this approach throughout the succession of different political arrangements from its inception to the present day.

For the military, and the military’s political proxies in positions of power, the loyalty of religious and ethnic minorities (i.e., persons who do not identify as Bamar-Buddhist) is often presented as suspect; a possible threat to the peace and unity of the country.<sup>21</sup> Along with foreigners, membership in national political and social life is presented as conditional for religious and ethnic minorities.<sup>22</sup> This stance contributed to the conflation of Burmese national identity with Buddhist religious identity.<sup>23</sup>

Although political elites initially stressed a more secular state, after the decades of failed ‘socialist’ political and economic policies that followed, Buddhist political rhetoric and practices were increasingly used by political figures as a way to bolster the military state’s legitimacy.<sup>24</sup> Buddhist rituals and symbols have been deployed at various points in time to legitimize military rule in Myanmar.<sup>25</sup> Religious activities range from military rulers making public displays of Buddhist merit-making to sponsoring the building of pagodas and paying respects to high-profile monks.<sup>26</sup> These different modes of intertwining Buddhism directly with state practice further marginalizes persons who do not identify as Buddhist within the political sphere.

The law, alongside state policies and practices, also institutionalizes the differential treatment of persons who do not identify as Bamar-Buddhist.<sup>27</sup> While Buddhism is not the official state

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<sup>20</sup> Steinberg, D., “The Problem of Democracy in the Republic of the Union of Myanmar: Neither Nation-State Nor State-Nation?,” *Southeast Asian Affairs*, 2012

<sup>21</sup> Religious and ethnic minorities are also presented as “tools of foreign elements,” a perception exacerbated by foreign support for opponents of the military regime. Walton, M., “Buddhism, Politics, and Political Thought in Myanmar,” Cambridge University Press, 2017, p.34.

<sup>22</sup> Walton, M., “The ‘Wages of Burman-ness’: Ethnicity and Burman Privilege in Contemporary Myanmar,” *Journal of Contemporary Asia* 43 (1) (2013), p.14.

<sup>23</sup> *Id.* at p.33; See also Ne Win, “Union Day Address to the Nation,” 12 February 1964, cited in Cheesman, N., “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary Asia* 7(3), 2017, p.5.

<sup>24</sup> For a more nuanced introduction to the role of Buddhist monks and Buddhism in Myanmar politics, see Walton, M., “Buddhism, Politics, and Political Thought in Myanmar,” Cambridge University Press, 2017. For more specific examples, see Schober, J., “Buddhist Just Rule and Burmese National Culture: State Patronage of the Chinese Tooth Relic in Myanmar,” *History of Religions* 36, No. 3, 1997.

<sup>25</sup> Such rituals are also, presumably, used to meet the personal religious needs of largely Buddhist political elites. Walton, M., “Buddhism, Politics, and Political Thought in Myanmar,” Cambridge University Press, 2017, p.168.

<sup>26</sup> *Id.*

<sup>27</sup> Constitution (2008), Art. 361 and Art. 362.

religion, the Myanmar Constitution recognizes the “special position of Buddhism” in Myanmar.<sup>28</sup> State ministries are even specifically tasked with the propagation of the Buddhist teachings (*sasana*).<sup>29</sup> For example, the Ministry of Religious Affairs oversees the Department for the Promotion and Propagation of the *Sasana*, which is responsible for implementing a specific policy of Buddhist missionary activities in ethnic minority areas dominated by non-Buddhist religions.<sup>30</sup> The four other major religions in Myanmar, Christianity, Islam, Hinduism, and Animism, are acknowledged in the Constitution but not receive similar favorable state promotion and support in comparison to Buddhism. Similarly, the Ministry of Home Affairs is responsible for the promotion and propagation of the *sasana* in the areas where religious minorities are more prevalent.<sup>31</sup> The use of Buddhist symbols and rhetoric as well as state oversight and promotion of Buddhism and Buddhist institutions has effectively ensured that Myanmar is a *de facto* Buddhist state.<sup>32</sup>

To this day, religious and ethnic minorities are systematically excluded from positions of political power among the central state political elites, this includes civil servant jobs and positions in the military.<sup>33</sup> Within military ranks, persons who do not identify as Bamar-Buddhist have been reportedly actively discouraged from joining the military.<sup>34</sup> The upper ranks, in particular, are largely inaccessible to religious and ethnic minorities.<sup>35</sup>

Various development and educational programmes, aid, initiatives, policies, and laws, affirm the notion that non-Bamar people are deviations from the ‘norm’ of Bamar and Buddhist identity. Persons who are not considered to be sufficiently Bamar-Buddhist are often encouraged to assimilate into Bamar-Buddhist culture as part of their ‘advancement’ or ‘development.’<sup>36</sup> While many Bamar-Buddhists have certainly suffered under decades of military rule or quasi-military rule, unlike religious and ethnic minorities, they do not face ongoing policies that suppress their culture, language, and other expressions of religious or ethnic identity.<sup>37</sup>

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<sup>28</sup> Constitution (2008), Art. 361.

<sup>29</sup> *Sasana* in this context refers to Buddhist tradition, including Buddhist teachings and practitioners. Walton, M. J., and Hayward, S., “Contesting Buddhist Narratives: Democratization, Nationalism, and Communal Violence in Myanmar,” East-West Center, 2014, p.21.

<sup>30</sup> “Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN,” Human Rights Resource Centre, 2015, Pp.329-330.

<sup>31</sup> Development of Border Areas and National Races Law (1993), S.8(i).

<sup>32</sup> The use of Buddhism in politics became more pronounced after 1988. See Frydenlund, Iselin (2019): “Protecting the *sasana* through law: Radical Buddhism and religious freedom in transitional Myanmar”, in ed. Vidhu Verma, *Religion, Secularism and Democracy in South-east Asia*. Delhi: Oxford University Press, p.194.

<sup>33</sup> Seng Mal Aung, “Myanmar’s Ethnic and Religious Minorities and Sense of Belonging,” The KOFF Peacebuilding Magazine, No. 163, November 2019.

<sup>34</sup> Selth, A., *Burma’s Armed Forces: Power Without Glory*, 2002, Eastbridge Books, p.264.

<sup>35</sup> *Id.*

<sup>36</sup> A process also referred to as ‘Burmanisation’ or ‘Bamarisation.’ Walton, M., “The ‘Wages of Burman-ness’: Ethnicity and Burman Privilege in Contemporary Myanmar,” *Journal of Contemporary Asia* 43 (1) (2013), p.11.

<sup>37</sup> “Minorities under Threat, Diversity in Danger: Patterns of Systemic Discrimination in Southeast Myanmar,” Karen Human Rights Group (KHRG), 2020.

### Box 1: Who are Taingyintha?

Even though the concept of *taingyintha* or 'national races' is believed to have surfaced around the British colonial period, the term did not take on its current meaning as a politically significant term until after General Ne Win came to power in 1962.<sup>38</sup> The concept was codified in the 1982 Citizenship Law and most notably reasserted after the new military regime took power in 1988.<sup>39</sup>

The term *taingyintha*, often misrepresented as self-evident categories,<sup>40</sup> has been legally-defined as "Kachin, Karenni, Karen, Chin, Mon, Arakanese, Shan, Burman [Bamar], and other *taingyintha*."<sup>41</sup> While this definition is technically open-ended under the law (allowing for "other *taingyintha*"), at present there is a list of 135 *taingyintha* that are considered to be officially recognised.<sup>42</sup> Despite the fact that the list of 135 *taingyintha* is an arbitrary mixture of ethnic groups, village names, clans, and languages, even including errors (with one group appearing two times), this list continues to be leveraged in the practice of citizenship and belonging in Myanmar.<sup>43</sup>

In reality, *taingyintha* as a concept has been used inconsistently.<sup>44</sup> For example, the term has been used to convey a political community against a common enemy or even to refer to minorities who are 'backward' and in need of development under the majority Bamar leadership.<sup>45</sup>

Military and quasi-military regimes have effectively operationalised the military's position as 'guardian of the state' along ethno-nationalistic lines using the concept of *taingyintha*. The term '*taingyintha*' has been used interchangeably with race, ethnicity, religion, and even indigeneity in Myanmar. As a political concept, it was leveraged to establish national identity, entrench xenophobia, and create a "paradigm for military-dominated statehood."<sup>46</sup> The concept soon became central to citizenship<sup>47</sup> and belonging, political power arrangements,

<sup>38</sup> Cheesman, N., "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya," *Journal of Contemporary Asia* 7(3), 2017, pp.5.

<sup>39</sup> *Id.* at p.12.

<sup>40</sup> See, for example, discussion of legislative debate surrounding the term. *Id.* at pp.9-10.

<sup>41</sup> Interpretation of Expressions Law (1973), S.5(a)(i).

<sup>42</sup> Cheesman, N., "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya," *Journal of Contemporary Asia*, 15 March 2017, p.9.

<sup>43</sup> "Identity Crisis: Ethnicity and Conflict in Myanmar," Report No. 312, International Crisis Group, 28 August 2020, p.8.

<sup>44</sup> *Id.* at p.8.

<sup>45</sup> *Id.* at pp. 7-8.

<sup>46</sup> *Id.*

<sup>47</sup> Under the 1982 Citizenship law, *taingyintha* is defined as "the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine, or Shan and ethnic groups as have settled in any of the territories including within the state as their permanent home from a period anterior to 1185 BE, 1823 AD." Citizenship Law (1982), S.3. Section 4 of the 1982 Citizenship Law also allows the state to determine whether a person qualifies as *taingyintha*.

armed conflict, and the realisation of basic rights in Myanmar, deeply impacting religious and ethnic minorities who are now excluded from the *taingyintha* category.

Recognition of *taingyintha* identity is the main pathway to citizenship and access to the rights and services linked to citizenship.<sup>48</sup> The concept not only promotes discrimination against *non-taingyintha* persons but it also impacts *taingyintha* persons who are perceived to be of Muslim, South Asian, or Chinese descent.<sup>49</sup>

Every administration, military regime, and quasi-civilian government has introduced laws, regulations, policies, and practices that continue to discriminatorily impact religious and ethnic minorities in present-day Myanmar. The consequences of state-endorsed discrimination and the implication of promulgating xenophobic rhetoric is far-reaching; it has contributed to communal violence and even justified military-action taken against religious and ethnic minorities, including the military-led 'clearance operations' against Rohingya Muslims.<sup>50</sup>

## 1.2 Legal Context

Myanmar's legal system is highly pluralistic as written and in its implementation. The current legal framework in Myanmar derives from several eclectic sources, including judicial decisions rendered under a system of absolute monarchy, colonial era laws directly transplanted from the British colonial administration of India, as well as laws imposed during successive military dictatorships and quasi-civilian governments.<sup>51</sup> Although Myanmar originally inherited much of its common law legal structure from the British colonial administration of Burma, the legal system has been overhauled by different military regimes and deviates considerably from the model in many ways.<sup>52</sup> Under military dictatorships throughout Myanmar's history, substantive aspects of the law have been frequently ignored in favour of regime policies.<sup>53</sup> Furthermore, in practice, judicial and administrative officials operate with considerable discretionary authority,

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<sup>48</sup> See also Chapter 7: Citizenship.

<sup>49</sup> "Experiences of Citizenship and Legal Identity in Myanmar," Justice Base and [partner organisation name withheld upon request], January 2021. Publication currently not public. Please contact Justice Base at info@justicebase.org for copy of above-listed publication.

<sup>50</sup> Since 25 August 2017, more than 742,000 Rohingyas have fled ongoing violence in Myanmar and sought refuge in Bangladesh according to UNHCR. See "Rohingya Emergency" on the UN High Commissioner for Refugees (UNHCR) website, available at: <https://www.unhcr.org/rohingya-emergency.html>

<sup>51</sup> Kham, Nang Yin. "An Introduction to the Legal System of Myanmar," National University of Singapore Myanmar Law Working Paper Series, Working Paper No. 001, 2014.

<sup>52</sup> Crouch, M., "The Layers of Legal Development in Myanmar," in Melissa Crouch and Tim Lindsey (eds), *Law, Society and Transition in Myanmar*. 2014.

<sup>53</sup> Cheesman, N. *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order*, Cambridge University Press, 2015, pp.92-99.

particularly where legal provisions are vague and overly broad. The result is pervasive corruption, inconsistent outcomes, and a heightened risk of other rights violations.<sup>54</sup>

In addition to existing judicial and administrative mechanisms operated by the central government, there are a wide variety of overlapping authorities and practices outside of the state's legal framework and institutions.<sup>55</sup>

### Personal laws

Under the 1989 Burma Laws Act, the British colonial administration applied specific laws to Buddhists, Muslims, and Hindus<sup>56</sup> with regards to specific types of claims: succession, inheritance, marriage or caste, and claims related to religious institutions (also known as 'personal laws').<sup>57</sup> During this time additional laws were introduced, particularly applying to Hindus and Christians. Many of the various laws introduced during the colonial era were linked to specific religious identities and largely continue to apply today. For example, laws were introduced that related to divorce (Buddhist, Christian, and Muslim), adoption (Buddhist), caste (Hindu), property ownership for charitable purposes (Muslim). Judges are still expected to enforce these so-called customary laws along with any relevant statutes and case law.<sup>58</sup> These laws solidified religion as a primary marker of legal identity under the law.<sup>59</sup>

In addition to personal laws, there are many other laws that specifically impact religious minorities in Myanmar. As will be discussed further in this document, these laws include specific protections and restrictions, including highly discriminatory frameworks governing citizenship and residency, places of worship, marriage, among other laws that infringe on freedom of religion and expression such as blasphemy and defamation laws.

### Structure of the legal system

The Myanmar Constitution and the Union Judiciary Law outlines the structure of the current judiciary from the local township courts to the highest apex court in Myanmar, the Union

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<sup>54</sup> Coe, J., "Broken Justice," *Frontier Myanmar*, 27 January 2016, "No Justice Behind Bars: the Coup and the Judiciary," *Frontier Myanmar*, 17 March 2022.

<sup>55</sup> See, for example, Denney, L., W. Bennett and Khin Thet San, "Making Big Cases Small and Small Cases Disappear: Experiences of local Justice in Myanmar," British Council, Overseas Development Institute, and Saferworld, 2016; Justice Base, "Voices from the Intersection: Women's Access to Justice in the Plural Legal System of Myanmar," UN Women, 2016; MyJustice, "Searching for Justice in the Law: Understanding Access to Justice in Myanmar," British Council, 2018.

<sup>56</sup> The Burma Laws Act does not directly regulate Christians, who were instead regulated by British law at the time and now by statute. See Gutter, P. "Law and Religion in Burma," *Legal Issues on Burma Journal* April 2001, p.5.

<sup>57</sup> Burma Laws Act (1898), S.13(1)(a)-(c).

<sup>58</sup> These laws were not simply a collection of customs, however, but were both "concession and a colonial construct" of the British colonial administration. Crouch, M., "Constructing Religion by Law in Myanmar." *Review of Faith and International Affairs (Special Issue on Myanmar)* 13(4), 2015, p.1.

<sup>59</sup> For more information, see Crouch, M., "The Layers of Legal Development in Myanmar," in Melissa Crouch and Tim Lindsey (eds), *Law, Society and Transition in Myanmar*. 2014.

Supreme Court.<sup>60</sup> The Supreme Court does not have the authority to review decisions made in courts-martial<sup>61</sup> or the Constitutional Tribunal, nor can the Supreme Court review certain matters such as applications for citizenship.<sup>62</sup> Laws from that British colonial era such as the Civil Procedure Code (1859), Penal Code (1861), Code of Criminal Procedure (1862), Evidence Act (1872) remain in force and theoretically regulate court proceedings in Myanmar.<sup>63</sup>

The military-drafted 2008 Constitution recognizes an independent judiciary and the general right to seek judicial review of administrative decisions.<sup>64</sup> However, since the military coup in 2021, the military has taken major steps to assert greater control over the courts. This included by suspending the mechanism of constitutional writs,<sup>65</sup> expanding the regime's control over legal aid bodies and providers,<sup>66</sup> and by dismissing, transferring, or forcing judges into retirement and replacing these judges with military proxies. Nearly all of the currently sitting Supreme Court Justices have apparent ties to the military, bringing into question judicial independence under the current military regime.<sup>67</sup> The Supreme Court also oversees the lower courts, including the appointment, promotion and transfers of lower-level judges.<sup>68</sup> In addition to the higher courts, judges may also be subject to undue interference from sources outside of the judiciary, such as the police and local authorities.<sup>69</sup>

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<sup>60</sup> Other courts with specific jurisdiction include juvenile courts, municipal courts, and traffic courts, as well as two specific courts: Courts Martial (to adjudicate Defense Services personnel) and the Constitutional Tribunal. Constitution (2008), Art.294; Union Judiciary Law (2010), S.7, S.23(a).

<sup>61</sup> Courts-martial have jurisdiction over defense service personnel. Such courts are under the absolute control of the military.

<sup>62</sup> Constitution (2008), Art. 294; regarding finality of decisions made by the Central Body, see Citizenship Law (1982), S.70(b).

<sup>63</sup> For an overview of how the judiciary fails to meet basic human rights and rule of law standards before and after the coup, see "Right to Counsel: The Independence of Lawyers in Myanmar," International Commission of Jurists (ICJ), December 2013 and "Crackdown on Human Rights Defenders, Opposition, and the Right to a Fair Trial in Myanmar," International Bar Association Human Rights Institute (IBAHRI), August 2022.

<sup>64</sup> Constitution (2008), Art. 19(a).

<sup>65</sup> Constitutional writs were the main means in which to seek judicial review of administrative actions in Myanmar. Suspended due to a "state of emergency" declared by the military after the coup pursuant to Article 296(b) and 379 of the 2008 Constitution. This state of emergency was extended beyond the timeframe permitted under the Constitution in February 2023. See National Defence and Security Council Notification 1/2023, 1 February 2023.

<sup>66</sup> See The Law Amending the Legal Aid Law (2021).

<sup>67</sup> All but one of the Supreme Court Judges have either a direct connection to the military—the Chief Justice and three other justices have a military background— or are appointed by the military (or its proxy political party USDP).

<sup>68</sup> Union Judiciary Law (2010), S.23(a).

<sup>69</sup> Crouch, M., *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, 2019, p.151.

Since the coup, the military has established military tribunals<sup>70</sup> and temporary *ad hoc* courts ('special courts') to try politically sensitive cases.<sup>71</sup> Decisions in military tribunals are final and there is no right to appeal except in the case of death sentence, which then can only be appealed to military Commander-in-Chief through a 'letter of apology' (အသနားခံစာ). Both military tribunals and special courts operate in proceedings behind closed doors and away from the public scrutiny.

In addition to the judiciary, a governmental body, the Myanmar National Human Rights Commission (MNHRC), was established in 2011 to conduct independent inquiries into human rights abuses.<sup>72</sup> There has been little evidence that this body has been effective.<sup>73</sup>

### Informal justice mechanisms

Ultimately, disputes are primarily resolved locally and informally in Myanmar as the majority of people in Myanmar do not trust a legal system that is widely considered to be time-consuming, costly, corrupt, and discriminatory.<sup>74</sup>

Prior to coup, local authorities, such as Ward or Village Administrators were the primary state mediators in disputes.<sup>75</sup> Local authorities were expected to resolve disputes through consensus-building and reconciliation, focusing on restorative rather than punitive justice. The broad discretionary power granted to these authorities, along with lack of oversight, also increased the likelihood of unfair outcomes.<sup>76</sup> After the coup, ward and village administrators were transferred back under the control of the military-controlled Ministry of Home Affairs<sup>77</sup> and a new

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<sup>70</sup> The military established martial law in seven townships across Myanmar: Six in Yangon (Martial Law Order 1/2021, 2/2021, and 3/2021) and one in Mindat, Chin State (Martial Law Orders 4/2021 and 5/2021). These orders transfer all executive and judicial powers to regional military commanders. Under the orders, trials are limited in jurisdiction to martial law locations as well as to 23 enumerated offences, including treasons, incitements, murders, rapes, robberies, corruptions, the arms act, and attacking soldiers and civil servants. *See also* Crouch, M. "What are military tribunals in Myanmar?" 16 March 2021. Available at: <https://melissacrouch.com/2021/03/16/what-are-military-tribunals-or-special-criminal-courts-in-myanmar/>

<sup>71</sup> These temporary courts are installed inside prisons to try persons accused of offences against the military. *See* "Myanmar Junta Using Prison Courts to Try Political Prisoners," *The Irrawaddy*, 9 April 2021

<sup>72</sup> The MNHRC was originally established by a Presidential Order and later incorporated into law in 2014. An individual can theoretically file a human rights abuse complaint under the Myanmar National Human Rights Commission Law (2014), S.30.

<sup>73</sup> Zaw Zaw Htwe, "Myanmar Human Rights Commission Fails to Stop Abuses: NGOs," *The Irrawaddy*, 20 May 2020.

<sup>74</sup> For more on informal justice mechanisms, *see* Denney, L., W. Bennett and Khin Thet San (2016). *Making Big Cases Small and Small Cases Disappear: Experiences of local Justice in Myanmar*, London: British Council, Overseas Development Institute and Saferworld; Justice Base (2016) *Voices from the Intersection: Women's Access to Justice in the Plural Legal System of Myanmar*, UN Women.

<sup>75</sup> MyJustice "Searching for Justice in the Law: Understanding Access to Justice in Myanmar," British Council, 2018.

<sup>76</sup> There is no specific legal provision conferring an official role in dispute resolution for local officials in the General Administration Department. Instead, it has been the practice based on the fact that Ward and Village Administrators are responsible for maintaining 'law and order' and 'peace and tranquility' in their respective ward or village under the 2012 Ward or Village Tract Administration Law, Section 12(c).

<sup>77</sup> After the military coup in 2021, the military retransferred the General Administration Department (GAD) from the Ministry of the Office of the Union Government to the Ministry of Home Affairs on 5 May 2021 (SAC Order No

amendment reversed the right to directly elect administrators.<sup>78</sup> Many ward and village administrators were appointed after the coup, resulting in widespread suspicion and even targeted attacks due to their perceived collaboration with the military regime, significantly disrupting existing dispute mechanisms.<sup>79</sup>

In Myanmar, there are various laws that grant local authorities with wide ranging powers to collect data and register ordinary activities. The existing levels of regulation combined with the broad discretionary authority held by local officials heightens the risk of human rights violations, including discrimination against religious minorities.

### 1.3 Demographic Information

According to the 2014 nationwide census, out of a total population of roughly 51.5 million, an overwhelming majority of people in Myanmar identify officially as Buddhist (87.9 percent).<sup>80</sup> Reportedly 6.2 percent are Christian (various denominations, including Baptists and Roman Catholics), 4.3 percent are Muslims (largely Sunni),<sup>81</sup> and the remainder identify as Hindu, Animist, or other religious traditions such as various forms of Chinese religious practice.<sup>82</sup>

The reported data from the 2014 census may be unreliable for many various reasons, including due to inconsistencies in data collection methodology.<sup>83</sup> The census has largely been criticized for effectively excluding Rohingya persons from its count.<sup>84</sup> Nongovernmental organisations have reported that an estimated 1.1 million Sunni Muslim Rohingyas were living in Myanmar prior to October 2016, with the UN High Commissioner for Refugees (UNHCR) estimating that roughly 700,000 Rohingyas left the country for Bangladesh starting in late 2017.<sup>85</sup>

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119/2021). The GAD is responsible for numerous governance and administrative functions including land administration, collection of tax, and formation and registration of organisations and associations.

<sup>78</sup> Ward or Village Tract Administration Law (2012), S.4. One resident per a household was allowed to vote.

<sup>79</sup> "Myanmar Military-Appointed Administrators Killed By Anonymous Attackers," *The Irrawaddy*, 6 May 2021; "Communities defy junta's attempts to rule wards and villages," *Frontier Myanmar*, 14 May 2021.

<sup>80</sup> The largest ethnic group is overwhelmingly Bamar, the majority of whom also report themselves as Buddhist.

<sup>81</sup> This percentage in particular is likely inaccurate given that the Rohingya population (largely Muslim) were not allowed to participate in the census. McLaughlin, T., "Myanmar publishes census, but Rohingya minority not recognized," *Reuters*, 29 May 2015.

<sup>82</sup> "Census Shows Proportion of Myanmar Muslims Unchanged," *Associated Press News*, 21 July 2016; See 2014 Myanmar Census Dashboard at [http://themimu.info/Census\\_2014\\_SR\\_dashboard](http://themimu.info/Census_2014_SR_dashboard)

<sup>83</sup> Professor Callahan points out that the methodology used led to a distorted snapshot of ethnicity in Myanmar. For more information. Callahan, M. 2017. "Distorted, Dangerous Data? Lumyo in the 2014 Myanmar Population and Housing Census," *Sojourn* 32(2):452-478, p.479; see also Lawi Weng. "Census Raises Issue of Ethnic Identities". *The Irrawaddy*, 31 August 2012; Ferguson, J., "Who's Counting?: Ethnicity, Belonging, and the National Census in Burma/Myanmar," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 171, no. 1 (January 1, 2015): 15.

<sup>84</sup> Callahan, M., "Distorted, Dangerous Data? Lumyo in the 2014 Myanmar Population and Housing Census," *Sojourn* 32(2): 2017, p.479.

<sup>85</sup> "2022 Annual Report of the U.S. Commission on International Religious Freedom: Burma," U.S. Commission on International Religious Freedom April 2022, pp.14-16.



Any demographic data involving religion or ethnicity in Myanmar is a highly sensitive matter in Myanmar as it may have far-reaching consequences especially with regards to political representation and the so-called peace process.<sup>86</sup> The controversies surrounding the 2014 census are yet another indication of how fraught the tensions remain around ethnicity and religion, and how these concepts in turn determine who gets to be a member of certain political, legal, and social communities in Myanmar.<sup>87</sup>

### **Box 2: Who are Rohingya?**

The Rohingya people are an ethnic minority group in Western Myanmar (Rakhine State). Although the overwhelming majority of Rohingya identify as Muslim (Sunni), a very small percentage may identify as Christian or Hindu. 'Rohingya' is generally a term of self-identification among the Rohingya community.<sup>88</sup> In Myanmar, those who oppose the recognition of Rohingya as part of Myanmar, often use 'Bengali' instead, invoking a name that emphasises foreignness and erases Rohingya identity.<sup>89</sup> In this context, such terminology is considered deeply racist and offensive.<sup>90</sup>

Over decades, Rohingya people have been increasingly excluded and marginalized in Myanmar. In particular, the implementation of laws related to citizenship and residency have been discriminatorily applied to gradually remove citizenship rights and thus weaken the ties that Rohingya people have with the state.<sup>91</sup> Although neither the Myanmar Constitution nor the 1982 Citizenship Law specifically exclude Rohingya people, the discriminatory intent behind the law, and the implementation of the law and its procedures, has essentially resulted in the denial of citizenship status to Rohingya persons.<sup>92</sup> Along with discriminatory laws, such as the 'race and religion laws' described below, state policies have interfered with the basic rights and freedoms of Rohingya by imposing restrictions on everything from movement, marriage, childbirth, and places of worship.<sup>93</sup>

In response to various uncertainties and anxieties that increased during a period of relative political liberalization (2011 to 2021), several Buddhist protectionist groups emerged, promoting anti-Muslim sentiment that later developed into communal violence that

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<sup>86</sup> *Id.*

<sup>87</sup> Callahan, M. 2017. "Distorted, Dangerous Data? *Lu-myo* in the 2014 Myanmar Population and Housing Census," *Sojourn* 32(2):452-478.

<sup>88</sup> *Freedom of Religion, the Role of the State, and Interreligious Relations in Myanmar*, International Centre for Ethnic Studies and Equitas – International Centre for Human Rights Education, 2018, p.4.

<sup>89</sup> Rahman, S. "Myanmar's 'Rohingya' vs 'Bengali' Hate Speech Debate," *The Diplomat*, 21 December 2019; There is evidence demonstrating that Rohingya have lived in Myanmar for many generations. "All You Can Do is Pray" Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State," Human Rights Watch, 2013, p.16.

<sup>90</sup> Rahman, S. "Myanmar's 'Rohingya' vs 'Bengali' Hate Speech Debate," *The Diplomat*, 21 December 2019

<sup>91</sup> See [Section II: Laws Related to Citizenship](#).

<sup>92</sup> For more detailed discussion, see Nyi Nyi Kyaw, "Unpacking the Presumed Statelessness of Rohingyas," *Journal of Immigrant & Refugee Studies*, 15(3), 2017, pp.269-286.

<sup>93</sup> "Ending Abusive State Policies Against Rohingya Muslims in Myanmar," Fortify Rights, 2014.

disproportionately affected Rohingya communities.<sup>94</sup> Amidst this violence, there were concerted efforts made to exclude Rohingya from political life, using citizenship documentation as the legal basis for marginalizing an entire group of people.<sup>95</sup>

In addition to communal violence, military action taken against the Rohingya has led to Rohingya people becoming one of the largest populations of stateless persons in the world with over 900,000 refugees in a refugee camp in Cox's Bazar, Bangladesh.<sup>96</sup> An estimated 600,000 remain in Rakhine State.<sup>97</sup> In 2017 over 700,000 Rohingya people in Myanmar fled to Bangladesh following a 'clearance operation' carried out by the Myanmar military.<sup>98</sup> The Rohingya who remain in Rakhine State report ongoing persecution, including severe restrictions on their movement and deprivation of their liberty.<sup>99</sup>

The *Tatmadaw* currently face accusations of crimes against humanity and genocide in international courts.<sup>100</sup> There are three significant international investigations or legal cases against the *Tatmadaw* for committing genocide and/or crimes against humanity against the Rohingya. In the International Court of Justice (ICJ), The Gambia, on behalf of the Organization of Islamic Cooperation (OIC), initiated a case alleging state violations of the Geneva Conventions.<sup>101</sup> International Criminal Court (ICC), an ongoing investigation is underway regarding individual criminal responsibility for the persecution of Rohingya who fled to Bangladesh. As Bangladesh is a state party to the Rome Statute, while Myanmar is not, jurisdiction of the ICC (which is formed under the Rome Statute), arguably limits the scope of the case to Bangladesh. In Argentina, a criminal case was filed on the basis of universal

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<sup>94</sup> For an overview, see *Interpreting Communal Violence in Myanmar*, Cheesman, N. (ed.), Routledge, 2018.

<sup>95</sup> See Chapter 8: Political Participation.

<sup>96</sup> As of March 2022. As these numbers are limited to registered persons, the actual number of Rohingya in these countries is likely to be much higher. "Factsheet: Pursuing Justice and Accountability: Next Steps for Rohingya Community of Burma," United States Commission on International Religious Freedom, May 2022. See also "Crisis 101: Rohingya Refugee Crisis Explained," United Nations High Commissioner for Refugees (UNHCR), 13 July 2022; Burma," 2022 Annual Report of the U.S. Commission on International Religious Freedom, April 2022, pp.14-16.

<sup>97</sup> *Id.*

<sup>98</sup> This military clearance operation involved mass killings and the burning of homes, leading to accusations of crime against humanity and genocide. "New Evidence Shows How Myanmar's Military Planned the Rohingya Purge," Reuters, 6 August 2022.

<sup>99</sup> See Chapter 10: Freedom of Movement

<sup>100</sup> Considerable evidence supports the claim of genocide. See, for example, "CIJA Report: Investigation into Crimes Against Minorities in Myanmar," Commission for International Justice and Accountability (CIJA), 2021; "Report of the Independent International Fact-finding Mission on Myanmar," Human Rights Council, 12 September 2018; Green, McManus, de la Cour Venning. "Countdown to Annihilation: Genocide in Myanmar," International State Crime Initiative, 2015; According to a legal and factual assessment conducted by the United States Department of State, using interviews and independent sources, the military has committed acts of genocide and crimes against humanity against the Rohingya. "Factsheet: Pursuing Justice and Accountability: Next Steps for Rohingya Community of Burma," United States Commission on International Religious Freedom, May 2022.

<sup>101</sup> The 1949 Geneva Conventions and their Optional Protocols establish the legal standards for international humanitarian law (in other words, the regulation of armed conduct in times of war, including treatment of civilians).

jurisdiction by several Rohingya human rights organizations, alleging genocide and crimes against humanity.<sup>102</sup>

The Rohingya people have been described as one of the most persecuted minorities in the world.<sup>103</sup>

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<sup>102</sup> Universal jurisdiction refers to crimes under international law, such as genocide and crimes against humanity, that are deemed so serious that all states may have the authority to prosecute from anywhere in the world. For a more detailed discussion, see "Universal Jurisdiction," International Justice Resource Center's website at <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/>

<sup>103</sup> "Press Release: Myanmar's Rohingya Persecuted, Living under Threat of Genocide, UN Experts Say," Office of the United Nations High Commissioner for Human Rights (OHCHR), 16 September 2019.

## CHAPTER 2: DISCRIMINATION

### 2.1 International Standards

- ❖ Every individual is entitled to protection of the law without discrimination on the basis of several protected grounds, including on the basis of religion.
- ❖ Myanmar has an obligation to observe the principle of nondiscrimination as it is a type of customary norm that applies to *all* countries.
- ❖ Both direct and indirect discrimination exist under Myanmar law in violation of domestic and international law.

Under international law, every individual is entitled to the protection of the law without distinction on the basis of several protected grounds, including religion.<sup>104</sup> Along with the principles of equality and equal protection,<sup>105</sup> nondiscrimination is a “fundamental principle that permeates all laws,” for which the “whole legal structure of... international public order rests...”<sup>106</sup> As such, these principles are considered to be peremptory norms binding on all states, regardless of treaty obligations.<sup>107</sup> Even during a state of emergency, states must ensure that no measures are taken that discriminate *solely* on the grounds of race, colour, sex, language, religion, or social origin.<sup>108</sup> Furthermore, states are obliged to prohibit, by law and without derogation, “any advocacy of national, racial or religious hatred which constitutes incitement to discrimination.”<sup>109</sup>

#### Nondiscrimination

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.<sup>110</sup>

- Universal Declaration of Human Rights (UDHR), Article 2

<sup>104</sup> Universal Declaration of Human Rights (UDHR) (1948), Art. 2(1). *See also* International Covenant on Civil and Political Rights (ICCPR) (1966), Art. 2(1) and Art.26; Of the treaties ratified by Myanmar, the relevant provisions specifically related to religion include Convention on the Rights of the Child (CRC) (1990), Art.2 and Art.30 and Convention on the Rights of People with Disabilities (CRPD) (2007), Art.3.

<sup>105</sup> Universal Declaration of Human Rights (UDHR) (1948), Art. 7.

<sup>106</sup> “Juridical Condition and Rights of Undocumented Migrants,” IACtHR, Advisory Opinion OC-18/03, 17 September 2003; “General Comment 18: Non-discrimination,” Human Rights Committee, 1989, para.1.

<sup>107</sup> There are many UN treaties dedicated to different types of discrimination, including International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)(1969), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), and Convention on the Rights of People with Disabilities (CRPD) (2007). Myanmar is a party to both CEDAW, and CERD.

<sup>108</sup> International Covenant on Civil and Political Rights (ICCPR) (1966), Art.4(1).

<sup>109</sup> ICCPR (1966), Art. 20(2). *See* 4.3: Hate Speech.

<sup>110</sup> As indicated by “...or other status,” these grounds are considered illustrative not exhaustive.

### Equal protection

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

- UDHR, Art. 7

Neither the UDHR nor the International Covenant on Civil and Political Rights (ICCPR) clearly define 'discrimination.' According to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), discrimination is "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."<sup>111</sup> Although Myanmar is not a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), this definition provides a definition recognized as authoritative under international law.<sup>112</sup>

This definition does not mean that all groups must be treated identically in all circumstances. For example, specific protections may be granted to persons under 18 years of age due to their relative vulnerability to the general adult population. There may be other circumstances where positive action is necessary to rectify systematic discrimination.<sup>113</sup> Where the rights of a group are impaired due to unequal conditions, states are obliged to take actions which would correct these conditions. This may involve preferential treatment under very limited conditions; any such positive steps must be temporary and only as necessary to correct the discrimination.<sup>114</sup>

Broadly speaking, discrimination can be either direct or indirect. With direct discrimination, a law, rule, policy or behavior is *intended* to discriminate against a specific group or groups. An example of a law that directly discriminates is the 2015 Buddhist Women Special Marriage Law which burdens any marriage between a Muslim man and Buddhist woman with additional state scrutiny and procedural steps before being recognized as legal under Myanmar law.<sup>115</sup> This law directly discriminates against persons based on the intersection of their religious belief and gender.

By contrast, in indirect discrimination, the law, rule, policy, or behavior may not be discriminatory in intent but it nonetheless has a discriminatory effect on at least one specific group. An example of a law that indirectly discriminates against religion minorities is the 1949 Residents of Burma Registration Act. This law requires every person residing in Myanmar to apply for a registration card as proof of identity.<sup>116</sup> While the law itself does not necessarily directly discriminate against

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<sup>111</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)(1969), Art.1(1).

<sup>112</sup> "General Comment 18: Non-discrimination," Human Rights Committee, 1989, para.7.

<sup>113</sup> As recognised in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)(1969), Art.2(2). Indeed, "...the principle of equality sometimes requires States parties to take affirmative action..." "General Comment 18: Non-discrimination," Human Rights Committee, 1989, para.10.

<sup>114</sup> "General Comment 18: Non-discrimination," Human Rights Committee, 1989, para.10.

<sup>115</sup> See [Chapter 6: Race and Religion Laws](#).

<sup>116</sup> Residents of Burma Registration Act (1949), S.4(1).

religious minorities, it has come to unduly burden religious and ethnic minorities due to the highly discriminatory practices associated with accessing identity documents and the relationship of such documentation to citizenship.<sup>117</sup> The law most notably indirectly discriminates against Rohingya people<sup>118</sup> as it has been used by the state to effectively restrict their movement in Myanmar.<sup>119</sup> In this case, the discriminatory impact of the law developed over time as a result of a specific set of conditions.

The 1982 Citizenship Law is an example of a law that directly and indirectly discriminatory against the religious and ethnic minorities. As written, the law directly favours individuals based on ethnic category (*tainqyintha*) and provides a limited pathway for a lower tier of citizenship to persons who are not members of a privileged ethnic category but otherwise meet very limited and specific requirements.<sup>120</sup> Additionally, any unintended discriminatory components of the law nonetheless unduly impact both religious and ethnic minorities through the discriminatory implementation of the law, particularly as a result of the considerable discretion granted to immigration authorities and the lack of independent review and due process protections under the law.<sup>121</sup>

Under the ICCPR, state parties are required to ensure they take effective measures to prevent and eliminate all forms of discrimination on the grounds of religion or belief as it is a fundamental human right to be enjoyed by every individual without discrimination.<sup>122</sup> Even though Myanmar is not a state party to the ICCPR, as mentioned above, Myanmar still has an obligation to observe the peremptory norm of nondiscrimination. This obligation applies to laws that both directly and indirectly discriminate against religious minorities.

## 2.2 Myanmar Law

- ❖ The Myanmar Constitution protects only its citizens from discrimination on the basis of enumerated categories.
- ❖ At the same time, the Constitution protects the right to equal protection and equality before the law for all persons.
- ❖ The Constitution's complete and blanket exclusion of noncitizens from the discrimination clause impermissibly discriminates against noncitizens in contravention of international law and remains inconsistent with its own equal protection and equality of law provisions.

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<sup>117</sup> See [Chapter 7: Citizenship](#).

<sup>118</sup> "Myanmar: Rohingya Jailed for Traveling," Human Rights Watch, 8 October 2019. See also [Box 2: Who are Rohingya?](#)

<sup>119</sup> Specifically, in the past decade in particular, this law has been used most commonly to prosecute Rohingya for traveling without official authorization. See [10.3: Travel Restrictions Targeting the Rohingya Population](#).

<sup>120</sup> See [7.3: Myanmar Citizenship Law](#).

<sup>121</sup> See [7.4: Challenges to Accessing Citizenship](#).

<sup>122</sup> International Covenant on Civil and Political Rights (ICCPR) (1966), Art.2(1)-(3). This includes the right to a remedy. Universal Declaration of Human Rights (UDHR) (1948), Art. 2(3)(a)-(c).

The Myanmar Constitution only protects *citizens* from discrimination on the basis of race, birth, religion, official position, status, culture, sex and wealth.<sup>123</sup> The discrimination clause under both the UDHR and ICCPR list the same protected and open-ended categories (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) which apply to all persons with respect to the fundamental rights and freedoms guaranteed under these international instruments.<sup>124</sup> Notably, while race, sex, religion, and birth are also protected under the Myanmar Constitution, the category of colour, language, political or other opinion, national or social origin, and property are notably not included in the nondiscrimination clause. Also, unlike in the UDHR or ICCPR, this clause may be interpreted as a closed list, and not open to the addition of other protected categories.

#### The Principle of Non-discrimination

The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

- Constitution (2008), Article 348

The restriction of the Constitution's nondiscrimination clause under Article 348 to only citizens arguably conflicts with the right to equal protection and equality before the law for *all persons* under Article 347.<sup>125</sup>

#### The Principle of Equal Protection and Equality

The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.

- Constitution (2008), Article 347

As a general rule, citizens and noncitizens are to enjoy the same fundamental rights and freedom without distinction under international law. Specifically, under the ICCPR, any distinctions between citizens and noncitizens are limited in that it must serve a legitimate state objective and be proportional to the achievement of that objective.<sup>126</sup> As such, the complete and blanket exclusion of noncitizens from the discrimination clause under the Myanmar constitution impermissibly discriminates against noncitizens in contravention of international law.

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<sup>123</sup> Constitution (2008), Art.348.

<sup>124</sup> Universal Declaration of Human Rights (UDHR) (1948), Art. 2; International Covenant on Civil and Political Rights (ICCPR) (1966), Art.2(1).

<sup>125</sup> Constitution (2008), Art. 347.

<sup>126</sup> "CCPR General Comment No. 15: The Position of Aliens Under the Covenant," UN Human Rights Committee (HRC), 11 April 1986; See also [2.3: Discrimination Against Noncitizens](#) below.

## 2.3 Discrimination Against Noncitizens

- ❖ Citizens and noncitizens should generally enjoy the same fundamental rights and freedom without distinction under international law.
- ❖ In Myanmar, there are many overly broad legal provisions that exclude noncitizens from realizing fundamental rights and freedoms under the law.
- ❖ Given Myanmar’s highly discriminatory citizenship framework, any rights and protections excluding noncitizens, effectively also excludes a disproportionate number of religious minorities.

### Distinction between citizens and noncitizens under international law

Citizens and noncitizens should generally enjoy the same fundamental rights and freedom without distinction under international law.<sup>127</sup> The ICCPR makes only one clear distinction between citizens and noncitizens by restricting political participation rights to citizens, such as the right to vote and be elected to political office.<sup>128</sup> Notably, even these restrictions must not otherwise violate the nondiscrimination clause or include other “unreasonable restrictions.”<sup>129</sup>

The only other distinction under the ICCPR is between people who are “lawfully within the territory” of a country and persons who are not.<sup>130</sup> This distinction relates specifically to liberty of movement and freedom to choose one’s own residence. These restrictions must also be (1) provided by law, (2) based on legitimate grounds, and (3) necessary and proportionate.<sup>131</sup>

Aside from these narrow exceptions, both citizens and noncitizens should enjoy the same fundamental rights. Any distinctions between citizens and noncitizens should be limited in that it must serve a legitimate state objective and be proportional to the achievement of that objective.<sup>132</sup> Additionally, any distinctions made to the rights under the ICCPR must be consistent with other rights in the treaty, most notably ensuring equality, equal protection, and nondiscrimination.

### Distinction between citizens and noncitizens under Myanmar law

In Myanmar, there are many overly broad legal provisions that exclude noncitizens from realizing fundamental rights and freedoms under the law. Under the Myanmar Constitution, all persons have the right to life, equality before the law, and equal protection.<sup>133</sup> However, many other fundamental freedoms and protections under the Constitution are limited to citizens, including

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<sup>127</sup> ICERD does not distinguish between citizens and noncitizens in protecting rights of individuals. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)(1969), Art.1(2).

<sup>128</sup> See [Chapter 8: Political Participation](#).

<sup>129</sup> International Covenant on Civil and Political Rights (ICCPR (1966), Art. 25.

<sup>130</sup> *Id.* at Art. 12(1).

<sup>131</sup> *Id.* at Art. 12(3). Legitimate grounds are as follows: national security, public order public health or morals, or the rights and freedoms of others. See [Chapter 10: Freedom of Movement](#).

<sup>132</sup> “CCPR General Comment No. 15: The Position of Aliens Under the Covenant,” UN Human Rights Committee (HRC), 11 April 1986.

<sup>133</sup> Constitution (2008), Art. 353 and Art. 347.



two of the most fundamental principles which must apply to all persons under international law: due process and the nondiscrimination clause.<sup>134</sup> As will be discussed further below, the right to religion is also restricted to citizens under Myanmar law in contravention of international standards.<sup>135</sup>

Other laws also reinforce the distinction between citizens and noncitizens in Myanmar. For example, the Myanmar Constitution only allows citizens to peacefully assemble and protest,<sup>136</sup> a limitation also reflected in the 2016 Law Relating to Peaceful Assembly and Peaceful Procession Act.<sup>137</sup> Anyone who fails to comply with the law, such as noncitizens who peacefully assemble in protest, may be subject to a prison term as well as possible fines.<sup>138</sup> Under international law, the right to peacefully assemble is the very foundation of democracy, human rights, and the rule of law. As such it must apply to all persons, regardless of citizenship status.<sup>139</sup>

In Myanmar, the Constitution reserves key fundamental freedoms to citizens, in contravention to international standards. Therefore, given Myanmar's highly discriminatory citizenship framework, any rights and protections excluding noncitizens under Myanmar law, effectively also excludes a disproportionate number of religious minorities.<sup>140</sup>

## 2.4 Religious Discrimination in Context

Religious and ethnic identity are conflated, overlapping, and unstable categories in Myanmar. As discussed in the previous chapter, for political and historical reasons, the military state has long intertwined nationhood with both Bamar ethnic identity and Buddhist religious identity.<sup>141</sup> The consequences of this mindset resulted in ongoing systemic and institutionalised discrimination against religious and ethnic minorities in Myanmar.<sup>142</sup>

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<sup>134</sup> Constitution (2008), Art.381 and Art 348; "CCPR General Comment No. 15: The Position of Aliens Under the Covenant," UN Human Rights Committee (HRC), 11 April 1986.

<sup>135</sup> Constitution (2008), Art. 34.

<sup>136</sup> Constitution (2008), Art. 354(b).

<sup>137</sup> Only citizens are permitted to apply for the necessary notification to legally assemble and protest. Law Relating to Peaceful Assembly and Peaceful Procession Act (2016), S.4.

<sup>138</sup> Law relating to Peaceful Assembly and Peaceful Procession (2016), Ss.18-19.

<sup>139</sup> International Covenant on Civil and Political Rights (ICCPR)(1966), Art.21; "CCPR General Comment No. 37: On the Right of Peaceful Assembly," UN Human Rights Committee (HRC), 17 September 2020.

<sup>140</sup> See [Chapter 7: Citizenship](#).

<sup>141</sup> As is evident in this commonly referenced slogan: "to be [Bamar] is to be Buddhist." This expression initially became popular in relation to independence from the British rule but has since been commonly invoked in Buddhist nationalist movements. Also note, the expression is more frequently referred to in translation as: "[t]o be *Burmese* is to be Buddhist." This document uses the term Bamar rather than Burmese.

<sup>142</sup> See perceptions of citizenship and religion. Welsh, B. and Huang, K., "Myanmar's Political Aspirations & Perceptions 2015 Asian Barometer Survey Report," Center for East Asia Democratic Studies, National Taiwan University, Strategic Information and Research Development Centre, 2016, pp. 48-53; Since 1999, the US State Department has designated the country as a "Country of Particular Concern" for having "engaged in or tolerated particularly severe violations of religious freedom." "2021 Report on International Religious Freedom," US Department of State's Office of International Religious Freedom, 2 June 2022, p.4.

There is a great diversity of religious practices in Myanmar for which there are correspondingly complex socio-historically and geographically contingent patterns of discrimination that vary not only from one religious group to the next but also from one geographic location to the next. For example, discrimination by the state against Christians in Kachin State may in some instances specifically related to the perceived threat of Christian communities to military state power, particularly in areas where Christians are associated with Ethnic Armed Groups (EAGs). Discrimination in these instances may also manifest in the form of bans on the importation of Bibles or even state-sponsored violence such as the burning of churches in areas where EAGs are known to reside.<sup>143</sup> The more prominent types of discrimination experienced by Christians in Myanmar may be in the form of unequal treatment, particularly in civil servant positions or in ability to establish places of worship in the face of long bureaucratic delays.<sup>144</sup> Christians also report facing challenges in acquiring citizenship and access to other basic rights and services.<sup>145</sup>

Like Christians in Myanmar, the nature of discrimination faced by Muslims is also historically complex and geographically contingent. Within the Muslim population alone there are many distinct groups that do not overlap such as Rohingya and Kaman Muslims. Both ethnic groups are predominantly Muslim and reside largely in Rakhine State but are linguistically and culturally distinct.<sup>146</sup> Notably, the Kaman are the only Muslim group recognised as *taingyintha* while Rohingya are often referred to, both officially by the state and unofficially, as ‘Bengali,’ which in this context is a derogatory term that emphasizes their ‘foreign’ origins.<sup>147</sup> There are historical reasons for such sentiments which distinguish the Rohingya experience of discrimination from Kaman Muslim experience, such as Kaman Muslims tie their origins in Rakhine State to their role as archers in royal military units in Rakhine tracing back to the late 1600s, while the origins of Rohingya in Myanmar has many different iterations accompanied by a less straight-forward narrative.<sup>148</sup> For example, there were significant migrations from Chittagong to Rakhine State with the encouragement of the British colonial administration, which reportedly led to resentment among Rakhine Buddhists and the scapegoating of such migrants for socio-economic problems that persist to this day.<sup>149</sup> In the last decade prior to the coup in 2021, both new and old socio-political anxieties and prejudices against Muslims were stoked by military and extremist groups largely in response to a period of political transition that threatened their power and authority in new ways. Unlike other religious minorities, Muslims, and particularly Rohingya, became the primary target of racist, xenophobic rhetoric that at times led to communal and state violence.<sup>150</sup>

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<sup>143</sup> Lehmann, A. “Religious minorities face persecution in Myanmar,” Deutsche Welle (DW), 14 October 2010.

<sup>144</sup> For more information, see “Hidden Plight: Christian Minorities in Burma,” December 2016, p. 20.

<sup>145</sup> See [Chapter 7: Citizenship](#).

<sup>146</sup> “The Dark Side of Transition: Violence Against Muslims in Myanmar,” International Crisis Group (ICG), 1 October 2013.

<sup>147</sup> See [Box 2: Who are the Rohingya?](#)

<sup>148</sup> This is one of many narratives and migrations that took place, including several that place Rohingya in Myanmar at an earlier date.

<sup>149</sup> “The Dark Side of Transition: Violence Against Muslims in Myanmar,” International Crisis Group (ICG), 1 October 2013.

<sup>150</sup> See [Chapter 1: Introduction](#) and [Box 2: Who are the Rohingya?](#)

More recently, rising anti-Muslim sentiment has spread to not only Muslims<sup>151</sup> but to persons who are perceived to be Muslim, such as more broadly to persons of South Asian appearance. Hindu, Sikh, and persons who engage in other types of religious practices may face discrimination in Myanmar for their actual religion or a mistaken perception of Muslim identity. South Asians, in particular, have faced discrimination, including communal violence, for specific historically contextual reasons unrelated anti-Muslim sentiment.

While religious and racial tensions can be seen in flashpoints of communal violence throughout the country's history, from the riots against South Asians in the 1930s and Chinese communities in the 1960s to the current iteration of religious tensions erupting in violence against Muslims and persons of South Asian appearance in the past decade, these moments are socio-politically and historically contingent.<sup>152</sup> Religious and racial tensions are not, and have never been, static or even irreconcilable in Myanmar.

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<sup>151</sup> Kaman people have experienced targeted discrimination as Muslims, including arson that destroyed many homes during one of many acts of communal violence in Rakhine in 2012. Su Myat Mon, "The Kaman: Citizens who suffer," *Frontier Magazine*, 28 May 2018.

<sup>152</sup> These dates are presented by way of example. There are many other well-documented instances of communal violence against religious and ethnic minorities in Myanmar that are not listed here. For example, Ho, E. and Chua, L., "Law and 'race' in the citizenship spaces of Myanmar: spatial strategies and the political subjectivity of the Burmese Chinese, *Ethnic and Racial Studies*," 39:5, 2016, pp.896-916 and "Buddhism and State Power," *International Crisis Group*, Report No. 209, 5 September 2017.

## CHAPTER 3: FREEDOM OF RELIGION OR BELIEF

### 3.1 Introduction

- ❖ Freedom of religion or belief involves a bundle of rights, including:
  - Freedom to profess a religion of one's choosing
  - Freedom to change one's beliefs and adopt a religion or belief of one's choosing
  - Freedom to manifest one's religion, including the right to establish a place of worship and to assemble in relation to religion.
- ❖ Myanmar has obligations to protect freedom of religion under both customary law and as a state party to legally binding treaties.

Freedom of religion is a fundamental and universal human right recognized and enshrined under all the major human rights treaties and international documents, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>153</sup> Freedom of religion under international law applies to all forms of religions and beliefs, including agnostic and atheistic beliefs.<sup>154</sup> Freedom of religion is intertwined with the principle of nondiscrimination, equality before the law and equal protection under international standards.<sup>155</sup> Discrimination on the basis of religion is prohibited under international law,<sup>156</sup> even during a state of emergency.<sup>157</sup> Myanmar has obligations to protect freedom of religion under both customary law and as a state party to legally binding treaties.<sup>158</sup>

#### Right to freedom of religion:

Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change [one's] religion or belief...

- UDHR, Article 18

International law guarantees freedom of thought, conscience, and religion which includes the right to worship and otherwise practice one's religion or beliefs. The right to manifest one's

<sup>153</sup> See also UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981). This document is a declaration, so while it is not binding, it provides authoritative guidance.

<sup>154</sup> "CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)," 30 July 1993, UN Human Rights Committee (HRC), para. 2.

<sup>155</sup> See Chapter 2: Discrimination

<sup>156</sup> Universal Declaration of Human Rights (UDHR)(1948), Art.2; International Covenant on Civil and Political Rights (ICCPR) (1966), Art. 2.

<sup>157</sup> States must ensure that no measures are taken that discriminate *solely* on the grounds of race, colour, sex, language, religion, or social origin. International Covenant on Civil and Political Rights (ICCPR) (1966), Art.4(1).

<sup>158</sup> "CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)," 30 July 1993, UN Human Rights Committee (HRC), para. 3; Convention on the Rights of the Child (CRC) (1989), Art.14(3).

religion includes the right to worship which includes ceremonial acts, establish places of worship, and assemble in connection with religious practice.<sup>159</sup>

The right to establish places of worship and assemble in connection with religious practice is an essential element for the manifestation of the right to freedom of religion or belief guaranteed under international law.<sup>160</sup> According to the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination, states are to ensure the protection of religious sites, including taking additional measures where the sites are vulnerable to destruction.<sup>161</sup> During times of war, places of worship are considered 'cultural property' and protection of such cultural property comprises of safeguarding the property.<sup>162</sup> Places of worship must never be treated as 'military objectives.'<sup>163</sup>

Freedom of religion also includes the right have or to adopt a religion or belief of one's choosing.<sup>164</sup> The ICCPR also specifically enshrines the right to be free from coercion in relation to having or adopting religious beliefs.<sup>165</sup> In the case of religious minorities, the ICCPR highlights the need for special protection by providing a separate provision for individuals belonging to minority groups.<sup>166</sup>

#### Right of religious or linguistic minorities to practice their own culture

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

- ICCPR, Article 27

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<sup>159</sup> "The concept of worship extends to [...] the building of places of worship." "CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)," 30 July 1993, UN Human Rights Committee (HRC), para. 4. The ICCPR also protects the right to association. International Covenant on Civil and Political Rights (1966), Art.22.

<sup>160</sup> "The concept of worship extends to [...] the building of places of worship." "CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)," 30 July 1993, UN Human Rights Committee (HRC), para. 4; "Report submitted by Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief," 20 December 2004, para.50.

<sup>161</sup> 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination, Art. 6(a); *see also* "Protection of Religious Sites," General Assembly Resolution 55/254, 31 May 2001.

<sup>162</sup> The Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954), Art.1 and Art.2 .

<sup>163</sup> Henckaerts, J., & Doswald-Beck, L., *Customary International Humanitarian Law: Volume I: Rules*, Cambridge University Press, 2005.

<sup>164</sup> International Covenant on Civil and Political Rights (1966), Art.18(1)-(2)

<sup>165</sup> International Covenant on Civil and Political Rights (1966), Art.18(2).

<sup>166</sup> International Covenant on Civil and Political Rights (1966), Art. 27.

## 3.2 Restrictions on the Right to Religion

- ❖ International standards do not permit any type of restriction on the right to have a religion or belief or to adopt a religious belief of one's choosing.
- ❖ The right to adopt a religion or belief of one's own choosing is a fundamental right that cannot be restricted by the state.
- ❖ The right to practice religion and otherwise manifest religious beliefs may be restricted. This can occur, without discrimination, as follows:
  - As prescribed by law, *and*
  - Only to the extent necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

International standards do not permit restrictions on the right to have a religion or belief or to adopt a religion or belief of one's choosing.<sup>167</sup> The right to *manifest* one's religion or belief, however, can be restricted in very limited circumstances.<sup>168</sup> Restrictions on the practice of religion is permitted under the ICCPR in limited circumstances: (1) as prescribed by law, and (2) as necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Although Myanmar is not a party to the ICCPR, these restrictions carry authoritative weight in relation to international standards.

Where restrictions are applied to a person under 18 years of age, as a state party to the Convention on the Rights of the Child (CRC), Myanmar is obliged to respect the same restrictions to freedom of religion as provided for under the ICCPR.<sup>169</sup>

### Restrictions on the right to religion

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 fundamental rights and freedoms of others.

- ICCPR, Article 18(3)

Under the ICCPR, any legal restrictions must be limited in scope and narrowly-tailored. The restrictions must be written and implemented only as strictly necessary to directly achieve one of the listed grounds.<sup>170</sup> For example, protecting 'traditional religions' is not considered a legitimate ground for restricting the practice of religion but limitations on crowd gatherings to protect public health due to the spread of Covid-19 may be considered legitimate depending on

<sup>167</sup> In other words, the right to have a religion or belief is non-derogable. "CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)," 30 July 1993, UN Human Rights Committee (HRC), para. 3.

<sup>168</sup> *Id.*

<sup>169</sup> Convention on the Rights of the Child (CRC) (1989), Art.14(3).

<sup>170</sup> "CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)," 30 July 1993, UN Human Rights Committee (HRC), para. 8.

the context.<sup>171</sup> Moreover, as is the case under all international law standards, any form of restriction on the freedom to manifest one's religion or belief must be not be discriminatorily applied.<sup>172</sup>

### 3.3 Myanmar Law

- ❖ The 2008 Myanmar Constitution guarantees citizens the right to freely profess and practice religion.
  - This right is subject to public order, morality, health, or other provisions in the Constitution.
- ❖ The right to religion under Myanmar law unduly discriminates against noncitizens, in contravention of international law.

Although the Myanmar Constitution guarantees every citizen the right to freely profess and practice religion, it is subject to vaguely-worded and overly broad restrictions related to public order, morality, health, or other provisions in the Constitution.<sup>173</sup> As described in the following chapters, there are many provisions under Myanmar law that contradict this right, such as the 2015 Religious Conversion Law and blasphemy laws. Notably, under international law, the right to religion must not be restricted only to citizens.<sup>174</sup>

#### Right to religion or belief

Every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to the other provisions of this Constitution.

- Constitution (2008), Article 34.

The Constitution prohibits discrimination against citizens based on religion, amongst other criteria.<sup>175</sup> Given Myanmar's highly discriminatory citizenship framework, any rights and

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<sup>171</sup> In 2020-2021, the restrictions placed on religious freedom in Myanmar in relation to curfews and gatherings of people due to Covid-19 concerns were justified on the legitimate grounds of public health. Nonetheless, the measures taken were not proportionate for many reasons but most notably due to the imposition of criminal penalties. Criminal penalties must never be imposed except for the most serious crimes, especially where non-criminal measures (such as fines) are deemed sufficient. "Challenges to Freedom of Religion or Belief in Myanmar," International Commission of Jurists (ICJ), October 2019, p.12.

<sup>172</sup> Universal Declaration of Human Rights (1948), Art. 2 and Art. 7; International Covenant on Civil and Political Rights (1966), Art. 2(1). The principle of non-discrimination applies to all states, regardless of whether or not they are a state party to any international treaty.

<sup>173</sup> 2008 Constitution, Art.34.

<sup>174</sup> The right to religion should also be applied to all persons and not just citizens. "CCPR General Comment No. 15: The Position of Aliens Under the Covenant," UN Human Rights Committee (HRC), 11 April 1986, para. 7. See [2.3: Discrimination against Noncitizens](#)

<sup>175</sup> Constitution (2008), Art.348. Under international law, the principle of non-discrimination applies to all persons, regardless of citizenship status. Universal Declaration of Human Rights (1948), Art. 2 and Art. 7; International Covenant on Civil and Political Rights (1966), Art. 2(1).

protections excluding non-citizens, effectively also excludes a disproportionate number of religious minorities.<sup>176</sup>

Under Myanmar law, there are various ways in which the state interferes with the right to establish places of worship and assemble for religious purposes. These range from administrative governance, building codes, public health regulations, and even the outright destruction of religious sites and property, such as churches and mosques.<sup>177</sup> At the same time, Buddhist monasteries and pagodas as well as religious ceremonies are promoted and supported by the state.<sup>178</sup> The 2008 Constitution does not have any explicit provisions that guarantee the protection of places of worship either in times of armed-conflict or times of peace.

There are laws that offer protection for places of worship including the Myanmar's Penal Code (1861), the Defence Service Act (1959) and the Ward and Village Tract Administration Law (2012). For example, a Ward or Village Administrator is required to safeguard the right to carry out matters relating to religion among residents within the official's township or village.<sup>179</sup> At the same time, however, a Ward or Village Administrator also has the authority to determine whether or not a person may hold a ceremony, subject to criminal penalties.<sup>180</sup> The existing protections under Myanmar law place considerable discretionary power in the hands of individual state authorities while failing to provide the necessary safeguards to protect freedom of religion in contravention of both domestic and international law.

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<sup>176</sup> See [Chapter 7: Citizenship](#).

<sup>177</sup> For some examples, "Myanmar cardinal calls for end to violence after church attack," Al Jazeera, 26 May 2021; "As Ramadan begins, soldiers attack sleeping Muslims at Mandalay mosque," Myanmar Now, 15 April 2021; "2022 Annual Report of the U.S. Commission on International Religious Freedom," April 2022.

<sup>178</sup> Fleming, R., "Hidden Plight: Christian Minorities in Burma," United States Commission on International Religious Freedom (USCIRF), December 2016.

<sup>179</sup> Ward and Village Tract Administration Law (2012), S.24.

<sup>180</sup> Ward and Village Tract Administration Law (2012), S.24; S. 26.



## CHAPTER 4: FREEDOM OF OPINION AND EXPRESSION

### 4.1 Introduction

- ❖ Freedom of opinion and expression is a fundamental right.
- ❖ Freedom of opinion and expression includes:
  - The right to hold opinions without interference
  - The right to seek, receive, and impart information
- ❖ There can be no restrictions on the freedom to hold beliefs or opinions, including religious beliefs.
- ❖ The freedom to express one's beliefs or opinions, by contrast, can be restricted but only in limited circumstances.

Freedom of opinion and expression is a fundamental right, it includes the right to hold opinions without interference and the right to express opinions.<sup>181</sup> As a party to the Convention on the Rights of the Child (CRC), Myanmar is also obliged to respect a child's freedom of expression.<sup>182</sup>

Under international law, there can be no restrictions on the freedom to hold beliefs or opinions, including religious beliefs. In other words, freedom to hold a beliefs or opinions is non-derogable even in a state of emergency.<sup>183</sup> By contrast, there may be, in some limited circumstances, restrictions on the *expression* of these opinions and belief.<sup>184</sup>

#### Freedom of expression under international law

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.  
-International Covenant on Civil and Political Rights (ICCPR), Article 19

#### Freedom of expression under Myanmar law

Every citizen shall be at liberty... to express and publish freely their convictions and opinions.  
-Constitution (2008), Article 354(a)

Under Myanmar law, freedom of expression is guaranteed only to citizens. Myanmar's highly discriminatory citizenship framework virtually ensures that any rights and protections excluding non-citizens effectively also disproportionately impacts religious minorities.<sup>185</sup> Such a

<sup>181</sup> Universal Declaration of Human Rights (UDHR)(1948), Art. 19; International Covenant on Civil and Political Rights (ICCPR)(1966), Art. 19.

<sup>182</sup> Convention on the Rights of the Child (CRC)(1989), Art. 13. A child is a person below the age of 18 years. Convention on the Rights of the Child (CRC)(1989), Art. 1; see also Myanmar's Child Rights Law (2019), S.3(b).

<sup>183</sup> "General Comment 34: Article 19: Freedom of Opinion and Expression," Human Rights Committee, 12 September 2011, para. 5.

<sup>184</sup> International Covenant on Civil and Political Rights (ICCPR)(1966), Art.19(3)(a)-(b).

<sup>185</sup> See [Chapter 7: Citizenship](#).

discriminatory provision imposed on a fundamental freedom is in violation of international standards.<sup>186</sup>

## 4.2 Restrictions on Freedom of Expression

- ❖ Unlike the freedom to hold beliefs or opinions, the freedom to express one's opinions or beliefs can be restricted but only in limited circumstances.
- ❖ Under international law, permissible restrictions on expression must meet three-part test:
  - (1) Provided by law
  - (2) Based on legitimate grounds
  - (3) Necessary and proportionate to the legitimate grounds

Unlike the freedom to hold beliefs or opinions, the freedom to express one's opinions or beliefs can be restricted but only in limited circumstances. According to the ICCPR, restrictions on the expression of beliefs and opinions must meet a three-part test in order to meet international standards:<sup>187</sup> the restriction must be (1) provided by law, (2) based on legitimate grounds, and (3) necessary and proportionate.<sup>188</sup>

### Permissible restrictions on freedom of expression under international law

Freedom of speech may be restricted as provided by law and are necessary (a) "for respect of the rights or reputations of others," or (b) "for the protection of national security or of public order... or of public health or morals."

- ICCPR, Article 19(3)

### Provided by law

Firstly, all restrictions on the freedom of expression must be written as law. Laws must be publicly accessible and meet the principle of legality as written. In other words, the laws should not be so vaguely worded or overly broad that it effectively grants unfettered discretion to state authorities.<sup>189</sup> In Myanmar, laws that criminalise offences against religion, including but not limited to expression of belief or opinion, fail to meet the standards of legality.<sup>190</sup>

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<sup>186</sup> "General Comment 34: Article 19: Freedom of Opinion and Expression," Human Rights Committee, 12 September 2011, para. 26; "CCPR General Comment No. 15: The Position of Aliens Under the Covenant," UN Human Rights Committee (HRC), 11 April 1986, para. 7.

<sup>187</sup> Although Myanmar is not a party to the ICCPR, the treaty and subsequent expert interpretations of the treaty published by the Human Rights Council, serve as an authoritative guidance on international standards on the topic.

<sup>188</sup> International Covenant on Civil and Political Rights (ICCPR)(1966), Article 19(3). These restrictions are mirrored in the Convention on the Rights of the Child (CRC) of which Myanmar is a party. Convention on the Rights of the Child (CRC)(1989), Art.13(2)(a)-(b).

<sup>189</sup> "General Comment 34: Article 19: Freedom of Opinion and Expression," Human Rights Committee, 12 September 2011, para. 25.

<sup>190</sup> See Chapter 5: Blasphemy.

### Legitimate grounds

Secondly, legitimate grounds for restricting any expression of beliefs or opinions under international law are limited to "[f]or respect of the rights or reputations of others" or "protection of national security or of public order... or of public health or morals."<sup>191</sup> For example, regarding restrictions "[f]or respect of the rights or reputations of others," there must also be demonstrable harm to the rights or reputation of others. As described further below, laws protecting the reputation of others (defamation laws), for example, must not simply penalise only offensive or disagreeable speech but also show actual harm to another person's rights or reputation.

By contrast, where the speech is intended to incite acts of discrimination, hostility or violence against a protected group, as is the case with hate speech, this type of restriction may meet one of the many legitimate grounds for permissible restrictions on expression under international law, such as national security or public order.

#### Permissible restrictions on freedom of expression under Myanmar law

Every citizen shall be at liberty in the exercise of the [right to express and publish freely their convictions and opinions]... if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality.

-Constitution (2008), Article 354(a)

In Myanmar, the constitutional right to express convictions and opinions is permissible on the grounds that that such law was enacted for the purposes of national security, law and order, community peace and tranquility or public order and morality.<sup>192</sup> In Myanmar, there are many laws that regulate speech, some of which are justified under the vague purposes provided for under the Constitution.

#### **Box 3: Media Laws in Myanmar**

Freedom of expression includes media freedom and the right to information. As free media is the basis of a free and democratic society, restrictions on media for solely being critical of persons in power can never be considered a legitimate grounds for restriction on freedom of expression.<sup>193</sup>

Laws in Myanmar that threaten freedom of expression and interfere with the right to access information include the Official Secrets Act (1923), Electronic Transactions Law (2004), the Law Protecting the Privacy and Security of Citizens (2017), and the Telecommunications Law (2013). The overly broad provisions of the Telecommunications Law, for example, have long been deployed by political elites to restrict expression in Myanmar. The most commonly-invoked

<sup>191</sup> International Covenant on Civil and Political Rights (ICCPR)(1966), Art.19(3)(a)-(b).

<sup>192</sup> Constitution (2008), Art.354.

<sup>193</sup> "General Comment 34: Article 19: Freedom of Opinion and Expression," Human Rights Committee, 12 September 2011, para. 42.

provision under this law punishes the “...defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications network” with two years in prison.<sup>194</sup> Similarly, the sharing of incorrect information can also incur a prison term of three years.<sup>195</sup>

In 2020, the Telecommunications Law was used to specifically block public access to a variety of websites, including many so-called ‘ethnic media outlets,’ such as Development Media Group (DMG), Karen News, and several Rohingya websites.<sup>196</sup> The Ministry of Transportation and Communications used Section 77 of the Telecommunications Law to shutdown internet service providers, blocking 2,147 websites in total.<sup>197</sup> The justification for the restrictions was on the grounds of public health, which in this case was to prevent the spread of false information about COVID-19.<sup>198</sup> In reality, a large number of ethnic media outlets were silenced in particular while state-run media continued to operate as before. This use of the law’s overly broad provision silenced expression beyond what was necessary to meet the permissible restricted grounds under both the Myanmar Constitution and international standards. In Myanmar, although freedom of expression in the media has always been under consistent attack from the state, a slew of laws and amendments have been introduced that limit media freedom since the military coup in 2021.<sup>199</sup>

### Necessary and proportionate

Lastly, restrictions on freedom of expression under international law may be imposed only as necessary and proportionate. In other words, a law must, at a minimum, be narrowly-tailored with a direct connection between the grounds for the restriction and the expression restricted.<sup>200</sup> The restriction must also be the *least intrusive* option available in order to protect a legitimate ground. In Myanmar, there are many laws that disproportionately punish expression and silence freedom of speech, such as defamation laws and laws regulating the media.

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<sup>194</sup> Telecommunications Law (2013), S.66(d); 2017 Telecommunication Law Amending Law, S.4, amending 2013 Telecommunication Law, S.66(d); In order to file a claim, prior permission from the Ministry of Transport and Communications is required. 2017 Telecommunication Law Amending Law, S.5.

<sup>195</sup> 2017 Telecommunication Law Amending Law, S.3, amending 2013 Telecommunication Law, S.68(a).

<sup>196</sup> “Myanmar: Immediately lift ban on ethnic news websites,” Article 19, 1 April 2020.

<sup>197</sup> Under this law, the Ministry of Transport and Communications has the power to shutdown, interrupt, obtain necessary information, and control telecommunications in “emergency situations” for the public interest. Telecommunications Law (2013), S.77.

<sup>198</sup> “Myanmar blocks activist website, saying it spreads fake news,” Reuters, 1 September 2020.

<sup>199</sup> After the coup, various laws and orders were invoked to silence media and other critics, including orders imposing internet curfews, the banning of Virtual Private Networks (VPNs), and revoking of media licenses. See “The Revolution Will not be Broadcast – Myanmar: IFJ Situation Report 2022,” International Federation of Journalists (IFJ), 2 November 2022.

<sup>200</sup> “General Comment 34: Article 19: Freedom of Opinion and Expression,” Human Rights Committee, 12 September 2011, para. 22 and para. 35.

#### **Box 4: Criminal Defamation in the Myanmar Penal Code**

Defamation laws can protect people from false statements that cause damage to their reputation. Where the expression of belief or opinion demonstrably harms the rights or reputations of others, defamation laws may meet one of the legitimate grounds under the ICCPR.<sup>201</sup> These laws, however, are often vulnerable to abuse as they can be used to silence expression, particularly when written using vague and overly broad terms.

There are many laws that penalise defamatory statements in Myanmar. In the Penal Code, defamatory statements may receive a penalty of up to two years in prison.<sup>202</sup> Under this provision, anyone who expresses any imputation<sup>203</sup> concerning another person, intending harm (or having reason to believe that harm would result) is guilty of criminal defamation.<sup>204</sup> The law is exceptionally broad without regard to further restrictions such as protecting expression that is in the public interest.<sup>205</sup> This law has been used in a wide variety of ways, including to impermissibly criminalise expression such as an anti-war protest.<sup>206</sup>

Defamation laws are subject to criminal penalties in Myanmar. Under international standards, imprisonment for making defamatory statements is generally considered to be disproportionate penalty for defamation, as criminal penalties should only be used as a last resort in the most serious of cases.<sup>207</sup> Civil penalties, such as fines, are more appropriate. Civil penalties are consistent with the principle of proportionality as it may be the least restrictive manner in which to protect harm to the rights and reputation of others.

This provision, along with the many other provisions under Myanmar law that penalise defamatory statements, impermissibly restricts and punish the expression of beliefs and opinions in violation of international law.<sup>208</sup>

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<sup>201</sup> Notably, on the basis of “respect of the rights or reputations of others.” International Covenant on Civil and Political Rights (ICCPR)(1966), Art.19(3)(a).

<sup>202</sup> Penal Code (1861), S.500.

<sup>203</sup> *See also* Explanation 4. Penal Code (1861), S.499.

<sup>204</sup> Penal Code (1861), S.499.

<sup>205</sup> Truth is a defense to the charge of defamation under Myanmar law. Penal Code (1861), S.499.

<sup>206</sup> For more examples of how the provision has been used against political opponents, see “Dashed Hopes: The Criminalisation of Peaceful Expression in Myanmar,” Human Rights Watch, 2019, pp.27-30.

<sup>207</sup> “General Comment 34: Article 19: Freedom of Opinion and Expression,” Human Rights Committee, 12 September 2011, para. 47.

<sup>208</sup> For an overview of laws that criminalise free expression in Myanmar, see “Myanmar Briefing Paper: Criminalisation of Free Expression,” Article 19, May 2019.

## 4.3 Hate Speech

- ❖ Hate speech is speech that is intended to incite listeners to commit acts of discrimination, hostility or violence against a protected group.
- ❖ Restricting hate speech is an example of permissible limitations on freedom of expression under international law.
- ❖ There are no Myanmar laws relating directly to ‘hate speech.’
- ❖ Any law regulating hate speech would have to be carefully crafted to avoid impermissibly restricting the fundamental freedom of expression.

Hate speech can be defined as speech that is “intended, and likely, to incite the audience of that speech to engage in acts of discrimination, hostility or violence against a protected group,” such as religious minority.<sup>209</sup> While determining whether a form of expression constitutes ‘hate speech’ can be complicated and is specific to the local context, one category of speech restriction is clearly permissible: speech that intends, or is likely, to incite the listeners to participate in genocide.<sup>210</sup>

### Hate speech

Any advocacy<sup>211</sup> of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

- International Covenant on Civil and Political Rights (ICCPR), Art.20(2)

Restricting hate speech is an example of permissible limitations on freedom of expression under international law. Hate speech can fall under a narrow exception that may be made where expression is used to incite discrimination, hostility, or violence against a protected group.

Restricting hate speech is not the same as the type of restrictions on expression posed by defamation or blasphemy laws. While those laws address ‘offense’ or ‘insult,’ hate speech protections protect a group from discrimination or violence, not insults or offensive speech.<sup>212</sup> Such broad restrictions on freedom of expression is incompatible with international law.

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<sup>209</sup> This definition has been proposed by Article 19, an international advocacy organisation, as a means in which to regulate hate speech in line with international law. Protected groups refer to protected categories under the non-discrimination provisions of international human rights law of which religion is protected category. “Myanmar Briefing Paper: Countering Hate Speech,” Article 19, February 2020, p.5.

<sup>210</sup> Article III(c) of The Genocide Convention “prohibits direct and public incitement to commit genocide.” Myanmar is a party to the Genocide Convention and has a duty to uphold prohibit the most extreme forms of hate speech that to genocide.

<sup>211</sup> Under the ICCPR, the provision uses the term ‘advocacy.’ Although a broader term, it can be interpreted as implying intent as used herein.

<sup>212</sup> Under Myanmar law, Penal Code sections 295(a), 297, and 298 are what may be considered hate speech offences. See [Chapter 5: Blasphemy](#).

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*“The right to freedom of expression implies that it should be possible to scrutinize, openly debate, and criticize belief systems... as long as this does not advocate hatred that incites violence, hostility, or discrimination against an individual or a group”<sup>213</sup>*

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The root causes of hate speech in Myanmar are varied and complex, originating in a complex socio-political context that has been propelled by many factors, including rapid development of the telecommunications and widespread use of social media.<sup>214</sup> There are numerous examples of hate speech used against religious minorities in Myanmar that have escalated into violence. For example, rumors of the rape of a Buddhist woman by a Muslim man in 2014 circulated rapidly online, leading to communal violence and two deaths.<sup>215</sup> While claims were later proven false, the resulting violence led to irreparable harm and further stoked religious tensions, perpetuating further violence. In 2018, a Facebook internal investigation on hate speech in Myanmar discovered coordinated campaigns perpetuating hate speech online by members of the Myanmar military.<sup>216</sup>

...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.

-Constitution (2008), Article 364

There is no law in Myanmar that specifically addresses hate speech in Myanmar.<sup>217</sup> Any law regulating hate speech would have to be carefully crafted to avoid impermissibly restricting the fundamental freedom of expression.<sup>218</sup> Myanmar law does contain legal provisions that may be applied to hate speech, ensuring the protections enshrined in the Myanmar Constitution.<sup>219</sup> However, these laws are already problematic in their vagueness, allowing for overly broad and arbitrary use of the law to silence expression of opinion or belief. Examples include the Penal Code provisions which punish “[s]tatements or insults which intentionally provokes a breach of

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<sup>213</sup> See the "Rabat Plan of action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence," para. 11, as published in "Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred," Addendum to the Annual report of the United Nations High Commissioner for Human Rights, Office of the High Commissioner for Human Rights (OHCHR), 11 January 2013.

<sup>214</sup> For more information, see "Hate Speech Ignited: Understanding Hate Speech in Myanmar," Progressive Voice, Burma Monitor, and International Human Rights Clinic at Harvard Law School, October 2020.

<sup>215</sup> Morada, N., "Hate Speech and Incitement in Myanmar Before and After the February 2021 Coup.," Global Responsibility to Protect, 3 March 2023.

<sup>216</sup> Mozur, P., "A Genocide Incited on Facebook, With Posts from Myanmar Military," The New York Times, 15 October 2018.

<sup>217</sup> In 2016 and 2017, a draft hate speech law in Myanmar was reportedly in discussions among various ministries. The law has yet to be introduced. The draft law has also been criticized for its overly broad provisions, see "Myanmar Briefing Paper: Countering Hate Speech," Article 19, February 2020, p.1.

<sup>218</sup> For more details on permissible restrictions on expression, see [4.2: Restrictions on Freedom of Expression](#).

<sup>219</sup> Constitution (2008), Art. 364. See [Chapter 5: Blasphemy Laws](#).

the peace or causes public mischief.” These laws are also disproportionate since they also include criminal penalties where civil fines may be more appropriate.

Hate speech and blasphemy laws provide two clear examples how the law can both restrict freedom of expression and significantly impact religious and ethnic minorities in the Myanmar context. Restricting hate speech is an example of permissible limitations on freedom of expression.<sup>220</sup> By contrast, blasphemy laws are an example of impermissible restrictions placed on both freedom of expression and freedom of religious opinion and belief.

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<sup>220</sup> Under the ICCPR, the limitations on freedom of expression when it comes to hate speech (as understood under Article 20) is justified under Article 19(3). “General Comment 34: Article 19: Freedom of Opinion and Expression,” Human Rights Committee, 12 September 2011, note 4, para. 50.



## CHAPTER 5: BLASPHEMY

### 5.1 Introduction

- ❖ The Myanmar Penal Code contains several provisions that criminalize actions which offend religious beliefs, disturb religious ceremonies, or damage religious objects or places of worship.
- ❖ In practice, these laws have been used in a discriminatory manner to control critics of Buddhism in Myanmar.
- ❖ These laws conflict with freedom of expression, freedom of religion, the principle of non-discrimination, and right to equality under international law.
- ❖ These laws may also violate the right to freely practice one's religion as enshrined under the Myanmar Constitution

In Myanmar, several 'offences related to religion,' also known as 'blasphemy laws,' were introduced during the colonial era. These offences criminalize damaging religious objects or places of worship, insulting (or attempting to insult) religious beliefs through various means, causing a 'disturbance' during religious ceremonies, or trespassing on places of worship with intention of insulting religion.<sup>221</sup> In general, these offences require some form of either intent to insult religion, or the knowledge that the action will likely insult religion.<sup>222</sup> The resulting offences may be punished with one to two years of imprisonment. Originally introduced to maintain law and order during the colonial era, these laws have been, and continue to be, discriminatorily applied to control critics of Buddhism.<sup>223</sup>

At face value, the right to freely practice one's religion and the right to freedom expression may appear to conflict with one another. However, both freedom of religion and freedom of expression imply that individuals have the right to hold and express a full range of beliefs about religion, including expression that is critical of religious beliefs. By contrast, blasphemy laws criminalize the subject matter of such expression. Much like other threats to freedom of expression, blasphemy laws must be consistent with the permissible restrictions on the freedom of expression under international law.<sup>224</sup>

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<sup>221</sup> Penal Code (1861) Ss.295-298; Law Amending the Penal Code (1927), S.295(a); *See also* [Appendix E: Table of Offences Against Religion](#).

<sup>222</sup> Exception: Penal Code Section 296 (causing a disturbance during a religious ceremony) which only requires voluntary action.

<sup>223</sup> "Challenges to Freedom of Religion or Belief in Myanmar," International Commission of Jurists (ICJ), October 2019, p.20.

<sup>224</sup> Regulating hate speech is a specific example of a permissible restriction on the freedom of expression. ICCPR, Art. 20(2); According to the Human Rights Committee (HRC), criminalizing opinion, such as in the case of blasphemy laws, contradicts Article 19 of the International Covenant on Civil and Political Rights (ICCPR). "General Comment 34: Article 19: Freedom of Opinion and Expression," Human Rights Committee, 12 September 2011, para. 48. *See* [4.3: Hate Speech](#).

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*“The right to freedom of expression includes the right to scrutinize, debate openly, make statements that offend... and criticize belief systems... including religious ones”<sup>225</sup>*

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Exercising the right to criticize religious beliefs should be seen as a part of the right to religion or belief. Blasphemy laws not only contradict the freedom of religion under international standards<sup>226</sup> but may also conflict with the Myanmar Constitution which enshrines the right to “freely profess and practice religion.”<sup>227</sup> Under the Myanmar Constitution, the right to religion may only be restricted on the grounds of public order, morality or health or to protect other provisions of the Constitution.

In recent years, many countries such as Canada, Iceland and Norway have repealed blasphemy laws. In 2017, a blasphemy provision, Section 296 of the Canadian Criminal Code, was repealed as part of an effort to modernize the criminal code in Canada. On the official website of the Government of Canada, it states that Canada has removed blasphemous libel as an offence recognizing that such laws do not properly reflect the Canadian Charter of Rights and Freedoms, part of Canada’s constitution, which protects “the right to equality, freedom of religion, belief, and expression.”<sup>228</sup> Similarly, Myanmar’s blasphemy laws contradict the right to equality, freedom of religion, belief, and expression as well as the principles of its own Constitution.

As described further below, Myanmar’s blasphemy laws are vaguely worded and overly broad,<sup>229</sup> allowing the state unfettered discretion to determine what is considered ‘offensive’ or ‘insulting’ to religion. In practice, blasphemy laws in Myanmar have largely been deployed to protect only critics of Buddhism. Under international standards, the right to religion does not allow for protection of any specific religion over other beliefs as that would violate the peremptory norms of non-discrimination and right to equality.<sup>230</sup>

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<sup>225</sup> Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression," UN Human Rights Council, 2012, *para.* 53.

<sup>226</sup> International Covenant on Civil and Political Rights (ICCPR)(1966), Art. 18(3). See Chapter 3: Freedom of Religion or Belief.

<sup>227</sup> Constitution (2008), Art. 34.

<sup>228</sup> “Questions and Answers - Cleaning up the Criminal Code: Clarifying and Strengthening Sexual Assault Law, and Respecting the Charter,” Official website of the Government of Canada at <https://www.justice.gc.ca/eng/csj-sjc/pl/cuol-mgnl/qa2-qr2.html>

<sup>229</sup> See Principle of Legality below.

<sup>230</sup> According to the Human Rights Committee, “it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leader or commentary on religious doctrine and tenets of faith.” “General Comment 34: Article 19: Freedom of Opinion and Expression,” Human Rights Committee, 12 September 2011, *para.* 48.

Under Myanmar law, the use of blasphemy laws contradicts the Myanmar Constitution when applied to citizens as it fails to comply with the nondiscrimination clause.<sup>231</sup> Blasphemy laws are incompatible with many rights under domestic and international law, including freedom of religion, freedom of expression, principle of nondiscrimination, and equality before the law and equal protection.

## 5.2 Principle of Legality

Any law that carries a criminal penalty, especially a law that affects a person's fundamental right to liberty by including imprisonment as a possible punishment, must be subject to considerable scrutiny. When it comes to criminal offences in particular, such provisions must follow the principle of legality. This principle requires criminal offences to be clearly and narrowly defined by law.<sup>232</sup> Where legal provisions are so vague that an average person cannot understand the meaning of the prohibition, such person would therefore not be able to intentionally conduct themselves in a way that is consistent with the law.<sup>233</sup> As a principle of justice essential to the rule of law, the principle of legality has obtained binding customary law status when it comes to international criminal law, applicable to international organisations, tribunals, and states.<sup>234</sup>

Violating Myanmar's blasphemy laws can lead to imprisonment. These laws are particularly problematic because the concepts of 'insult' or 'outrage' to a person's religious beliefs or feelings are highly subjective conditions, varying from one person to the next, and therefore are inherently vague and overly broad terms. By the same token, determining actual harm is also highly subjective. Myanmar's blasphemy laws do not provide clearly and narrowly defined terms, nor are there any further limitations on the discretion of authorities in determining what constitutes blasphemy.<sup>235</sup> Failing to meet the principle of legality through use of overly broad and vague language can confer unfettered discretion to the authorities to enforce the law, leaving such provisions vulnerable to discriminatory use or arbitrary enforcement.

## 5.3 Blasphemy Laws in Practice

In practice, Myanmar's blasphemy laws have been used to punish critics of persons in power in relation to Buddhism. Section 295(a) of the Penal Code has been used the most frequently to prosecute persons who criticize Buddhism.<sup>236</sup>

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<sup>231</sup> Constitution (2008), Art. 348.

<sup>232</sup> Under the principle of legality, no punishment is imposed except as provided by law.

<sup>233</sup> Gallant, K., "The Principle of Legality in International and Comparative Criminal Law," Cambridge University Press, 2009, p.362, citing Ward N. Ferdinandusse, "Direct Application of International Criminal Law in National Courts," TMC Asser Press, 2006, p.238.

<sup>234</sup> Gallant, K., *The Principle of Legality in International and Comparative Criminal Law*, Cambridge University Press, 2009, p.12 and p.404

<sup>235</sup> See Penal Code (1861), Ss.295-298.

<sup>236</sup> "Myanmar Briefing Paper: Criminalisation of Free Expression," Article 19, May 2019.

Penal Code, Section 295(a):<sup>237</sup>

- Insulting, or *attempts to insult*, religious beliefs through written or spoken word, or visual representation; with
- deliberate and malicious intent.

For example, Htin Lin Oo, a writer, was sentenced to two and half years in prison for violating Section 295(a) after a speech at a public event was shared online, outraging several religious figures.<sup>238</sup> The offending language was his questioning of several monks whom he believed was using Buddhism to perpetuate violence and further discrimination against religious minorities in Myanmar. Another example of charges filed under Section 295(a) is Kyaw Win Thant, a man who criticized Buddhist monks on social media for their opposition towards sex education.<sup>239</sup> He was convicted and sentenced to 21 months in prison in June 2020. This law has also been used to silence criticism from within the *Sangha* (Buddhist monastic order).<sup>240</sup> In 2020, for example, U Nyan Na, a monk, was charged with various offences, including statements made that were deemed to violate Section 295(a). In each instance, there appears to be a lack of evidence of “deliberate and malicious intent” to insult religious beliefs. Instead, the law is seemingly being deployed to simply punish individuals who dare question specific Buddhist monks. If these convictions are indeed absent of the intent requirement as prescribed by law, then use of the law in these cases were arbitrary and impermissible under both domestic and international standards. Each case described above indicates an arbitrary and discriminatory application of the law.

In retaining blasphemy laws, the state has the legal authority to determine what is offensive to religion. Prosecutions in recent years indicate that the law is used to protect Buddhism and Buddhist monks. The increased use of blasphemy laws in Myanmar should be considered alongside the rise of Buddhist nationalism and extremism which in turn is an expression of deep-felt insecurities about the future of Buddhism in times of rapid change.<sup>241</sup> Although several Buddhist nationalists and extremists lost some support when the National League for Democracy (NLD) came into power, with the new military takeover, these laws may be used as yet another way in which to silence criticism of the state and military.<sup>242</sup> As long as these provisions remain law, they are an open legal category which can be invoked by the state to silence expression.

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<sup>237</sup> In 1927, Section 295(a) was added to the Indian Penal Code, now the Myanmar Penal Code.

<sup>238</sup> Sathisan, V., et al. “Blasphemy Statutes Deny Human Rights,” Myanmar Times, 21 July 2015. In fact, while Htin Lin Oo’s prosecution may violate international law, the speech perpetuated by the Buddhist monks he questioned may actually constitute “hate speech.” It is the monks’ speech in this case that may be restricted under international law. See 4.3: Hate Speech.

<sup>239</sup> “Myanmar jails doctor for insulting monks,” Bangkok Post, 4 June 2020.

<sup>240</sup> For more information on the relationship between the military regime and the Sangha, see Ford, B. “Myanmar Coup: Military Regime Seeks to Weaponize Religion,” 16 December 2021.

<sup>241</sup> For more discussion on the complex circumstances around which new forms of legal activism arose among religious leaders, see Frydenlund, I. “The rise of religious offence in transitional Myanmar,” *Outrage: The Rise of Religious Offence in Contemporary South Asia*, UCL Press, 2019, pp.77-102.

<sup>242</sup> There are many indications that the current military regime will also manipulate existing laws to silence critics of Buddhism. For example, in 2022, the military spokesperson General Zaw Min Tun publicly threatened to issue order

## CHAPTER 6: RACE AND RELIGION LAWS

### 6.1 Overview

- ❖ The following controversial laws, collectively known as the ‘race and religion laws’ were introduced in 2015:
  - Religious Conversion law
  - Buddhist Women Special Marriage law
  - Monogamy Law
  - Population Control Healthcare Law
- ❖ These laws are both discriminatory in intent and in impact, expressly discriminating against religious minorities and women.

A bundle of heavily-criticized laws,<sup>243</sup> collectively known as the ‘race and religion laws’ (the Religious Conversion Law, the Monogamy Law, the Buddhist Women’s Special Marriage Law, and the Population Control Healthcare Law) were introduced in 2015. The context under which these laws were introduced underscores its discriminatory intent; these laws were drafted and passed with considerable support from *Ma Ba Tha*, an extremist group with a well-documented anti-Muslim agenda.<sup>244</sup> *Ma Ba Tha* campaigned for the introduction of the race and religion laws, claiming that these laws were ‘necessary’ to protect Buddhism in Myanmar from ‘external forces,’ namely Muslims.<sup>245</sup> *Ma Ba Tha* had considerable support from members of the Union Solidarity and Development Party (USDP), a proxy political party for the military at the time. For its part, USDP leaders leveraged its support for the laws to invoke long-standing narratives which position the *Tatmadaw* as protectors of Buddhism and the state. These 2015 laws can be directly linked to socio-political anxieties and prejudices against Muslims that were stoked by military and extremist groups largely in response to a period of political transition that threatened their power and authority in new ways. For example, one persistent narrative that had increased in popularity during this period was the unfounded belief that Muslim men were a primary threat to Buddhist woman and Buddhism as a whole.<sup>246</sup> This narrative, along with many other discriminatory narratives targeting Muslims in particular, were repeatedly invoked in order to justify the introduction of the laws. The race and religion laws are inconsistent with the fundamental rights and freedoms of religion or belief, right to privacy, and the principles of

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to punish those who insult Buddhism “in accordance with the law.” “Military threatens to issue orders and take action against critics of Buddhism,” Democratic Voice of Burma (DVB), 26 July 2022.

<sup>243</sup> “Myanmar: Parliament Must Reject Discriminatory “Race and Religion” Laws,” Amnesty International and International Commission of Jurists (ICJ), 3 March 2015; “Challenges to Freedom of Religion or Belief in Myanmar,” International Commission of Jurists (ICJ), October 2011; White, C., “Protection for Whom? Violations of International Law in Myanmar’s New “Race and Religion Protection” Laws,” Georgetown Institute for Women, Peace & Security, December 2015, p.10.

<sup>244</sup> Caster, M. “The Truth About Myanmar’s New Discriminatory Laws,” The Diplomat, 26 August 2015.

<sup>245</sup> *Id.*

<sup>246</sup> For more discussion, see McCarthy, G. and Menager, J., “Gendered Rumours and the Muslim Scapegoat in Myanmar’s Transition,” *Journal of Contemporary Asia* 47:3, 2017, pp.396-412.

equality, equal protection, and non-discrimination under domestic and international standards.<sup>247</sup>

### Religious Conversion

Of the four laws, the Religious Conversion Law most directly impacts the right to freedom of religion or belief by setting up a system in which the state directly oversees religious conversions.<sup>248</sup> Under international law, the freedom to hold a religious belief or opinion, including to adopt a religious belief, cannot be restricted by the state *under any circumstances*.<sup>249</sup> Yet, under this law, individuals who wish to convert to another religion must apply for a certificate of religious conversion, a process which includes undergoing questioning by a state registration board in order for state officials to ascertain whether the applicant “truly believes in the said religion.”<sup>250</sup> Although the law does not apply to any specific religion, the law is vague and overly-broad regarding the application process for a certificate of religious conversion, violating the principle of legality. Notably, the law grants considerable discretionary power to state officials to oversee conversions but does not include any accompanying safeguards to ensure that different religious groups are adequately represented in the decision-making process. This law leaves religious minorities especially vulnerable to discriminatory and unfair application of the law.

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*The Religious Conversion Law requires the state to oversee the religious conversion process thereby jeopardising the fundamental right to religious belief or opinion*

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The law is disproportionately punitive in imposing criminal penalties. For example, a person may be sentenced to up to two years imprisonment for applying for a conversion certificate with the intent to ‘insult’ or ‘misuse’ any religion.<sup>251</sup> This law contravenes the fundamental right to religion under Article 34 of the Myanmar Constitution and various provisions under international law.<sup>252</sup>

### Marriage

The Buddhist Women’s Special Marriage Law regulates marriage between a Buddhist woman and non-Buddhist man.<sup>253</sup> This law explicitly interferes with the right to marry by requiring additional administrative steps such as notification and registration for marriage in order to be legally

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<sup>247</sup> See [Chapter 2: Discrimination](#)

<sup>248</sup> The law establishes the ‘Religious Board for Religious Conversion’ to oversee the issuance of religious conversion certificates at the local township level. Religious Conversion Law (2015), Ss.7-11.

<sup>249</sup> See [3.2: Restrictions on the Right to Religion](#)

<sup>250</sup> Religious Conversion Law (2015), S.5.

<sup>251</sup> Religious Conversion Law (2015), S.14 and S.17.

<sup>252</sup> See [Chapter 3: Freedom of Religion](#).

<sup>253</sup> With exceptions, marriage in Myanmar is governed within a pluralistic legal system that includes customary and civil law. See Crouch, M., "Constructing Religion by Law in Myanmar," *The Review of Faith & International Affairs*, 13:4, 2017, pp.1-11. This law is not without precedent under Myanmar law. Crouch (2017), pp.2-5.

recognized on discriminatory grounds. Like the Religious Conversion Law, this law is disproportionately punitive in imposing criminal penalties.<sup>254</sup>

The law discriminatorily targets specific marriages on the basis of the participants' gender and religious identity, thereby violating the peremptory norms of equality, equal protection, and nondiscrimination. The law specifically burdens Buddhist women by invoking patriarchal notions and stereotypes relating to their vulnerability and need for protection to justify state interference in their private life. Additionally, restrictions on marriage violate the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Myanmar is a state party.<sup>255</sup>

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*The Buddhist Women's Special Marriage Law blatantly discriminates on the basis of religion and gender by placing additional burdens specifically on marriages between Buddhist women and non-Buddhist men.*

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### Monogamy

The Monogamy Law bans polygamy and adultery involving all categories of Myanmar citizens.<sup>256</sup> Rather than introduce new offences, the law expands on conduct subject to criminal penalties already prohibited under the Penal Code.<sup>257</sup> This law is an example of a law that is not discriminatory as written in law but is intended to have a discriminatory impact; while the law does not target a specific religious group, the legislative history indicates that the discriminatory intent of the law was to discourage interfaith marriages and protect women in Myanmar from polygamous Muslim men.<sup>258</sup> The law also impermissibly criminalises sexual relationships between consenting adults, in violation of the right to privacy under international standards.<sup>259</sup>

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*The Monogamy Law criminalises consenting sexual relationships with the unstated intent of protecting women in Myanmar from Muslim men, violating numerous international standards.*

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<sup>254</sup> See Buddhist Women's Special Marriage Law (2015), Ss.37-43.

<sup>255</sup> CEDAW requires that state parties ensure that women and men have the same rights as men to enter into a marriage of their choosing. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 16(a)-(b).

<sup>256</sup> The law also applies to foreigners who marry Myanmar citizens while living inside Myanmar.

<sup>257</sup> Penal Code (1861), Ss. 494-495.

<sup>258</sup> According to U Wirathu, a leading monk promoting the passing of the law, this law was intended to "preserve the sanctity of marriage, to safeguard the danger of Jihadi Muslims who are marrying many women in an effort to establish a Muslim nation, and for women to avoid the problem of polygamy." Thein Le Win, "Law Aimed at Muslims in Burma Strikes Buddhist Targets," The Irrawaddy, 11 December 2015.

<sup>259</sup> "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence..." Universal Declaration of Human Rights (UDHR) (1966), Art. 12.



## Population Control

The Population Control Healthcare Law provides for the designation of ‘special zones’ for population control measures. For example, under the law, local authorities in these designated areas can impose restrictions on births by requiring a 36-month interval between the birth of each child.<sup>260</sup> Although the law does not reference any specific religious communities, like the other race and religion laws, this law similarly relies on entrenched stereotypes and prejudices against Muslim minority populations.<sup>261</sup> Like the monogamy law, this law is grounded in unfounded fears of Muslims ‘outbreeding’ Buddhists as a way in which to take over the country.<sup>262</sup> While similar steps have already been taken at the local level against Rohingya Muslims, this law risks promoting further abuse and discrimination against them and other religious minorities.<sup>263</sup> As women generally bear the burden of the reproduction process, this law also unduly impacts women who live in ‘special zones.’ This not only violates fundamental principles of equality, equal protection, and nondiscrimination but allows the state to intervene in sexual and reproductive rights in violation of Myanmar’s obligations under CEDAW.<sup>264</sup>

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*The Population and Healthcare Law risks further promoting abuse and discrimination against religion minorities.*

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In extreme cases, state-sanctioned population control can fall under the definition of genocide.<sup>265</sup> In 2021, the military regime added the offence of ‘genocide’ to the Penal Code which largely mirrors the definition under international standards.<sup>266</sup> Notably, the only substantive deviation from international law related to where existing laws are already in place with respect to measures intended to prevent births in one of the protected groups. This exception is consistent with the Population Control Healthcare Law and demonstrates the current state’s willingness to accommodate a law that violates the basic rights of religious and ethnic minorities.

These four laws violate domestic and international standards in many ways, especially the principle of nondiscrimination, equal protection, and right to religious belief or opinion. The Religious Conversion Law, in particular, directly interferes with the fundamental right to religious belief or opinion. Regardless of whether a specific religion is mentioned, as is the case in the

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<sup>260</sup> Population Control Healthcare Law (2015), S.1(c).

<sup>261</sup> See an official state report in 2013 referring to “rapid population group of Bengalis.” “Final Report of Inquiry Commission on Sectarian Violence in Rakhine State,” Rakhine Investigation Commission, 8 July 2013.

<sup>262</sup> Caster, M. “The Truth About Myanmar’s New Discriminatory Laws,” The Diplomat, 26 August 2015.

<sup>263</sup> *Id.*

<sup>264</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 16.

<sup>265</sup> The amendment added Section 311-A to the Penal Code which defines genocide as a list of acts (specified under law), ranging from killing to imposing measures intended to prevent births, with “intent to destroy, in whole or in part, a national, ethnical, racial or religious group...” 2021 Amendment of the 1861 Penal Code Law.

<sup>266</sup> 2021 Law Amending the 1861 Penal Code adds Section 311(a) to the 1861 Penal Code. See also “Myanmar Junta Enacts Genocide Law,” The Irrawaddy, 26 August 2021.



Buddhist Women's Special Marriage Law, these laws were intended to have a discriminatory impact on Muslims. The laws relating to marriage and reproduction were specifically built on narratives linked to unfounded fears surrounding Muslim men practicing polygamy as well as the threat of Muslim reproductivity.<sup>267</sup>

In addition to violating the right to privacy under international law, the Monogamy Law, Buddhist Women's Special Marriage Law, and Population Control Healthcare Law, are laws that regulate marriage, consensual sexual relations, and reproduction rights, thereby unduly impacting women in violation of principles of equal protection and non-discrimination under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>268</sup> As a state party to CEDAW, Myanmar is obliged to take appropriate measures to modify or abolish laws which discriminates against women.<sup>269</sup>

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<sup>267</sup> Caster, M., "The Truth About Myanmar's New Discriminatory Laws," *The Diplomat*, 26 August 2015.

<sup>268</sup> Where persons under 18 years of age are involved, these provisions may also violate the Conventions on the Rights of the Child (CRC) of which Myanmar is a party.

<sup>269</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 2(f)-(g).

# SECTION II: LAWS RELATED TO CITIZENSHIP

## CHAPTER 7: CITIZENSHIP

### 7.1. Introduction

- ❖ Citizenship is a fundamental right under international law.
- ❖ States must meet international obligations such as non-discrimination and non-arbitrariness.
- ❖ Myanmar’s citizenship law confers differing access to rights and services depending on citizenship status and *type of citizenship*.
- ❖ Myanmar’s religious and ethnic minorities are at an elevated risk of statelessness due to discriminatory law and its implementation.

Citizenship can function as a source of identity, recognition of an individual’s membership in a political community, as well as a legal status.<sup>270</sup> As a legal status, citizenship can be understood as the right to have rights; in other words, an individual’s recognized legal status regarding citizenship determines the ability of an individual to access other rights and services from state institutions.

Myanmar’s citizenship law confers differing access to rights and services depending not only on citizenship status but *type of citizenship* (full, associate, and naturalized citizen). Citizenship status in Myanmar impacts many different rights and services, including the right to political participation and freedom of movement as well as access to housing, education, and healthcare.<sup>271</sup>

Citizenship is a fundamental right under international law.<sup>272</sup> While states have the right to determine who is, and who is not, a legal citizen, this power is not absolute; states must comply with international obligations in relation to the granting and loss of citizenship, particularly meeting international obligations such as non-discrimination and non-arbitrariness.<sup>273</sup>

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<sup>270</sup> The objective of this document is to provide an overview of minority religious rights from a human rights’ perspective. Therefore, the information herein focuses on citizenship *as a legal status*.

<sup>271</sup> See [2.3: Discrimination against noncitizens](#)

<sup>272</sup> Both ‘citizenship’ and ‘nationality’ are referenced interchangeably in this document. Citizenship can be understood as form of nationality, commonly used in relation to an individual’s legal status in a country. While there are important distinctions between these terms, they are not addressed in this document. For a more detailed discussion, see Henrard, K., “The Shifting Parameters of Nationality,” *Neth. Int. Law Rev.* 65, 2018, pp. 269–297.

<sup>273</sup> Under customary law and Article 1 of the Convention on Certain Questions relating to the Conflict of Nationality Laws (1930), it is for each state to determine who is a national under its own laws. There is a clear limit to this right: state laws must conform to binding international law and customary law, particularly with regards to the right to nationality and principle of non-discrimination.

A person who is unable to realise their right to citizenship in any country is considered stateless.<sup>274</sup> Myanmar’s religious and ethnic minorities are at an elevated risk of statelessness due to limited pathways to citizenship as well as the discriminatory application of citizenship law and procedures by immigration officials.<sup>275</sup>

## 7.2. International Standards

- ❖ The right to citizenship is a fundamental human right under international law.
- ❖ There are three key components to the right to citizenship:
  - Right to acquire
  - Right to change
  - Right to retain
- ❖ There are many ways to acquire citizenship, including:
  - Family descent
  - Birth in state territory
  - Marriage
  - Naturalisation
- ❖ Revocation should only occur when:
  - Prescribed by law
  - Proportionate
  - Follows due process

The right to citizenship is recognized as a fundamental human right under international law.<sup>276</sup> The right to citizenship includes the right to acquire, change, and retain citizenship.<sup>277</sup> There are many ways citizenship can be acquired, including by familial descent (*jus sanguinis*), birth in a state’s territory (*jus soli*), marriage, and naturalisation. Acquiring citizenship from parent to child (*jus sanguinis*) in Myanmar requires at least one parent to have one of three categories of legal

<sup>274</sup> UN Convention Relating to the Status of Stateless Persons (1954), Art.1.

<sup>275</sup> Cheesman, N., “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya.” *Journal of Contemporary Asia* 47, No. 3, 2017, pp.461–83; International Commission of Jurists (ICJ), “Citizenship and Human Rights in Myanmar,” 2019; Justice Base. “Constitutional Analysis of Myanmar’s 1982 Citizenship Law.” Justice Base, 2018; Nyi Nyi Kyaw, “Alienation, Discrimination, and Securitization: Legal Personhood and Cultural Personhood of Muslims in Myanmar,” *The Review of Faith & International Affairs*, 13:4, 2015, pp.50-59; Smile Education and Development Foundation (SEDF) and Justice Base, “A Legal Guide to Citizenship and Identity Documents in Myanmar.” 2018; Smile Education and Development Foundation (SEDF) and Justice Base, “Access to Documentation and Risk of Statelessness,” 2017.

<sup>276</sup> Universal Declaration of Human Rights (UDHR) (1948), Art. 15.

<sup>277</sup> “Everyone has the right to a nationality” and “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” Universal Declaration of Human Rights, Art. 15. See also, International Covenant on Civil and Political Rights (ICCPR) (1966), Art. 24(3), Convention on the Rights of the Child (CRC) (1990), Art. 7 and 8, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), Art. 9 and Convention on the Rights of Persons with Disabilities (CRPD) (2007), Art. 18.

citizenship.<sup>278</sup> Unlike countries such as the United States of America (USA), Myanmar citizenship is not automatically conferred on persons born inside state territory (*jus soli*).

Myanmar also differs from many other countries in terms of its conception of naturalisation. Under international standards, ‘naturalisation’ is any process after birth that enables a person to take on new legal citizenship not previously held. It can be acquired through a person’s established links with a country, such as through residency or marriage. For example in the USA, one pathway to naturalisation is through residency. In this case, persons who have lived in the country for at least five years officially as permanent residents are eligible to apply for legal citizenship. The process also includes an interview and a citizenship test. Once a person acquires citizenship status through naturalisation, that person, except in extraordinary circumstances, has equal rights with other citizens.<sup>279</sup> Such naturalisation process is not possible in Myanmar. The category of ‘naturalised citizen’ under Myanmar law is distinct in that it is a type of citizenship status that is acquired through either familial descent or the presence of an additional set of specific factual circumstances that must be established prior to the enactment of the 1982 Citizenship Law.

As will be described in the following section, the three tiers of citizenship under Myanmar law are acquired, in part, on the basis of ethnicity. Indigeneity or ethnicity as a basis for citizenship is not in contravention of international standards, however this right to citizenship is to be enjoyed without discrimination as to race, colour, or national or ethnic origin. In violation of the principle of non-discrimination and the right to nationality (citizenship) under international standards, Myanmar’s citizenship laws and procedures, both in law and in practice, deprive individuals of access to citizenship and its accompanying rights and services on a discriminatory basis.<sup>280</sup> In turn, citizenship laws in Myanmar perpetuate discrimination and exacerbates existing challenges experienced by religious and ethnic minorities.

“No one shall be arbitrarily deprived of his nationality.”

- Universal Declaration on Human Rights, Article 15

Under international law, no one should be arbitrarily deprived of nationality. According to a set of guidelines developed for the 1961 Convention on the Reduction of Statelessness, withdrawal of nationality must be (1) prescribed by law, (2) be the least intrusive means of achieving a

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<sup>278</sup> For assistance in determining citizenship, see the decision tree in the [Appendix D: Citizenship Decision Tree](#).

<sup>279</sup> Such as treason or renunciation of citizenship. See *for more details*, 8 United States Code (USC) §1481.

<sup>280</sup> As described further below, the law and implementation of 1982 Law violates the Myanmar Constitution which guarantees equal rights before the law and equal protection for all persons. Constitution (2008), Art. 347. For example, regarding arbitrary implementation of the law as it applies to Rohingya, see Nyi Nyi Kyaw, “Unpacking the Presumed Statelessness of Rohingyas,” *Journal of Immigrant & Refugee Studies*, 15(3), 2017, 269-286.

legitimate purpose (proportionate),<sup>281</sup> and (3) follow a due process.<sup>282</sup> Where these elements are not met, withdrawal of nationality violates domestic and international standards.<sup>283</sup> For example, the withdrawal of nationality without a fair trial before an independent body is considered to be arbitrary and in violation of international standards. To avoid arbitrariness, in addition to a fair hearing, state decisions should also be issued in writing and subjected to independent and effective review.<sup>284</sup>

The revocation of citizenship must not breach other international human rights obligations. For example, revocation that is applied in a discriminatory manner is considered to be arbitrary and not only a violation of peremptory norms of non-discrimination but also other international standards. One example is the withdrawal of nationality for an entire ethnic group through judicial, legal or administration action, such as in the case of Rohingya population in Myanmar.

Revocation or other forms of deprivation of citizenship that also results in statelessness is generally considered to be arbitrary. As described further below, the law in Myanmar provides for the revocation of citizenship to be applied arbitrarily in a discriminatory manner with little to no due process, transparency, or the opportunity for independent review.

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<sup>281</sup> A legitimate aim does not include the revocation of citizenship to punish a person for asserting their human rights, such as the right to freedom of expression or association.

<sup>282</sup> Although Myanmar is not a party to the 1961 Convention on the Reduction of Statelessness, the guidelines provide an authoritative basis for establishing fair process in relation to the revocation or other forms of deprivation of nationality. “Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness,” UN High Commissioner for Refugees (UNHCR), May 2020.

<sup>283</sup> Under the Myanmar Constitution, except in times of emergency, “no citizen shall be denied redress by due process of law for grievances entitled under law.” Constitution (2008), Art. 381. Under international law there are no exceptions to the right to due process of law.

<sup>284</sup> UN High Commissioner for Refugees (UNHCR), “Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness,” May 2020, para. 99. A fair hearing includes the ability to appeal decisions (in the first instance). *Id.*, para. 100.

### 7.3. Myanmar Citizenship Law<sup>285</sup>

- ❖ Before the introduction of the 1982 Citizenship Law, there were many different ways to acquire citizenship.
- ❖ After the 1982 Citizenship Law, citizenship was restricted to certain ethnic groups, citizenship through descent, and citizens already recognized as citizens prior to the law's enactment. These changes particularly disadvantaged religious and ethnic minorities.
- ❖ Citizenship through marriage or residency cannot be acquired under current Myanmar law.
- ❖ Citizenship in Myanmar changed from one single category to three different types of citizenship (full, associate, and naturalised)
  - These three tiers confer differential rights, protections, and services.
- ❖ 'Citizens by birth' are the only type of citizens who cannot have their citizenship revoked unless the person permanently leaves the country or acquires different citizenship. Other forms of citizenship are differentially subject to revocation.
- ❖ The process of citizenship revocation lacks due process, transparency, and the opportunity for independent review.

#### Context

Prior to the enactment of the 1982 Citizenship Law (also referred to herein as the '1982 Law'), there were many different pathways to acquire citizenship under the 1948 Union Citizenship Act, including but not limited to: (1) citizenship through *taingyintha*<sup>286</sup> status, or parents or grandparents' *taingyintha* status and (2) citizenship based on residency of at least eight years.<sup>287</sup> Citizenship acquired by residency was the main pathway to citizenship that was not tied to ethnicity.<sup>288</sup> Once citizenship was acquired, all citizens were guaranteed equal rights under the law.

After the coup in 1962 led by General Ne Win, the military regime increasingly invoked the concept of *taingyintha* as part of its state-building process.<sup>289</sup> Under Ne Win, religious and ethnic minorities were increasingly portrayed as 'foreigners' who posed a threat to national security.<sup>290</sup>

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<sup>285</sup> Citizenship in Myanmar is governed primarily by the 1982 Citizenship Law and its 1983 Procedures. It is intertwined with other provisions in the 2008 Constitution and other laws such as Child Rights Law (2019). In terms of implementation, most directives and instructions are not publicly available.

<sup>286</sup> See [Box 1: Who are \*taingyintha\*?](#)

<sup>287</sup> Union Citizenship Act (1948), S.3- S.6. See also, Constitution (1947), Art. 11. Constitution (1974), Art. 145(b), preserved existing citizenship laws under the Union Citizenship Act (1948).

<sup>288</sup> Union Citizenship Act (1948), S.4(2).

<sup>289</sup> 1982 Speech of Ne Win published in *The Working People's Daily*, 9 October 1982; Nick Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya," *Journal of Contemporary Asia*, (15 Mar 2017), pp.5-6.

<sup>290</sup> Jose Maria Arraiza & Oliver Vonk, "Report on Citizenship Law: Myanmar," October 2017, p.7.

Muslims in Rakhine, for example, were referred to pejoratively as ‘Bengali,’ a label that in this context implies illegal migrant status with recent ties to outside of Myanmar. In the lead up to the enactment of the 1982 Law, Ne Win publicly stated that “national races and non-national races do not get equal rights” and questioned whether “some mixed blood people” were “loyal to the state because of their foreign blood.”<sup>291</sup> Such xenophobic and racialised views were effectively incorporated in the 1982 Law.

### Categories of citizenship

With the enactment of the 1982 Law, citizenship moved from a single, unitary category to three separate categories (full, associate, and naturalised), each conferring unequal access to rights, protections, and services. In particular, the category of *taingyintha*<sup>292</sup> was granted elevated status in the law and became increasingly key to claiming full citizenship rights. Only ‘citizens by birth,’<sup>293</sup> a concept closely-linked to *taingyintha* status, cannot have their citizenship status easily revoked.<sup>294</sup> The threat of revocation of citizenship adds to the existing precarity of other categories of citizenship.

Under the 1982 Law, full citizens are persons who are either recognised as *taingyintha* or have at least one full citizen parent and a parent with grandparents who have one of the three categories of citizen.<sup>295</sup> Persons who were already citizens at the time of the 1982 Law's enactment are also included in this category.<sup>296</sup> The other two categories of citizenship (associate<sup>297</sup> and naturalised<sup>298</sup>) are referred to in Burmese as ‘*eh naing ngan tha*’ or ‘guest citizen

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<sup>291</sup> “To Draft the Citizenship Bill,” Socialist Party Journal, November 1980.

<sup>292</sup> Under the 1982 law, *taingyintha* is defined as “the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine, or Shan and ethnic groups as have settled in any of the territories including within the state as their permanent home from a period anterior to 1185 BE, 1823 AD.” Citizenship Law (1982), S.3. Section 4 of the law provides for the state to determine whether or not a person qualifies as *taingyintha*. Although it is common in Myanmar to refer to a list of 135 officially recognised *taingyintha*, this list is not codified under the 1982 Law and did not appear until 1990. The Working People’s Daily, “Our Union of Myanmar where 135 national races reside,” 26 September 1990.

<sup>293</sup> “Citizens by birth” are persons who are either recognised as *taingyintha* or born of parents who are both recognised as *taingyintha*. Citizenship Law (1982), S.5.

<sup>294</sup> Citizenship can only be revoked in this case where the person permanently leaves the country or acquires different citizenship. Citizenship Law (1982), S.8(b).

<sup>295</sup> Specifically, by descent, if one parent is a full citizen, and another parent is a full citizen, associate citizen, or naturalized citizen or if both parents and two grandparents are any combination of full citizen, associate citizen, or naturalized citizen. Citizenship Law (1982), S.3, S.5, and S.7(a). For more information, see the decision tree in [Appendix D](#).

<sup>296</sup> Citizenship Law (1982), S.6.

<sup>297</sup> A person qualifies for associate citizenship if (a) both parents are associate citizens or (b) if he or she qualified for citizenship under the 1948 Citizenship Act *and* had an application for citizenship pending under the Act before the enactment of the 1982 Law. Citizenship Law (1982), S.7(e). For more information, see the decision tree in [Appendix D](#).

<sup>298</sup> A person qualifies for naturalised citizenship if (a) person or parents lived in Myanmar before 4 January 1948, (b) both parents are naturalised citizens or one parent is a naturalised citizen and the other parent is an associate citizen, (c) one parent is a foreigner while the other parent is either a full, associate, or naturalised citizen, or (d) the person acquired a Foreign Residency Certificate (FRC) before the 1982 law was enacted and has been married to a citizen (of any category) since before 1982. Applicants must also be 18 years or older, be able to Burmese, and deemed of

(associate) and '*naing ngan tha pyu kwin ya thu*' or 'permitted citizen' (naturalised). The terminology underscores the tenuous, outsider status of associate and naturalised citizens.<sup>299</sup>

The 1982 Law essentially restricts citizenship to persons who are considered *taingyintha*, persons who can establish eligibility through familial descent, or persons who already acquired specified legal status prior the enactment of the 1982 law.<sup>300</sup> While the 1982 law honoured the citizenship of persons who acquired it under the 1948 Union Citizenship Act (or, as is the case with associate citizenship, had already applied for citizenship at the time of the enactment of the 1982 Law), the current law effectively prevents 'foreigners' from ever becoming citizens. Even acquiring citizenship through marriage is only available for non-citizens who had a Foreign Residency Certificate (FRC) *prior to the enactment of the 1982 law*, among other requirements.<sup>301</sup> There are no pathways for citizenship for non-*taingyintha* persons who have arrived in Myanmar after 1982 except through close familial descent. In other words, the 1982 Law successfully codified the existing fears and anxieties of Ne Win's regarding 'foreign' interference and threats to state stability whether real, imagined, or invoked for political reasons.

The list of officially recognised *taingyintha* has also changed over time. In particular, certain Muslim groups previously included on official government documents as *taingyintha*, were later removed.<sup>302</sup> Furthermore, as described in the following section below, even persons who may qualify under existing laws face additional evidentiary barriers, in particular persons who are from religious minorities. Religious and ethnic minorities face additional barriers to accessing citizenship not only under the law but in practice. Even religious and ethnic minorities who are in fact *taingyintha*, are often required to provide additional documentary evidence and are treated with suspicion by immigration authorities. Consequently, the category *taingyintha* also excludes communities who have long resided in Myanmar.

#### **Box 5: What are Temporary Registration Certificates?**

From 1995, Temporary Registration Certificates (TRCs) were issued as temporary replacements for National Registration Cards (NRCs).<sup>303</sup> Although the TRCs were intended as temporary replacements for NRCs, they remained in use for roughly 20 years. TRC holders are largely persons from religious and ethnic minority backgrounds. For example, TRCs were issued to many Rohingya in northern Rakhine State.

Prior to 1982, NRCs had been issued to citizens, including non-*taingyintha* religious and ethnic minorities who had automatically acquired citizenship through residency and descent under

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good character and a sound mind. Citizenship Law (1982), S.42, S.43, S.44, and S.45. For more information, see the decision tree in Appendix D.

<sup>299</sup> Associate or naturalised citizen status can also be conferred by the Central Body. Citizenship Law (1982), S.8(a).

<sup>300</sup> Jose Maria Arraiza & Oliver Vonk, "Report on Citizenship Law: Myanmar," October 2017, p.7.

<sup>301</sup> Citizenship Law (1982), Art.45.

<sup>302</sup> Nick Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya," *Journal of Contemporary Asia*, 15 March 2017, p.9.

<sup>303</sup> NRCs and TRCs were issued under the Residents of Burma Registration Act (1949), Section 4, and Residents of Burma Registration Rules (1951), Section 13(1)(c).



the 1948 Union Citizenship Act.<sup>304</sup> As those who were considered foreigners received a Foreign Registration Certificate (FRC), an NRC effectively functioned as a citizenship document.<sup>305</sup> These documents did not determine citizenship status *per se* but did function as proof of identity and residence.

After the 1982 Citizenship Law was enacted, a nationwide citizenship scrutiny process was implemented. For those eligible, Citizenship Scrutiny Cards (CSCs) were supposed to replace NRCs but many religious and ethnic minorities received TRCs instead.<sup>306</sup>

On 11 February 2015, TRCs were annulled ahead of the general elections held in November the same year.<sup>307</sup> With the annulment of the TRCs in 2015, those who surrendered their TRCs had to apply and undergo a new citizenship verification process.<sup>308</sup> TRCs and its successor, the National Verification Cards (NVCs), characterise holders as foreigners. Like TRCs, NVCs are in fact yet another “abusive tool” in which to deny legal and political rights to religious and ethnic minorities.<sup>309</sup>

### Revocation

Other than the narrow category of ‘citizens by birth,’ citizens can lose their citizenship by leaving Myanmar permanently, acquiring citizenship of another country, or acquiring Myanmar citizenship through false documentation.<sup>310</sup> Additionally, alongside committing “an offence involving moral turpitude,” actions taking related to disloyalty to the state of Myanmar such as trading or communicating with enemy countries or organizations hostile to the state, acts indicating disaffection to the state or endangering state security or public peace, and sharing state secrets are grounds for revocation of citizenship for associate and naturalized citizens.<sup>311</sup>

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<sup>304</sup> Under the Citizenship Act (1948), S.2 and S.4, and Citizenship (Election) Act (1948), S.3(e), Union Certificate of Citizenship (UCC) were officially issued as proof of citizenship. Few people, however, acquired these documents as they were necessary only under limited circumstances. Instead, the vast majority of the population relied on NRCs as identity documentation. UCCs were no longer issued after the 1982 Citizenship Law came into force. NRCs are still used under certain circumstances. Religious and ethnic minorities continue to receive NRCs in recent years. Smile Education and Development Foundation (SEDF) and Justice Base, “Access to Documentation and Risk of Statelessness,” 2017, p.17.

<sup>305</sup> Nyi Nyi Kyaw, “Unpacking the Presumed Statelessness of Rohingyas,” *Journal of Immigrant & Refugee Studies*, 15(3), 2017, 269-286, p.276.

<sup>306</sup> Smile Education and Development Foundation (SEDF) and Justice Base, “Access to Documentation and Risk of Statelessness,” 2017, p.16.

<sup>307</sup> Under Presidential Notification No. 19/2015, TRC expired on 31 May 2015; see also [Chapter 6: Political Participation](#) for more discussion on the efforts to exclude TRC holders from political participation.

<sup>308</sup> Those who succeeded in their application received a National Verification Card (NVC). “Burma: Government Plan Would Segregate Rohingyas,” Human Rights Watch, 3 October 2014.

<sup>309</sup> “Burma: Government Plan Would Segregate Rohingyas,” Human Rights Watch, 3 October 2014. For more details on how NVCs are used as an “abusive tool” see “News Release: Myanmar: New Evidence of Denial of Rohingya Citizenship,” Fortify Rights, 16 January 2020 and “Tools of Genocide”: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar,” Fortify Rights, 3 September 2019

<sup>310</sup> Citizenship Law (1982), S.16 and S.18 (full citizens), S.34 and S.36 (associate), and S.57 and S.59 (naturalized).

<sup>311</sup> Citizenship Law (1982), S.35 (associate) and S.58 (naturalized).

These vague and overly broad provisions fail to meet the standards of the principle of legality, thereby allowing these laws to be wielded in a discriminatory manner by local authorities.

#### **Box 6: Revocation of Citizenship**

The only way a *full citizen by birth* can lose citizenship status under the 1982 Law is by permanently leaving their country or acquiring citizenship of another country.<sup>312</sup> Both naturalised and associate citizens, however, may lose their citizenship for reasons including showing disloyalty to the state.<sup>313</sup>

The current military regime has demonstrated a willingness to revoke citizenship of numerous political opponents, including Permanent UN Representative, U Kyaw Moe Tun, political activists, artists, and social media influencers, persons who have publicly spoken out against the military coup.<sup>314</sup> The targeted revocation of citizenship of persons for expressing their political views in opposition to the regime indicates the regime's willingness to use the 1982 Citizenship Law to punish political opposition.<sup>315</sup> As such, persons who oppose the political regime and hold either associate or naturalized citizenship status face an elevated risk of statelessness as a result of existing legal framework.

#### Appeal

Under the 1982 Law, decisions regarding citizenship, including the granting and revocation of citizenship, are ultimately made by the Central Body, a body comprised of members who are also part of the executive branch.<sup>316</sup> A citizenship decision made by the Central Body may be appealed to the military-controlled Union Government.<sup>317</sup> Under the law, the decision made by the Union Government is final and judicial review is not permitted.<sup>318</sup>

In addition to the lack of an independent judicial review of citizenship decisions, there is also a lack of transparency. Authorities are not required to provide a reason for decisions made under the 1982 Law and its procedures.<sup>319</sup> Without this transparency, the ability to amount an effective defense, and by extension due process, is denied. This conflicts with the Myanmar Constitution under which citizens are entitled to redress through due process of the law.<sup>320</sup> The lack of redress and due process for citizens in the revocation process under the 1982 Law violates the Myanmar

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<sup>312</sup> Citizenship Law (1982), S.16.

<sup>313</sup> Citizenship Law (1982), S.8(b), S.35, and S.58.

<sup>314</sup> "Myanmar Regime Revokes Citizenship of 11 Prominent Resistance Figures," The Irrawaddy, 7 March 2022.

<sup>315</sup> There is some debate regarding the legality of recent high-profile revocations due to their full citizenship status. There is a lack of evidence supporting several revocations of full citizens on the basis of dual citizenship or permanently leaving the country.

<sup>316</sup> "Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible," International Commission of Jurists (ICJ), June 2019, p.8.

<sup>317</sup> Citizenship Law (1982), S.70(a)-(b).

<sup>318</sup> Citizenship Law (1982), S.70(b).

<sup>319</sup> Citizenship Law (1982), S.71.

<sup>320</sup> With three exceptions essentially connected to states of emergency. Constitution (2008), Art. 381. Under international law no derogation of due process is permitted.

Constitution in addition to due process rights under international law.<sup>321</sup> The apparent lack of transparency, independent review, and any form of due process provides a legal framework highly susceptible to arbitrariness and other types of abuse, particularly in the form of discrimination.

#### 7.4 Challenges to Accessing Citizenship

- ❖ There are many different challenges to accessing citizenship and other identity documents, particularly for religious and ethnic minorities. These challenges include:
  - A complex, opaque bureaucratic application process.
  - Difficulty accessing information and immigration offices
  - Long, unpredictable delays.
  - Inconsistent application of the law, broad discretion granted to immigration officials, and pervasive corruption.
- ❖ Challenges to accessing citizenship documentation is further exacerbated by discriminatory implementation of the law, particularly for persons who are perceived by local authorities and immigration officials as members of a religious minority.

Citizenship papers and other forms of identity papers are essential to legally accessing rights protections and basic services. Yet, according to the 2014 census, 27.3% of the Myanmar population do not hold a citizenship scrutiny card or any other form of civil documentation, includes Temporary Residency Cards (TRCs).<sup>322</sup> The reasons for lacking documentation vary, including lack of awareness of the right to citizenship and its benefits, lack of resources (particularly time and money), complex bureaucratic procedures and long delays, fear of engaging the authorities, and inability to acquire documents.<sup>323</sup> Lack of documentation may also be linked to religious and ethnic discrimination from state officials and other intermediaries in the implementation of citizenship law and procedures.

The process of acquiring citizenship in Myanmar is generally a long, complex bureaucratic process.<sup>324</sup> Within this process, there are many additional obstacles, such as collecting the necessary documentation. Documents that may be requested from immigration authorities vary but generally include a family tree form, original birth certificate, parent's original identity

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<sup>321</sup> For more discussion on how the appeals process under the 1982 Citizenship Law violates fundamental rights and the separation of powers, see “Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible,” International Commission of Jurists (ICJ), June 2019, pp.12-13. Due process is a right that must apply to all and not limited to only citizens. “CCPR General Comment No. 15: The Position of Aliens Under the Covenant,” UN Human Rights Committee (HRC), 11 April 1986.

<sup>322</sup> Myanmar Census, Ministry of Labour, Immigration, and Population (MoLIP), 2014. [http://themimu.info/Census\\_2014\\_SR\\_dashboard](http://themimu.info/Census_2014_SR_dashboard). Actual percentage of undocumented persons may be higher due to a flawed census.

<sup>323</sup> For a more comprehensive overview of these challenges, see Smile Education and Development Foundation (SEDF) and Justice Base. “Access to Documentation and Risk of Statelessness,” 2017.

<sup>324</sup> For more discussion on the challenges to acquiring citizenship, see Smile Education and Development Foundation (SEDF) and Justice Base. “Access to Documentation and Risk of Statelessness,” 2017, pp.28-38.

documents, and letters of recommendation from local administrators to prove residence.<sup>325</sup> Evidentiary documents may be difficult for certain individuals to acquire, so much so that the cost of acquiring the documents, through multiple lengthy in-person visits to various government office locations as well as the unofficial fees (i.e., bribe payments), makes the process prohibitively costly and time-consuming. Where documents cannot be acquired, recommendation letters and affidavits may be collected instead in some instances.<sup>326</sup> Typically, these letters are reliant on the willingness of village heads or administrators to assist as well as the type of document sought.<sup>327</sup> While applicants report wide variations in documents requested to process their applications,<sup>328</sup> applicants who are perceived to be Muslim, Chinese, or Hindu are reportedly more likely to be asked to provide additional documentation (such as documentation regarding origin of the applicants grandparents).<sup>329</sup> *Taingyintha* applicants report experiencing reduced scrutiny.<sup>330</sup>

The complexity of the law and lack of transparency regarding implementing procedures has led to confusion even among experts and immigration officials.<sup>331</sup> This is further exacerbated by the broad discretion and lack of oversight granted to immigration officials, leading to a process that is variable and unpredictable in its implementation from one official to the next. Numerous reports indicate that connections, either directly with immigration officials or through a broker,<sup>332</sup> along with bribery are the most determinative factors for acquiring citizenship.<sup>333</sup> However, it is religious and ethnic minorities who disproportionately encounter the additional administrative hurdles that frequently necessitate the assistance of bribery and intermediaries.<sup>334</sup> The types of bribery payments reported range from making unofficial payments for simply receiving the correct application forms to switching religious status to increase the likelihood of a successful application.<sup>335</sup> Religious and ethnic minorities report paying more in bribery payments than any other group.<sup>336</sup>

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<sup>325</sup> Smile Education and Development Foundation (SEDF) and Justice Base. "Access to Documentation and Risk of Statelessness," 2017.

<sup>326</sup> There are indications that after the coup that affidavits and other written documentation has been rejected in favour of in-person witness testimony, further escalating the cost of resources in many cases.

<sup>327</sup> Smile Education and Development Foundation (SEDF) and Justice Base. "Access to Documentation and Risk of Statelessness," 2017, p.19.

<sup>328</sup> *Id.* at p.29.

<sup>329</sup> *Id.* at p.30

<sup>330</sup> *Id.* at p.29-30.

<sup>331</sup> Informal directives and instructions are largely unavailable to the public. Smile Education and Development Foundation (SEDF) and Justice Base, "Access to Documentation and Risk of Statelessness," 2017, pp.28-30.

<sup>332</sup> For more on brokers, see "'People Who Can Afford to Go to Brokers': How Community Leaders Assist Individuals with Applications for Civil Documentation," Justice Base, 2019.

<sup>333</sup> Smile Education and Development Foundation (SEDF) and Justice Base. "Access to Documentation and Risk of Statelessness," 2017, pp.32-33.

<sup>334</sup> Intermediaries may include religious leaders brokers/agents, family friends, some however provide to the GAD office and then the GAD officials process applications at INRD. *Id.* at pp.30-33.

<sup>335</sup> *Id.* at p33.

<sup>336</sup> For example, according to one Muslim leader, unofficial fees are necessary to receive any documents. *Id.* at p.32.

Discriminatory behaviour from immigration officials and other authorities towards religious and ethnic minorities further exacerbates existing obstacles to acquiring citizenship and other forms of civil documentation. Discrimination frequently occurs in the form of unofficial delays, request for more documentation, and demands for bribes. In a study conducted in 2020 in Myanmar, respondents reported experiences of discrimination from immigration and administrative officials in the citizenship application process due to their perceived religion or race.<sup>337</sup> Muslims in particular reported being forced to identify as ‘mixed blood,’ ‘foreigners,’ or non-*taingyintha*.<sup>338</sup> Kaman Muslims also face difficulties obtaining citizenship despite being considered *taingyintha*.<sup>339</sup> One third of Kaman Muslims have been reported as not holding citizenship scrutiny cards.<sup>340</sup> This type of experience is not limited to Muslims, however. Hindus face different experiences of citizenship and discrimination depending on where they live and individual connections with persons in positions of power.<sup>341</sup> Persons who identify as *taingyintha* also reported discrimination due to other's perception of their religious identity. Discrimination based on perceived religious identity is systemic throughout the immigration department.

#### **Box 7: Inability to Self-Identify**

There are numerous reports of immigration officials determining an applicant's identity based on perception or bias. Religious identity appears to be the primary factor for immigration officials in determining whether an applicant can freely self-identify in the application process.

Muslim applicants report instances in which immigration officials deny them the right to list ‘Myanmar’ (Bamar) as their ethnicity, regardless of documentary evidence, because Muslim and Myanmar are considered by a large number of immigration officials as incompatible identities. Similarly, as Myanmar identity is wrapped up in notions of statehood and citizenship, there is a parallel trend of officials insisting that persons who identify as Muslim must register their ethnicity as ‘Bengali,’ ‘Pakistani,’ or ‘Indian,’ even if they and their family have no existing connections to these other countries.<sup>342</sup> As one 70-year-old man reported: “They said if I am a Muslim, I could not put [‘Myanmar’]. I can only get an [Citizenship Scrutiny Card] if I put ‘Bengali’ under ethnicity... I was very upset...”<sup>343</sup> These identities reinforce the perceptions of Muslim persons as foreigners rather than considering the applicant's actual ties to the country which may span over generations.

<sup>337</sup> “Experiences of Citizenship and Legal Identity in Myanmar,” Justice Base and [partner organisation name withheld upon request], January 2021, p.18-19. Publication currently not public. Please contact Justice Base at info@justicebase.org for copy of above-listed publication.

<sup>338</sup> *Id.*

<sup>339</sup> For other descriptions of discrimination faced by Kaman as a religious minority, see UNHCR ‘Study of Community Perceptions of Citizenship, Documentation and Rights in Rakhine State,’ August 2016.

<sup>340</sup> Nyi Nyi Kyaw, “Alienation, Discrimination, and Securitization: Legal Personhood and Cultural Personhood of Muslims in Myanmar,” *The Review of Faith & International Affairs*, 13:4, 2015, p.53.

<sup>341</sup> See, for example in Rakhine, ‘Study of Community Perceptions of Citizenship, Documentation and Rights in Rakhine State,’ United Nations High Commissioner for Refugees (UNHCR), August 2016.

<sup>342</sup> Smile Education and Development Foundation (SEDF) and Justice Base. “Access to Documentation and Risk of Statelessness,” 2017, p.37.

<sup>343</sup> *Id.* at p.36.

Other religious minorities have also reported challenges to self-identification at the immigration office. For example, practitioners of the Bow religion report having to identify as either Christian or Buddhist to get an identity card.<sup>344</sup> Similarly, there are reports of Karen-Christians being pressured into identifying as Buddhist.<sup>345</sup> In one case, a man reported waiting three years for a citizenship card. Once he agreed to change his religion to Buddhism, he received his card within 15 minutes. While it is not clear whether a bribe was paid for the opportunity to change his religion, he nonetheless had to change his religion in order to receive a citizenship card.<sup>346</sup>

In other instances, applicants have reported that they choose to censor themselves without coercion from immigration officials. With the understanding that the citizenship application process discriminates against religious minorities, applicants from these communities have reported preemptively chosen to elect a religious or ethnic identity that they believe will increase their chances of a successful application.<sup>347</sup> Typically this means identifying as Buddhist wherever possible.<sup>348</sup>

There remains some variation according to location and the immigration officials involved.<sup>349</sup> In a few instances it may be possible to identify as Myanmar and Muslim, for example. However, this is inconsistently enforced. The trend seems to indicate that religious minorities also restricted in how they can self-identify, with Muslims primarily affected by this practice.<sup>350</sup>

Religious and ethnic minorities in particular reported concerns that interacting with immigration officials, even to renew a citizenship card, could lead to the confiscation of their citizenship card.<sup>351</sup> In such instances, a person may receive a temporary card, regardless of available documentary and testimonial evidence. Fear of authorities, particularly since the military coup may also provide a new obstacle to acquiring citizenship documents, along with new restrictions on travel.<sup>352</sup>

#### **Box 8: Citizenship Verification Initiatives**

In Myanmar, local administration officials, embassies, and other groups will occasionally work together with immigration officials to help eligible individuals acquire citizenship cards and other forms of civil documentation. In much the same way the law is applied in immigration

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<sup>344</sup> *Id.* at p.38.

<sup>345</sup> *Id.* at p.37.

<sup>346</sup> Smile Education and Development Foundation (SEDF) and Justice Base. "Access to Documentation and Risk of Statelessness," 2017, p.32.

<sup>347</sup> *Id.* at p.35.

<sup>348</sup> *Id.* at p.37.

<sup>349</sup> *Id.* at p.36.

<sup>350</sup> *Id.* at p.37.

<sup>351</sup> Smile Education and Development Foundation (SEDF) and Justice Base. "Access to Documentation and Risk of Statelessness," 2017, p.26.

<sup>352</sup> See [Chapter 10: Freedom of Movement](#)

offices, these initiatives are widely reported to be discriminatory in application, often bypassing persons perceived to be religious minorities.

In 1989, after the introduction of the 1982 Citizenship Law, nationwide verification initiatives were carried out to replace National Registration Cards (NRCs) with Citizenship Scrutiny Cards (CSCs) for eligible persons.<sup>353</sup> However, instead of receiving CSCs as a replacement for NRCs, religious and ethnic minorities, such as Rohingya<sup>354</sup> and other Muslim groups along with persons of Chinese and Indian-descent, had the experience of seeing their NRCs replaced with Temporary Registration Certificates (TRCs), or in some instances not replaced at all.<sup>355</sup> After the annulment of TRCs in 2015, a similar scrutinization process began with National Verification Cards (NVCs) which were issued to replace TRCs.<sup>356</sup> Those with citizenship rights under the law are being forced into taking NVCs.<sup>357</sup> As temporary documents, both TRCs and NVCs are tools levied to deny full legal and political rights to those who receive them.<sup>358</sup>

Discrimination in these initiatives can also manifest along ethnic rather than religious lines, particularly with regards to minority religious identities other than Muslim. According to one report, a Christian pastor reported an initiative in his village where immigration officials assisted individuals in every house except the households where persons of Tamil ethnicity resided. Most of the people were Christians who held only TRCs.<sup>359</sup>

Persons of 'mixed blood'<sup>360</sup> are also often excluded from the initiatives and advised to go directly to immigration offices. In other cases, persons considered to be 'mixed-blood' are warned not to bother to go to immigration offices.<sup>361</sup> Mixed blood woman reported attended seven drives but was denied each time because of her appearance as 'mixed blood.'<sup>362</sup> In general, this term has been used rather inconsistently, even broadly applied to persons who appear to be of South Asian descent who are not technically mixed-race.

<sup>353</sup> Arraiza, J. & Vonk, O., "Report on Citizenship Law: Myanmar," [Global Governance Programme], GLOBALCIT, Country Reports, 2017/14, October 2017, p.7.

<sup>354</sup> The majority of the Rohingya population at that time had NRCs.

<sup>355</sup> See Box 7: What are Temporary Registration Certificates (TRCs)?; Arraiza, J. & Vonk, O., "Report on Citizenship Law: Myanmar," [Global Governance Programme], GLOBALCIT, Country Reports, 2017/14, October 2017; "The Dark Side of Transition: Violence Against Muslims in Myanmar," International Crisis Group (ICG), 1 October 2013.

<sup>356</sup> "President Office issues notification on expiration of temporary identity cards," The Republic of the Union of Myanmar President Office, 11 February 2015; "Formation of the Steering Committee for issuance of National Verification Card (NVC) in Rakhine State for those who will undergo verification for citizenship," Myanmar Ministry of Information, 8 February 2017.

<sup>357</sup> "News Release: Myanmar: New Evidence of Denial of Rohingya Citizenship," Fortify Rights, 16 January 2020.

<sup>358</sup> "Tools of Genocide": National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar," Fortify Rights, 3 September 2019, p.54.

<sup>359</sup> Smile Education and Development Foundation (SEDF) and Justice Base, "Access to Documentation and Risk of Statelessness," 2017, p.34.

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<sup>361</sup> Smile Education and Development Foundation (SEDF) and Justice Base, "Access to Documentation and Risk of Statelessness," 2017, p.26.

<sup>362</sup> *Id.*



Various tactics, including citizenship verification measures as described above, have contributed to loss of citizenship for religious and ethnic minorities in Myanmar.<sup>363</sup> In fact, the condition of the Rohingya has been described as “processual revocation of citizenship leading to statelessness.”<sup>364</sup> There is no provision under the 1982 Citizenship Law or its 1983 Procedures that explicitly denies citizenship to the Rohingya. Instead, the revocation of citizenship for certain religious minorities, including the Rohingya, has occurred systematically over time, through the gradual privileging of *taingyintha* and narrowing of pathways to citizenship after the enactment of the 1982 Citizenship Law, as well as, most crucially, the discriminatory implementation of the law.

The highly discriminatory citizenship framework has resulted in the exclusion of entire ethnic and religious groups as well as persons of mixed ancestry. This includes people with lifelong ties to the country or even ties that span several generations. Not only is the law inconsistent with international standards but it also contradicts the equal protection clause in the Myanmar Constitution, which applies to all people within Myanmar territory, regardless of citizenship status.<sup>365</sup>

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<sup>363</sup> Deprivation of citizenship resulting in statelessness is considered arbitrary.

<sup>364</sup> Fargues, E., & Honohan, I. (Eds.), *Revocation of Citizenship: The New Policies of Conditional Membership*, European University Institute (EUI) Working Paper RSC 2021/23, 2021.

<sup>365</sup> Constitution (2008), Art. 347. The Human Rights Council, among other international bodies, continue to call for a review of the 1982 Citizenship Law’s discriminatory provisions. Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible,” International Commission of Jurists (ICJ), June 2019, Footnote 26.



## CHAPTER 8: POLITICAL PARTICIPATION

### 8.1 Citizenship and Political Participation

- ❖ Political participation is determined by citizenship status under Myanmar law.
- ❖ All categories of citizenship are eligible to vote under the law.
  - In reality, only certain citizens can vote.
- ❖ Only a full citizen whose parents are also full citizens are allowed to run for political office.
  - Several religious minorities were denied the opportunity to run for political office in 2015 and 2020 despite being able to meet requirements for citizenship and provide the necessary documentation.
- ❖ Only a full citizen can establish a political party.
- ❖ Only a citizen (full, associate, or naturalised citizen) can be officially recognised members of a political party.

Public political participation plays an essential role in a functioning democracy and in the furtherance of human rights. Political participation includes voting, running for political office, and activities related to running a political party. Citizenship and residency status generally determine a person's right to political participation. In Myanmar, a highly discriminatory citizenship framework informs the laws and practices of political participation, unfairly impacting religious and ethnic minorities.

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

- Universal Declaration on Human Rights, Art. 21(1)

#### Right to Vote

Voting is one of the main forms of public participation. Under international standards, the right to vote must abide by the principle of non-discrimination on the basis of religion, among other protected categories.<sup>366</sup> Under the Myanmar Constitution, all persons who are 18 years and over are eligible to vote in accordance with the law.<sup>367</sup> While Constitution does not specifically exclude holders of temporary certificates,<sup>368</sup> in the lead up to the general elections in 2015, Myanmar's election laws were amended to disqualify holders of temporary certificates from the voting process.<sup>369</sup> Before the amendments in 2015, full citizens, associate, naturalised citizens, and

<sup>366</sup> Universal Declaration of Human Rights (1948), Art. 21(1) and universal and equal suffrage under Art. 21(3); International Covenant on Civil and Political Rights (1966), Art.25.

<sup>367</sup> Constitution (2008), Art.391(a).

<sup>368</sup> See Constitution (2008), Art.392(e) which only allows for disqualification in accordance with Election laws.

<sup>369</sup> The Second Amendment to the 2010 Amyotha Hluttaw Election Law (2015), S.3(a); The Second Amendment to the 2010 Pyithu Hluttaw Election Law (2015), S.4(a).

holders of temporary certificates were eligible to vote.<sup>370</sup> Within Myanmar’s discriminatory citizenship framework, temporary certificate holders are comprised of religious and ethnic minorities. Indeed, the majority of Rohingya hold temporary certificates. In both law and practice, religious minorities have been unfairly deprived of their right to political participation through both a discriminatory legal framework that determines citizenship and political rights and discriminatory efforts deployed by political officials and election authorities.<sup>371</sup>

After the 2010 general election, and in the lead up to the next election in 2015, numerous exclusionary efforts came together to disenfranchise Temporary Registration Certificate (TRC) holders, in particular.<sup>372</sup> As the majority of TRC holders are from religious and ethnic minority groups, including large portions of the Rohingya population, the efforts to exclude TRC holders from the political process should also be considered in the context of broader efforts to slowly deprive Rohingya people of their rights on a discriminatory basis.

#### **Box 9: Challenging the Right to Vote in the Constitutional Tribunal**

In November 2014, a specific provision allowing Temporary Registration Certificates (TRCs) holders to vote in a draft constitutional referendum law<sup>373</sup> was submitted to the bicameral legislature (*Pyidaungsu Hluttaw*) igniting fierce opposition, particularly from the Rakhine National Development Party (RNDP), a party known for its anti-Rohingya views.<sup>374</sup> TRC holders are largely persons from religious and ethnic minority backgrounds, including a large number of Rohingya.

Although the provision was in line with other election laws,<sup>375</sup> it faced opposition from all sides: the military and its political proxies as well as members from the National League for Democracy (NLD). At the same time, anti-Rohingya nationalists marched in protest of this provision and the right of TRC holders to vote in other Myanmar elections as well.<sup>376</sup>

Amid this controversy, a group of parliamentarians challenged the provision in the draft law by submitting a request for clarification to the Constitutional Tribunal<sup>377</sup> The applicants

<sup>370</sup> Amyotha Hluttaw Election Law (2010), S.6(a); Pyithu Hluttaw Election Law (2010), S.6(a)

<sup>371</sup> While in practice voting is mostly based on household lists and not overseen by immigration authorities, the process of getting on the household list may involve civil documentation and/or bribery that unfairly affects religious and ethnic minorities. Aside from the requirement that one is on the voter lists, there remains considerable uncertainty regarding who can and cannot vote, with some local officials accepting a recommendation letter from village heads in lieu of citizenship or other form of identity cards. Regardless, even acquiring such documentation is at the “mercy” of discriminatory authorities and often linked to citizenship. Pyae Sone Aung, “Who gets to vote?” *Frontier Magazine*, 8 September 2020; see [Chapter 7: Citizenship](#)

<sup>372</sup> See [Box 7: What are Temporary Registration Certificates \(TRCs\)?](#)

<sup>373</sup> Draft Constitutional Referendum Law (2015), S.11(a). For more detail, see Crouch, M., *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, 2019, pp.63-69.

<sup>374</sup> Human Rights Watch, “All We Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State,” 2013, p.26-27.

<sup>375</sup> Amyotha Hluttaw Election Law (2010), S.6(a) and Pyithu Hluttaw Election Law (2010), S.6(a).

<sup>376</sup> “Hundreds Protest Rohingya Vote on Myanmar Charter Change,” *Radio Free Asia*, 11 February 2015.

<sup>377</sup> The Constitutional Tribunal has the power of constitutional review, including over laws promulgated in legislative branch. Constitution (2008), Art. 46 and Art 322(a)-(b).

provided numerous arguments in favour of excluding TRC holders.<sup>378</sup> In reply, the Constitutional Tribunal ultimately held that TRC holders do not have a constitutionally enshrined right to vote and therefore should not be able to vote in proposed referendum.<sup>379</sup> By the time the Tribunal had provided its written opinion to the *Pyidaungsu Hluttaw* on the 16<sup>th</sup> of February 2015, however, President Thein Sein had already annulled all TRCs.<sup>380</sup> Soon thereafter, President Thein Sein, also scrapped the draft referendum along with the proposed constitutional referendum.<sup>381</sup>

The Tribunal's decision linked to the scrapping of the draft law, combined with the annulment of TRCs and actions taken by the Union Election Commission (UEC),<sup>382</sup> effectively disenfranchised a large number of minorities from participating in both the 2015 and 2020 elections.<sup>383</sup>

Under 2010 Election Laws,<sup>384</sup> holders of citizenship cards (corresponding to full, associate, and naturalised) and temporary certificates are allowed to vote.<sup>385</sup> When then-President Thein Sein announced the annulment of Temporary Registration Certificates (TRCs) in 2015 ahead of the general election that November, it led to the effective denial of the right to vote for religious and ethnic minorities, particularly persons of ethnic Chinese and/or South Asian descent, and Muslims of various backgrounds.<sup>386</sup>

Those who oppose the right of TRC holders to vote point out that TRCs are temporary and without a rigorous application process. However, without the option to participate in a rigorous application process or other pathways to citizenship, the legal and administrative framework in Myanmar is structured so that certain categories of religious and ethnic minorities are effectively denied their political participation rights.

Aside from the targeted discrimination of TRC holders, other voter suppression tactics have been employed by political elites. For example, in previous election cycles, the responsible authorities

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<sup>378</sup> Crouch, M., *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, 2019, pp.66-67.

<sup>379</sup> The provision in the draft law was deemed to have gone beyond the legal scope of the 2008 Constitution by allowing TRC holders to vote in a constitutional referendum. According to the Tribunal, allowing TRC holders to vote is inconsistent with Article 38(a) and Article 391 of the Constitution which grants the right to vote to "citizens." *Id.* at p.68.

<sup>380</sup> According to Presidential Notification No. 19/2015, TRCs expired on 31 May 2015, ahead of the 2015 general elections in November of that year. "President Office issues notification on expiration of temporary identity cards," The Republic of the Union of Myanmar President Office, 11 February 2015.

<sup>381</sup> Thein Sein issued a directive to annul all TRCs likely in response to protests and political pressure from colleagues. Yen Saning, "Court Deems White Card Holders' Vote Unconstitutional, Sends Law Back to Parliament," The Irrawaddy, 17 February 2015.

<sup>382</sup> The UEC is responsible for overseeing elections. All UEC members are appointed by the executive branch. Union Election Commission Election Law (2010), S.3, S.6, and S.8.

<sup>383</sup> Crouch, M., *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, 2019, p.68.

<sup>384</sup> Election laws governing election of parliamentary ministers: Amyotha Hluttaw Election Law (2010) (upper house) and Pyithu Hluttaw Election Law (2010) (lower house).

<sup>385</sup> Amyotha Hluttaw Election Law (2010), S.6(a); Pyithu Hluttaw Election Law (2010), S.6(a)

<sup>386</sup> "Myanmar: Election Fundamentally Flawed," Human Rights Watch, 5 October 2020.

failed to post voter lists in specific areas due to ‘security reasons.’ The areas involved were notably heavily populated by Rohingya communities in the lead up to the 2020 general election.<sup>387</sup> As persons who are not on the voter list are thereby ineligible to vote, this specific tactic ended up disenfranchising people in these areas who may have otherwise been eligible to vote.<sup>388</sup>

### Running for Political Office

Every citizen shall have the right to elect and be elected in accord with the law.  
- Constitution (2008), Art.38(a)<sup>389</sup>

The right to run for elected office is determined not only by full citizenship status of the candidate but the citizenship status of both of the candidate's parents.<sup>390</sup> In the case of running for the position of President or Vice-President, both parents must also be *born in Myanmar* in order to be eligible.<sup>391</sup> To run as a member of parliament, the candidate's parents must both be full citizens,<sup>392</sup> including at least one of whom was a citizen *at the time of the candidate's birth*.<sup>393</sup> Given that full citizenship status, both under the law and in implementation, favours *taingyintha* persons, such restrictions on the right to run for elected office unduly impacts religious and ethnic minorities.

In 2015 and 2020, many Muslim candidates saw their applications to run for office in the upcoming general parliamentary elections rejected by election oversight bodies.<sup>394</sup> In 2020, applications from Rohingya candidates to run for political office were resoundingly rejected, largely on grounds that the candidates could not prove citizenship.<sup>395</sup> Appeals filed by the

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<sup>387</sup> "Myanmar: Election Fundamentally Flawed," Human Rights Watch, 5 October 2020; In 2020 elections, as in other elections, the opportunity to vote was cancelled in areas for “security reasons.” The cancellation of voting in these areas was blamed on armed conflict Kachin, Kayin, Shan and Rakhine States. “Majority Rules in Myanmar’s Second Democratic Election,” Crisis Group, Asia Briefing No.163, 22 October 2020.

<sup>388</sup> Amyotha Hluttaw Election Law (2010), S.6(b); Pyithu Hluttaw Election Law (2010), S.6(b). While the voting in practice may vary due to location and the individual authorities involved, these changes have ensured that any meaningful right to vote that may or may not have existed has now at least legally foreclosed through the legal changes made in 2015. Crouch, M., *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, 2019, p.65.

<sup>389</sup> “[E]very citizen has the right to elect and right to be elected to the Pyithu Hluttaw, the Amyotha Hluttaw, and the Region or State Hluttaw.” Constitution (2008), Art.369(a).

<sup>390</sup> President or Vice-President: Constitution (2008), Art. 59(b) and Art.120(b), and Amyotha Hluttaw Election Law (2010), S.8(b) and 10(e); Minister of Parliament (lower house): Constitution (2008), Art.152(b) and Pyithu Hluttaw Election Law (2010), S.8(b) and 10(e).

<sup>391</sup> Constitution (2008), Art. 59(b). The President and Vice-President are elected by members of parliament.

<sup>392</sup> Amyotha Hluttaw Election Law (2010), S.8(b); Pyithu Hluttaw Election Law (2010), S.8(b).

<sup>393</sup> Amyotha Hluttaw Election Law (2010), S.10(e); Pyithu Hluttaw Election Law (2010), S. 10(e).

<sup>394</sup> By contrast, for example, in 2010, three Rohingya politicians were voted into parliament. The Guardian, “Myanmar’s Muslims win no seats in new parliament,” 16 November 2015.

<sup>395</sup> See, for example, the case of Abdul Rasheed, a Rohingya Muslim candidate, whose application to run for parliament in 2020 was rejected by the local election commission on the grounds that his parents were not Myanmar citizens at the time of his birth. International Election Observation Mission (IEOM), “Interim Report,” Asian Network for Free Elections (ANFREL), 2020.

rejected candidates were unsuccessful even where necessary documentation to qualify for political office was provided.<sup>396</sup> Existing discriminatory practices among immigration officials further compounds the difficulties faced by religious minorities in acquiring the necessary documentation to run for political office.

### Establishing Political Parties

In the lead up to the 2015 general elections, the Political Parties Registration Law was amended so that only full citizens were permitted to establish political parties, thereby excluding associate citizens, naturalised citizens, and TRC holders from forming a political party.<sup>397</sup> Similarly, the law amended a provision to exclude associate citizens and TRC holders from becoming officially recognised members of any political party as well.<sup>398</sup> The amendment was part of an attempt led by Aye Maung, the Chairperson of the Rakhine National Development Party (RNDP) and a politician known for his anti-Rohingya views, to remove the right of TRC holders, as well as naturalised and associate citizens, to vote and register as official members of a political party.<sup>399</sup> The amendment led to the expunging of TRC holders and associate citizens from political parties, including 8,000 people from the National League for Democracy (NLD) alone in 2015.<sup>400</sup>

Although this law has again been amended,<sup>401</sup> the curtailing of the political rights of associate citizens, naturalised citizens, and TRCs holders has had its intended effect: in 2015, no Muslims were elected to parliament, including Muslim political leaders who previously held seats.<sup>402</sup> In 2020, two Muslim candidates (out of 1,100 candidate) ran under the NLD (nationally, 30 Muslim candidates out of 6,969 candidates ran for parliament).<sup>403</sup> In total, 23 percent of Muslim candidates who applied to run for a parliamentary seat in the 2020 general elections were rejected.<sup>404</sup> By comparison, 0.3 percent of persons rejected from other religious groups.

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<sup>396</sup> Naing, S., "Rohingya politicians excluded from Myanmar election," Reuters, 25 August 2020; "Myanmar: Prevent Exclusion of Rohingya Candidates from National Elections," Fortify Rights, 19 August 2020; "Rohingya Candidate to Appeal Myanmar Parliament Candidacy Rejection," Radio Free Asia (RFA), 14 August 2020.

<sup>397</sup> Political Parties Registration Law (2014), 4(a); Second Amending Law of the Political Parties Registration Law (2014), S.2; Yen Snaing, "President Signs Amended Law Barring Non-Citizens From Politics," The Irrawaddy, 3 October 2014.

<sup>398</sup> Political Parties Registration Law (2010), 10(a); Second Amending Law of the Political Parties Registration Law (2014), S.4

<sup>399</sup> Crouch, M., *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, 2019, p.65.

<sup>400</sup> Ye Mon and Lu Min Mang, "NLD to help expelled members get citizenship," The Myanmar Times, 20 March 2015.

<sup>401</sup> The 2010 Political Parties Registration Law has since been repealed and replaced in 2023 by similar law that has reinstated the right of associate citizens to once again become members of a political party. Political Parties Registration Law (2023), S.10(a). While many other provisions remain the same in the 2010 law, the 2023 Political Parties Registration Law has added provisions relating to the formation of political parties that essentially restricts the ability of political opposition to form against the military's State Administration Council (SAC) under the new law.

<sup>402</sup> The main political parties did not even field Muslim candidates in 2015. Several Muslim candidates had originally intended to run as NLD candidates but later, under pressure from party leaders, decided not to run for political office. Holmes, O., "Myanmar's Muslims win no seats in new parliament," The Guardian, 15 November 2015.

<sup>403</sup> Both candidates won their respective parliamentary seats. "Myanmar Muslim MP-Elect Vows To Be Rights Champion," The ASEAN Post, 11 November 2020.

<sup>404</sup> "Majority Rules in Myanmar's Second Democratic Election," Crisis Group, Asia Briefing N°163, 22 October 2020, pp.7-8.

In the context of political participation, the issue of citizenship is especially politically sensitive. In the lead up to the 2020 general election, a few media outlets and military spokespeople voiced claims of election fraud in alleging that people without proper citizenship cards had voted.<sup>405</sup> These allegations later became one of the main justifications for the coup.<sup>406</sup> Since the coup, a citizenship verification initiative, the *Pann Khin* project, has undertaken to correct to so-called “errors in the voter list” in the 2020 elections. Much like other citizenship verification initiatives,<sup>407</sup> in which local administration officials, embassies, and other groups work together with immigration officials to help eligible individuals acquire citizenship cards, Pann Khin is reportedly discriminatory in application, bypassing persons perceived to be religious minorities in particular.<sup>408</sup> Previous citizenship drives have also been held prior to elections but this particular context has taken on particular relevance as a blatant political tool that will ultimately result in further disenfranchisement of religious and ethnic minorities in particular.

The actions undertaken in the past decade by the President and executive branch, by members of parliament, by judges at the Constitutional Tribunal, and by members of the Union Election Commission in Myanmar effectively excluded religious minorities, particularly Muslims, from voting, holding political office, and participating in political parties. This process of exclusion has had a profound effect on the representation of religious minorities and their interests at every level of government. Moreover, this manipulation of political, judicial, and administrative institutions by political elites essentially undermined the entire democratic process in Myanmar at a crucial time of transition and development,<sup>409</sup> many years before the military coup in 2021.

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<sup>405</sup> For example, see “Entire people, all administrative bodies need to join hands to combat terrorism, says Senior General.” *Global New Light of Myanmar*. 14 December 2021.

<sup>406</sup> Office of the President, Republic of the Union of Myanmar, Order No.1/2021.

<sup>407</sup> For example, citizenship initiatives such as Moe Pwint programme (2010-2015), Thitsar programme (starting in 2015), and now the Pann Kinn (2021 to present). Pyae Sone Aung, “Who gets to vote?,” *Frontier Magazine*, 8 September 2020; “Experiences of Citizenship and Legal Identity in Myanmar,” Justice Base and [partner organisation name withheld upon request], January 2021. Publication currently not public. Please contact Justice Base at [info@justicebase.org](mailto:info@justicebase.org) for copy of above-listed publication.

<sup>408</sup> See [Box 8: Citizenship Verification Measures](#).

<sup>409</sup> This chapter refers to political changes within the past decade. For a brief overview of Burmese/Myanmar politics and history, see Charney, M., *A History of Modern Burma*, Cambridge University Press, 2009.

## CHAPTER 9: STATELESSNESS

### 9.1 Overview

- ❖ Statelessness occurs when a person is not able to realise their right to citizenship in any country in the world.
- ❖ Even though Myanmar is not a party to international treaties on statelessness, Myanmar still has an obligation to at least observe the peremptory norms of non-discrimination with regards to acquisition, loss of nationality, and treatment of stateless persons.
- ❖ Racial and religious discrimination, lack of pathways to naturalisation, and other barriers to acquiring citizenship documentation have increased the risk of statelessness disproportionately among religious minorities in Myanmar.
- ❖ Myanmar law also lacks the necessary protections to prevent statelessness.

Statelessness occurs when an individual is unable to realise the right to citizenship in any country.<sup>410</sup> As such, stateless persons have limited access to fundamental rights and services, including right to work and travel, access to healthcare and education.<sup>411</sup> Statelessness can occur at birth or through loss or revocation of citizenship.<sup>412</sup> A stateless person may also be considered a refugee.<sup>413</sup>

Two key international treaties apply to statelessness: 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness. Under the 1961 Convention on the Reduction of Statelessness, a state party is required to provide nationality to persons born in the territory who would otherwise be stateless.<sup>414</sup> Similarly, international standards also requires that a state party not deprive a person of citizenship if that person would become stateless as a result.<sup>415</sup> Fundamental to both treaties is the peremptory norm of non-discrimination for which states may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.<sup>416</sup> Even though Myanmar is not a party

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<sup>410</sup> This definition is broader than stated under international law. Under the UN Convention Relating to the Status of Stateless Persons (1954), Article 1, a stateless person is “a person who is not recognised as a legal citizen by any country.” Under the definition herein, it also refers to persons who cannot acquire or prove their nationality (also known as ‘*de facto* statelessness’). There is no legally binding international law that applies to *de facto* stateless persons unless they are also considered refugees.

<sup>411</sup> For a breakdown of access to rights for citizens and non-citizens in Myanmar, see Appendix D: .

<sup>412</sup> Deprivation of citizenship resulting in statelessness is considered arbitrary. For more on revocation of citizenship, see [Chapter 7: Citizenship](#).

<sup>413</sup> Not all stateless persons are refugees, as many stateless people have never even crossed an international border. Conversely, not all refugees are stateless as they may be able to realize their right to citizenship but still meet the definition of a refugee under various laws.

<sup>414</sup> Convention on the Reduction of Statelessness (1961), Art. 1.

<sup>415</sup> *Id.* at Art.1(1) and Art.8.

<sup>416</sup> *Id.* at Art.9.



to either treaty on statelessness, Myanmar still has an obligation to at least observe the peremptory norms of non-discrimination with regards to acquisition, loss of nationality, and treatment of stateless persons.<sup>417</sup>

Discrimination is one of the main causes of statelessness in the world.<sup>418</sup> More than 75% of the population of known stateless persons belong to an ethnic or religious minority.<sup>419</sup> The Rohingya<sup>420</sup> are one of the largest populations of stateless persons in the world with over 900,000 refugees in a refuge' camp in Cox's Bazar (Bangladesh) and an estimated 600,000 remaining in Rakhine State.<sup>421</sup> Other persons such as Chinese, Tamil, Gurkhas, and Muslims from different communities and backgrounds have also been rendered stateless under both the country's discriminatory legal framework and discriminatory implementation of citizenship in practice.<sup>422</sup> Many persons of mixed ethnic and religious parentage similarly report facing systematic discrimination and, as such, are at a heightened risk of statelessness.<sup>423</sup> Statelessness in Myanmar disproportionately impacts religious minorities, exacerbating and reinforcing experiences of exclusion and marginalization.

**Box 10: Protections Against Statelessness for Children Born in Spain<sup>424</sup>**

In 2021, a court in Spain ruled that child born in Morocco, while in transit from Cameroon to Spain, had the right to acquire Spanish citizenship. The mother, originally from Cameroon, gave birth to a child in a private home in Morocco on her way to reside in Spain. As a result of the circumstances of the child's birth and transportation, there are no documents officially recognising the child's birth or existence in any country other than Spain.

The child in this case could not acquire citizenship from Cameroon automatically because of the procedures necessary to acquire citizenship. The mother applied to the Cameroon consulate in Spain but was referred to local officials. The mother could not travel to Cameroon

<sup>417</sup> Myanmar's lack of legal protections and procedures to protect against statelessness violates several UN treaties to which the state is a party: Convention on the Rights of the Child (CRC) (1990), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), and Convention on the Rights of Persons with Disabilities (CRPD) (2007) all require states to protect and safeguard against statelessness among children, women, and persons with disabilities, respectively. *See* CRC (1990), Art.7, CEDAW (1979), Art.9, and CRPD (2007), Art.18.

<sup>418</sup> "Addressing Statelessness Through the Rule of Law," International Development Law Organization (IDLO), 2022, p.5-6.

<sup>419</sup> "Background Note on Discrimination in Nationality Laws and Statelessness," UNHCR, 2021, p.3.

<sup>420</sup> *See* [Box 2: Who are Rohingya?](#)

<sup>421</sup> "Crisis 101: Rohingya Refugee Crisis Explained," United Nations High Commissioner for Refugees (UNHCR), 13 July 2022; "2022 Annual Report of the U.S. Commission on International Religious Freedom," United States Commission on International Religious Freedom (USCIRF), April 2022, pp.14-16. f

<sup>422</sup> Justice Base, "A Legal Guide to Citizenship and Identity Documents in Myanmar" (Justice Base, 2018); Justice Base, "Constitutional Analysis of Myanmar's 1982 Citizenship Law" (Justice Base, 2018); *see also* [Chapter 7: Citizenship](#).

<sup>423</sup> "Access to Documentation and Risk of Statelessness," Smile Education and Development Foundation (SEDF) and Justice Base, 2017, pp.26, 34-35, and 37.

<sup>424</sup> "Landmark judgment from Spain: court grants Spanish nationality to a stateless child born en route (a case of 'invisible children')," European Network on Statelessness, 7 July 2022.



to handle the necessary steps for citizenship with the local officials in Cameroon due to lack of travel documentation.

The mother also requested birth registration documents for her child and even sought to have her child recognised as a citizen of Morocco at the Moroccan consulate in Spain. Her request in this case was ignored by the Moroccan authorities.

As a result of the above-described circumstances, the child was neither recognised by the mother's country of origin (Cameroon) or country of birth (Morocco) and was therefore stateless. The Spanish judge relied on Spanish and international law to rule that it was in best interests of the child as well as in line with Spain's international obligations with regards to the right to nationality and prevention of statelessness to grant Spanish citizenship to the child.<sup>425</sup>

Myanmar's citizenship framework and its implementation does not respect the right to nationality under international law and lacks the necessary safeguards to protect against the arbitrary deprivation of citizenship leading to statelessness. By contrast, as described in the case study above, Spain is an example of a country that contains positive safeguards against statelessness. In Spain, the authorities recognise children as citizens of Spain if they are (1) born in Spain and (2) do not automatically acquire nationality in another country through their parents. Whether or not a person can acquire nationality of another country depends on the operation of law outside of Spain. Such legal protections provided against statelessness is consistent with Spain's international obligations as a state party under both stateless conventions and the Convention on the Rights of the Child (CRC).<sup>426</sup> Under the CRC, a child shall have the right from birth to the right to acquire a nationality (citizenship).<sup>427</sup> Further, state parties are obliged to ensure that the child's right to nationality is realized, particularly where a child would otherwise be stateless.<sup>428</sup> Although Myanmar is also a state party to the CRC, Myanmar law does not provide sufficient protections against statelessness under similar circumstances,<sup>429</sup> thereby exposing children born in Myanmar to increased risk of statelessness.

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<sup>425</sup> Spanish Civil Code, Art. 17(1)(c), Convention relating to the Status of Stateless Persons (1954), Art. 1(1), and Convention on the Rights of the Child (CRC), Art. 7.

<sup>426</sup> Spanish Civil Code, Art. 17(1)(c), Convention relating to the Status of Stateless Persons (1954), Art. 1(1), and Convention on the Rights of the Child (CRC), Art. 7.

<sup>427</sup> Convention on the Rights of the Child (1989), Art. 7(1).

<sup>428</sup> *Id.* at Art.7(2).

<sup>429</sup> Section 22 of the Child Rights Law (2019) law reaffirms existing citizenship laws: "Every child registered for birth shall have the right to citizenship in accordance with the provisions under the existing Law."

## CHAPTER 10: FREEDOM OF MOVEMENT

### 10.1 International Standards

- ❖ The right to freedom of movement is a fundamental component of liberty.
- ❖ Freedom of movement includes the following:
  - freedom of movement within a territory
  - freedom to choose a residence within a territory
  - the right to leave any country
  - the right to enter one's own country
- ❖ The right to freedom of movement may only be restricted when said restriction is:
  - provided by law and
  - necessary to protect national security, public order, public health or morals or the rights and freedoms of other rights recognized under international law.

The right to freedom of movement is a fundamental component of liberty. Freedom of movement includes the right to freedom of movement within a territory and the right to choose a residence within a territory for persons *lawfully within the territory of a state*.<sup>430</sup> While the ICCPR guarantees freedom of movement for persons who are 'lawfully within the territory,'<sup>431</sup> this has been interpreted as applying not only to citizens but also to persons whose "status has been regularized," even if that person originally arrived illegally.<sup>432</sup> In general, blanket restrictions on individuals, preventing them from travelling internally without a specific permit, is considered an impermissibly broad restriction that contravenes freedom of movement under international law.<sup>433</sup>

#### Freedom of movement within one's own country

Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

- International Covenant on Civil and Political Rights (ICCPR), Art. 12(1)

Freedom of movement also includes the freedom to leave any country, including one's own, and the right *not* to be arbitrarily denied the right to enter one's own country.<sup>434</sup> In addition international standards protect overlapping rights related to movement, such as "no one shall be

<sup>430</sup> Jayawickrama, N., *The Judicial Application of Human Rights Law: National, Regional, International Jurisprudence*. Cambridge University Press, 2017, p.453.

<sup>431</sup> International Covenant on Civil and Political Rights (ICCPR) (1966), Art. 12(3).

<sup>432</sup> "CCPR General Comment No. 27: Freedom of Movement," UN Human Rights Committee (HRC), 2 November 1999, para.4.

<sup>433</sup> "CCPR General Comment No. 27: Freedom of Movement," UN Human Rights Committee (HRC), 2 November 1999, para.4.

<sup>434</sup> International Covenant on Civil and Political Rights (ICCPR) (1966), Art.12(2) and Art.12(4).

subjected to arbitrary... exile”<sup>435</sup> and “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>436</sup>

International standards also address forms of discrimination as they relate to freedom of movement. For example, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires that states “undertake to prohibit and to eliminate racial discrimination” in order to guarantee universal enjoyment of several fundamental rights, among them “the right to freedom of movement and residence within the borders of the state” and “the right to leave any country, including one’s own, and to return to one’s country.”<sup>437</sup> Although Myanmar is not a party to the ICERD, it must observe the peremptory norm of non-discrimination.

Any restrictions on freedom of movement must be exceptional.<sup>438</sup> Under the ICCPR, the right to freedom of movement, including to choose one’s own residence and to be free to leave any country, may be restricted only under circumstances where said restriction is (1) provided by law and (2) necessary to protect national security, public order, public health or morals or the rights and freedoms of other rights recognized under international law.<sup>439</sup> Even where the restrictive measures are justifiable under international law, criminal penalties such as imprisonment must never be imposed where civil penalties (i.e., fines) are otherwise sufficient.<sup>440</sup>

In Myanmar, the restrictions on freedom of movement under the law, and as carried out by the authorities in practice, continue to violate international standards, especially as it is arbitrarily and discriminatorily applied to religious and ethnic minorities.

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<sup>435</sup> Universal Declaration of Human Rights (UDHR) (1948), Art.9.

<sup>436</sup> *Id.* at Art. 14(1).

<sup>437</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), Art. 5. Other examples include Article 18 of the Convention on the Rights of Persons with Disabilities (CRPD) (2007) protects the right “to liberty of movement, to freedom to choose their residence and to a nationality” of persons with disabilities and Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) ensures that women have equal rights “with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.” Under Article 10(2) of the Convention on the Rights of the Child (CRC) (1990), a child has the right to leave any country and enter their own country subjected only to enumerated restrictions as described below. Myanmar is a party to CRPD, CEDAW, and CRC.

<sup>438</sup> “CCPR General Comment No. 27: Freedom of Movement,” UN Human Rights Committee (HRC), 2 November 1999, para.11.

<sup>439</sup> International Covenant on Civil and Political Rights (ICCPR) (1966), Art.12(3).

<sup>440</sup> “CCPR General Comment No. 27: Freedom of Movement,” UN Human Rights Committee (HRC), 2 November 1999, para.14.

## 10.2 Freedom of Movement in Myanmar

- ❖ In Myanmar, freedom of movement is intertwined with proof of identity and residency documents, documents that religious and ethnic minorities may not be able to easily obtain due to citizenship status.
- ❖ There are also various local regulations and orders, as well as unofficial practices, including extortion and unofficial roadblocks, that discriminatorily target religion minorities.
- ❖ Since the coup, freedom of movement and travel has become even more restricted for all persons living in Myanmar but particularly for religious and ethnic minorities.

Laws that regulate movement in Myanmar are linked to proof of identity and residency documents, all of which are tied directly and indirectly to citizenship status.<sup>441</sup> Documentation is required at every stage of travel, from purchasing train or plane tickets to staying overnight in locations outside of one's registered place of residence.<sup>442</sup> Those who travel without necessary documentation may face disproportionate penalties of up to five years in prison.<sup>443</sup>

Under the law, every person residing in the country is required to apply for a registration card as proof of identity.<sup>444</sup> These cards include data regarding ethnicity and religion. Persons who cannot establish that they are citizens under the 1982 Citizenship Law are supposed to register as foreigners under the Foreigner's Act.<sup>445</sup> Furthermore, while the 1982 Citizenship Law does not directly restrict movement, the 1983 procedures requires that everyone carry their respective citizenship cards while travelling. These laws leave those who have not acquired citizenship especially vulnerable to criminal penalties if they cannot acquire the necessary documentation for travel. The 1982 Citizenship Law effectively restricts freedom of movement since denial of citizenship under this law provides a basis for withholding legal documentation necessary for travel.<sup>446</sup> Below the Union (national) level, local orders and restrictions further regulate

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<sup>441</sup> The laws that regulate movement in Myanmar are as follows: Burma Immigration (Emergency Provisions) Act (1947), the Registration of Foreigners Act (1940), the Registration of Foreigners Rules (1948), the Residents of Burma Registration Act (1949), and the Residents of Burma Registration Rules (1951). Additionally, the Ward or Village Tract Administration Law (2012) replaced the Towns Act (1907) and the Village Act (1907), two laws which previously affected freedom of movement in Myanmar.

<sup>442</sup> The Residents of Burma Registration Act requires the registration of particulars (i.e., name, country of origin, nationality, etc.) of every person residing in Myanmar. Such registration is necessary to acquire identity cards that may be used for internal travel instead of a passport. Residents of Burma Registration Act (1949), S.4.

<sup>443</sup> Up to two years under the Residents of Burma Registration Act (1949), S.6(3) and up to five years under the 1990 Law Amending the Myanmar Immigration (Emergency Provisions) Act (1947), S.2(a).

<sup>444</sup> Residents of Burma Registration Act (1949), S.4(1).

<sup>445</sup> While case law suggests that a person who registers under this law should not also be considered to have forfeited citizenship, in practice, such registration may indeed cause problems. See, for example, *Ten Yu Han v. The President of the Union of Burma*, 1953 BLR 47. "a citizen remains a citizen even if he holds an [Foreign Residency Certificate (FRC)] out of "ignorance, or under a mistaken belief or for protection in case the authorities entertain some doubts as to his citizenship."

<sup>446</sup> "Myanmar: Rohingya Jailed for Traveling," Human Rights Watch, 8 October 2019.

movement and travel. Such local orders often target ethnic minority groups, including Rohingya,<sup>447</sup> Kaman Muslims,<sup>448</sup> and Chin.<sup>449</sup>

Freedom of movement is also intertwined with household registration under Myanmar law. Persons must register their place of residence, including registering their personal information on a household list. Further, the Ward or Village Tract Administration Law, recently amended after the coup in 2021, reintroduces a provision that requires the reporting of any overnight guest.<sup>450</sup> Under the premise of securing law and order, the provision essentially grants authorities unfettered access to private residences. The law significantly impacts certain religious minorities as they are less likely to have citizenship or the sufficient civil documentation necessary to register as a guest.<sup>451</sup> Those who are unable to obtain household registration documents due to citizenship status or lack of access to civil documentation may then be required to regularly report themselves as 'guests' even in their own homes. Some individuals may not be able to report at all or may be forced to pay bribes to remain in their own homes.<sup>452</sup> Some individuals report choosing to limit travel outside of their home or hometown to avoid interactions with the authorities or even face jail and/or fines.<sup>453</sup> This law, particularly the documentation needed and overall process of household registration, has been inconsistently applied all across the country.<sup>454</sup> In addition to national-level laws, there are various local regulations and orders, as well as unofficial practices (described below), including extortion practices and unofficial roadblocks, that discriminatorily target religion minorities.

Before the coup in 2021, travel and movement restrictions placed on *citizens* were largely limited to exceptional circumstances, such as the travel restrictions imposed on external election observers and journalists during the 2020 election. Where these restrictions were generally deemed legitimate, such as in the case of curfew and quarantine regulations allegedly as a response to COVID-19 concerns, these restrictions were criticized by rights groups for carrying disproportionately harsh penalties.<sup>455</sup>

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<sup>447</sup> "Tools of Genocide": National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar," Fortify Rights, 3 September 2019, p.54.

<sup>448</sup> "Let Kaman IDPs Return to Their Homes," Burma Human Rights Network, 14 April 2020.

<sup>449</sup> "We Are Like Forgotten People" – The Chin People of Burma: Unsafe in Burma, Unprotected in India," Human Rights Watch, 27 January 2009, p.52.

<sup>450</sup> See Ward or Village Tract Administration Law (2012), Ss.13(g)-(h), S.13(n), and S.17. For more details on household inspections, guest lists, and the registration of overnight guests, see "Midnight Intrusions," Fortify Rights, March 2015. Until this 2021 amendment, only one month reporting was required under the 2016 Amendment to the Ward or Village Tract Administration Law (2012) (3rd Amendment), S.10(b) and S.17.

<sup>451</sup> The requirement of reporting overnight guests has long been used as a way to locate and arrest dissidents. Htoo Thant, "'Midnight inspection' clause abolished by parliament," Myanmar Times, 20 September 2016; "Military casts a wide net with a series of late-night raids," Myanmar Now, 12 Feb 2021. s

<sup>452</sup> Religious and ethnic minorities report often being forced to pay a series of bribes at every step of the way. "Midnight Intrusions," Fortify Rights, March 2015, p.16 and 26.

<sup>453</sup> Petty corruption such as bribery is pervasive even though there are many anti-corruption provisions under the law, including under the Ward or Village Tract Administration Law (2012), S.33 (The Ward or Village Tract Administrator shall not collect any currency in respect of guest list information).

<sup>454</sup> "Midnight Intrusions," Fortify Rights, March 2015, pp.14-16.

<sup>455</sup> "Freedom in the World 2021: Myanmar," Freedom House.

Since the coup, freedom of movement and travel has become even more limited for citizens.<sup>456</sup> Restrictions on movement are often enforced by the military, and include roadblocks and checkpoints, as well as curfews, enforced exit controls, along with residency requirements reintroduced which requires residents to report any overnight guests in their homes.<sup>457</sup> While this also affects the rights of citizens, the increased surveillance and restriction measures worsen existing limitations on the freedom of movement for religious and ethnic minorities.

In practice, persons without citizenship papers may carry recommendation letters from hometown authorities in order to discourage criminal prosecution or harassment from officials during travel.<sup>458</sup> This practice relies on the discretion of local authorities without a legal framework or safeguards. Persons who are perceived to be from a religious and ethnic minority more commonly report being singled out, questioned by the police, and asked to pay bribes by officials during travel.<sup>459</sup>

As freedom of movement is necessary to apply for citizenship documents, for applicants who have moved away from home or otherwise need to provide documentation for parents and grandparents in different parts of the country, the restrictions become a vicious circle: in order to acquire the documentation necessary to successfully apply for citizenship or other forms of civil documentation, it is often necessary travel, and yet in order to travel legally, citizenship and civil documentation is needed. These restrictions are yet another way in which the law and its implementation further marginalizes religious and ethnic minorities.

### 10.3 Travel Restrictions Targeting the Rohingya Population

- ❖ Stateless populations in Myanmar continue to face the most significant restrictions on their movement.
- ❖ Both before and after the coup, Rohingya communities have been subject to the most severe travel restrictions due to lack of documentation as a result of being designated as ‘illegal aliens’ under the law.
- ❖ 1949 Residents of Burma Registration Act has been used most commonly to prosecute Rohingya persons for traveling without official authorisation.

Both before and after the coup, Rohingya communities have been subject to the most severe travel restrictions due to lack of documentation as a result of being designated as ‘illegal aliens’

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<sup>456</sup> For example, attempts to leave the country were thwarted in the case of some high-profile political dissidents who were arrested as they tried to escape Myanmar by air. Freedom in the World 2022: Myanmar," Freedom House, 29 July 2022.

<sup>457</sup> *Id.*

<sup>458</sup> It is not clear if formal instructions or guidance have been issued to immigration or police officials regarding the use of recommendation letters to travel, although this seems to be common practice in some areas. Smile Education and Development Foundation (SEDF) and Justice Base, "Access to Documentation and Risk of Statelessness," 2017, pp.40-41

<sup>459</sup> *Id.*

under the law.<sup>460</sup> Without access to citizenship status, stateless people, like many Rohingya persons in Myanmar, can be denied the legal documentation necessary for travel or even face imprisonment particularly under Section 6(3) of the 1949 Residents of Burma Registration Act.<sup>461</sup> Rohingya in some areas are essentially confined to certain camps and villages.<sup>462</sup>

There are numerous practical obstacles to registration that Rohingya persons face in particular in relation to Residents of Burma Registration Act. For example, for Rohingya living in Rakhine State, such communities rarely have access to the state-assigned nurses and midwives who are authorized to record births in an official register, the first step in obtaining a birth certificate.<sup>463</sup> Authorities have also decreased the frequency with which they register newly-born Rohingya on household lists (which, in the absence of a birth certificate, acts as the main form of documentation for many Rohingya).<sup>464</sup> Such vital documentation is a prerequisite for acquiring, among other things, residency documentation necessary to comply with the Residents of Burma Registration Act.<sup>465</sup> Rohingya are thus often essentially confined to certain towns and villages and internal displacement camps.<sup>466</sup>

In 2019, 30 Rohingya Muslims were detained for traveling without permits while enroute to the commercial capital city of Yangon after leaving the conflict in Rakhine State where they previously resided.<sup>467</sup> 21 were later sentenced to two years in prison for failing to provide a proper registration card.<sup>468</sup> The remaining nine are children who were sent to some form of detention centre. At no point did the detainees receive legal representation. News media reported that traffickers had arranged for their transportation to Malaysia to seek asylum.<sup>469</sup> This instance is just one of many known arrests of Rohingya people traveling within the country.

The political upheaval since the coup, in 2019, has further escalated human rights abuses across the country. In Rakhine State, December 2021, a court sentenced 199 people (the majority of

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<sup>460</sup> Under the 1982 Citizenship Law, Rohingya are denied citizenship and are instead considered 'illegal aliens.'

<sup>461</sup> "Myanmar: Rohingya Jailed for Traveling," Human Rights Watch, 8 October 2019.

<sup>462</sup> Rohingya face such significant restrictions on their freedom of movement that some observers argue that they are subjected to a system of apartheid. "Caged Without a Roof": Apartheid in Myanmar's Rakhine State," Amnesty International, 21 November 2017, p.10; "Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar," Fortify Rights, 25 February 2014; "All You Can Do Is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State," Human Rights Watch, 22 April 2013.

<sup>463</sup> Lim, R. "Life in Limbo," United Nations, 2 June 2022.

<sup>464</sup> "Caged Without a Roof": Apartheid in Myanmar's Rakhine State," Amnesty International, 21 November 2017, pp.34-35.

<sup>465</sup> "Myanmar: Rohingya Jailed for Traveling," Human Rights Watch, 8 October 2019

<sup>466</sup> According to various reports, 144,000 predominantly Muslim Rohingya are in such camps in Rakhine State by the end of 2021. "2021 Report on International Religious Freedom: Burma," Office of International Religious Freedom, US State Department, 2 June 2022, p.2.

<sup>467</sup> "Myanmar: Rohingya Jailed for Traveling," Human Rights Watch, 8 October 2019.

<sup>468</sup> Residents of Burma Registration Act (1949), S.4(1). As the exact details of the case have not been publicly reported to date, it is also possible that they faced charges for providing a forged "registration card" or for pretending to assume the identity of another person on a registration card. Residents of Burma Registration Act (1949), S.6(1); A two-year sentence is the maximum penalty under the Residents of Burma Registration Act (1949), S.6(3).

<sup>469</sup> "Myanmar Jails 21 Rohingya Caught Traveling to Yangon for Work, Emigration," Radio Free Asia, 4 October 2019.

whom are Rohingya from Maungdaw (a site of brutal military clearance operations against the Rohingya population)<sup>470</sup> to five years in prison for illegally trying to migrate.<sup>471</sup> Although the exact charges have not been made public, in order to receive a maximum sentence of five years based on the circumstances, these individuals were likely charged under the 1947 Burma Immigration (Emergency Provisions) Act. The provision penalizes ‘foreigners’ for entering and/or remaining in the country without a proper permit or visa with up to five years in prison.<sup>472</sup>

In some cases, stateless persons like many Rohingya may be able to request official permission in order to travel between states and regions, even townships and villages, as described above, but such permission is also subject to local regulations that seemingly target areas where the population is largely comprised of Rohingya persons.<sup>473</sup> For example, in areas such as in Buthidaung in northern Rakhine State, local travel restrictions are becoming even more restrictive. In an order issued on November 25<sup>th</sup> from the Buthidaung Township Administrator Nay Oo, “Muslim people”<sup>474</sup> are believed to be traveling beyond their own townships without a Form 4 (a temporary travel permit), actions which he described as threatening local security and rule of law.<sup>475</sup> His order further warns that those who travel without written permission will face legal action. A Form 4 must be acquired from the local immigration office and is not always granted.<sup>476</sup> Prior to this date, a recommendation letter from the local Ward or Village Tract Administrator was needed.

These infringements on their right to freedom of movement impact many other areas of their lives. For example, travel permit requirements and checkpoints delay access to healthcare facilities, and curfews further prohibit access at night, limiting the ability of Rohingya to receive necessary medical care.<sup>477</sup> Among other effects of the law, Rohingya children have limited access to primary education since they are barred from attending schools with ethnic Rakhine children and government teachers refuse to teach at schools in the areas where they live.<sup>478</sup>

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<sup>470</sup> “New Evidence Shows How Myanmar’s Military Planned the Rohingya Purge,” Voice of America (VOA), 6 August 2022.

<sup>471</sup> Myo Tun. “More than 100 Rohingya fleeing persecution in Rakhine State sentenced to five years in prison,” Myanmar Now, 16 December 2021.

<sup>472</sup> Burma Immigration (Emergency Provisions) Act (1947), S.13(1) as amended in 1956, S.3(a)(1). 1990 Law Amending the Myanmar Immigration (Emergency Provisions) Act (1947), S.2(a) increased the penalty from a maximum sentence of two years to a maximum of five years in prison.

<sup>473</sup> “Caged Without a Roof: Apartheid in Myanmar’s Rakhine State,” Amnesty International, 21 November 2017, pp.42-58.

<sup>474</sup> According to another source the order used the term ‘Bengali’ instead of ‘Rohingya’ which has become a derogatory way of referring to Rohingya persons in Myanmar as a way to reinforce their “foreign-ness” and deny them legal status. Term usage of the term Rohingya, by contrast, is considered a term reflecting a biased “political standing and interest” by those who oppose their recognition as part of Myanmar. Rahman, S. “Myanmar’s ‘Rohingya’ vs ‘Bengali’ Hate Speech Debate,” The Diplomat, 21 December 2019.

<sup>475</sup> Myo Tun. “Rohingya in Buthidaung hit with even tougher travel restrictions,” Myanmar Now, 29 November 2021.

<sup>476</sup> There are several reports that bribery may facilitate the acquisition of a Form 4. *Id.*

<sup>477</sup> “Caged Without a Roof: Apartheid in Myanmar’s Rakhine State,” Amnesty International, 21 November 2017, p.12.

<sup>478</sup> *Id.*



For many Rohingya living in internal displacement camps, restrictions on their movement mean they must rely on others (including humanitarian organizations and local merchants) for necessities including food, shelter, commodities, and essential services.<sup>479</sup> These conditions deprive Rohingya of their livelihoods. Denial of the right to freedom of movement can affect other fundamental rights, like access to food, healthcare, education, and a livelihood.

Myanmar law and practices in restricting movement falls far short of international human rights standards. In general, blanket restrictions on individuals, preventing them from travelling internally without a specific permit, is considered an impermissibly broad restriction that violates the freedom of movement.<sup>480</sup> Furthermore, given the highly discriminatory practices associated with accessing identity documents and the relationship of such documentation to citizenship, these restrictions unduly burden religious and ethnic minorities as well.

Further, the restrictions are being systematically employed to prosecute Rohingya for movement within the country. Not only is there no justification for this difference in treatment under international law but the restrictions are also disproportionate in imposing criminal penalties where civil penalties, specifically fines, would otherwise suffice.<sup>481</sup> These restrictions are intended to curtail their freedom of movement and restrict the Rohingya population to specific areas in violation of international law.<sup>482</sup>

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<sup>479</sup> *Id.* at p.53.

<sup>480</sup> “CCPR General Comment No. 27: Freedom of Movement,” UN Human Rights Committee (HRC), 2 November 1999, para.4.

<sup>481</sup> *Id.* at para.14

<sup>482</sup> *Id.* at para.18

## SECTION III: APPENDICES

### APPENDIX A: FURTHER RESOURCES

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## APPENDIX B: KEY CONCEPTS IN INTERNATIONAL LAW

### B.1 Overview

Myanmar is a party to several United Nations (UN) treaties. When a state becomes a party to a treaty, it means that the state must respect, protect, and fulfill the rights guaranteed under the treaty. Additionally, as a Member State of the UN, Myanmar is also bound to the UN Charter. Myanmar has adopted the 1948 Universal Declaration of Human Rights (UDHR). The UDHR is a declaration, not a treaty, and is therefore not legally binding on States. However, the UDHR is a special document; it is an authoritative interpretation of the (binding) UN Charter and is the foundation of international human rights law.

In addition to treaties, which are legally binding agreements, Myanmar has additional obligations under customary law. Customary law under international law refers to established international practices that have become accepted as law. A peremptory norm (*jus cogens*) is a type of customary law from which no derogation is possible (i.e., it applies in all circumstances without exception).<sup>483</sup> It is a norm that is recognised by the international community and binding on all States. Examples of peremptory norms are the prohibition against genocide, war crimes, crimes against humanity, slavery, torture, principles of equality and non-discrimination, and equal protection before the law.<sup>484</sup>

Myanmar is not a party to one of the most fundamental human rights treaties: International Covenant on Civil and Political Rights (ICCPR). Along with UDHR and International Covenant on Economic, Social, and Cultural Rights (ICESCR), ICCPR forms the International Bill of Human Rights.<sup>485</sup> The ICCPR elaborates on rights in UDHR, and even though Myanmar is not a state party, this treaty is an authoritative reference point for understanding specific human rights from an international human rights perspective.

Under the Myanmar Constitution, the process of ratifying a treaty in Myanmar can either be initiated in the legislature or by the President in a request submitted to the legislature.<sup>486</sup> In Myanmar, an international law must first be incorporated into domestic law before it can be considered enforceable.<sup>487</sup> The Myanmar Constitution acknowledges that it will honor its obligations to any treaties ratified prior to its enactment.<sup>488</sup>

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<sup>483</sup> Vienna Convention on the Law of Treaties (1969), Art. 53.

<sup>484</sup> There is a debate regarding whether the whole of UDHR is part of customary law. At the very least, there is a consensus that some parts of UDHR are customary law, such as the right to life, right to equality, and the prohibition of discrimination.

<sup>485</sup> "International Bill of Human Rights," Office of the United Nations High Commissioner for Human Rights (OHCHR). <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

<sup>486</sup> Constitution (2008), Art. 108; Art.209.

<sup>487</sup> Crouch, M., *The Constitution of Myanmar: A Contextual Analysis*, Hart Publishing, 2019, p.177.

<sup>488</sup> Constitution (2008), Art. 456; Notably, CEDAW and CRC were ratified prior to the current Constitution came into force.

## B.2 List of Relevant International Instruments

Myanmar is a State Party to several key human rights treaties and declarations that relate to the rights of religious minorities. These include:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
- Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) (1948)<sup>489</sup>
- Convention on the Rights of Persons with Disabilities (CRPD) (2007)
- Convention on the Rights of the Child (CRC) (1990)
- International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966)

Myanmar is not a party to several key human rights treaties and declarations that related to the rights of religious minorities. These include:

- Convention on the Reduction of Statelessness (1961)
- Convention relating to the Status of Stateless Persons (1954)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (ICCPR) (1966)
- United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1998)

Myanmar is a member state of the Association of Southeast Asian Nations (ASEAN). Established in 1967, ASEAN is a regional inter-governmental organization that has long practiced the principle of non-interference in affairs of each respective member state. The ASEAN Charter remains the legally binding agreement under ASEAN. Similarly, the ASEAN Human Rights Declaration (AHRD) is not formally-binding.

### Further resources

- UN Human rights instruments are available on the Office of the United Nations High Commissioner for Human Rights (OHCHR) website:

<https://www.ohchr.org/en/instruments-listings>

- The ASEAN database of legal instruments are available on the ASEAN website:

<https://asean.org/legal-instruments-database/>

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<sup>489</sup> Myanmar acceded in 1956 but made a reservation on Article 6. This reservation holds that only national tribunals or courts in Myanmar may try cases of genocide.

- To research Myanmar's treaty obligations, visit the United Nations Treaty Body Database at:

[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx)

- This document also references several thematic 'General Comments' issued by the Human Rights Committee. The General Comments is a treaty body's interpretation of the provisions within the treaty. In this case, the Human Rights Committee is a body of independent experts who monitor the implementation of the ICCPR and provide an authoritative interpretation of its provisions. For access to the General Comments, see the UN Treaty Body Database at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11)

- To learn more about the various monitoring bodies and how to engage in advocacy at the UN, see *A Practitioner's Guide to Human Rights Monitoring, Documentation and Advocacy*, The Advocates for Human Rights, 3 January 2011. This Manual is available on their website at:

<https://www.theadvocatesforhumanrights.org/Publications/A/Index?id=132>

- For more thematic reports specially related to Myanmar, see the reports of the UN Special Rapporteur on the situation of human rights in Myanmar, an independent expert who has been mandated by the UN to monitor and investigate the human right situation in Myanmar. For more information, visit the UN Special Rapporteur on the situation of human rights in Myanmar's page on the United Nations High Commissioner for Human Rights (OHCHR)'s website at:

<https://www.ohchr.org/en/special-procedures/sr-myanmar>

## APPENDIX C: CITIZENSHIP DOCUMENTS

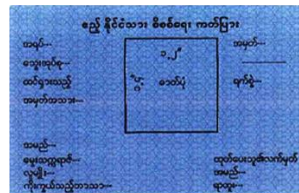
### C.1 Scrutiny Cards

Scrutiny Cards are documents that help to show a person's citizenship.<sup>490</sup> Scrutiny cards are very important, as they may enable people to do basic things like travel, attend high school and university, open a bank account, register their marriage, vote, and buy and sell land. The card records their personal information, including name, sex, religion, race, father's name and identification number.

- Full citizens should receive a pink card, or citizenship scrutiny card (CSC).
- Associate citizens can apply for a blue card, or associate citizenship scrutiny card (ACSC). Naturalized citizens can apply for a green card, or naturalized citizenship scrutiny card (NCSC).



CSC



Associate CSC



Naturalised CSC

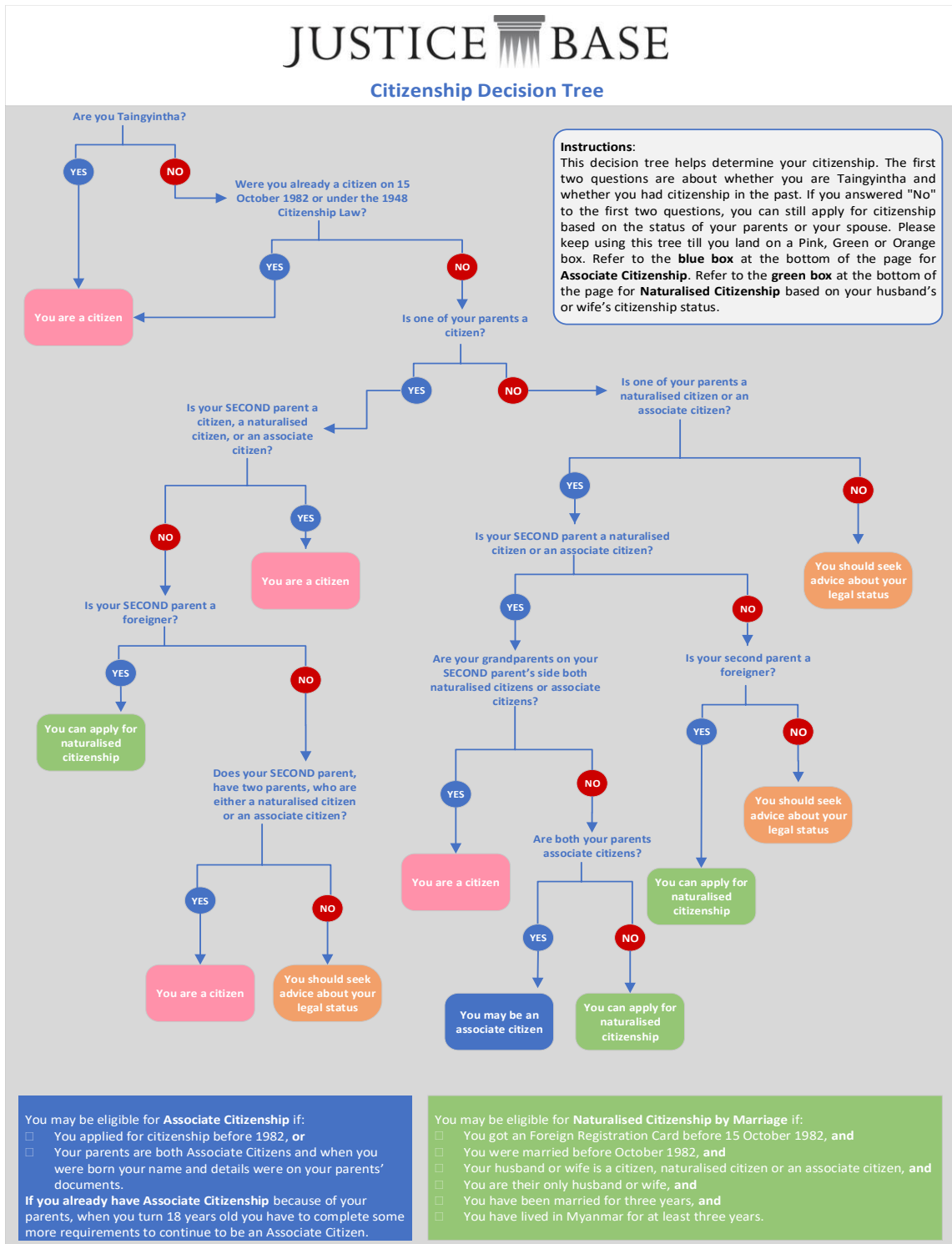
These three types of scrutiny cards were all created pursuant to the 1983 Procedures, corresponding to the three types of citizenship under the 1982 Citizenship Law.

- Full citizenship is defined in Sections 3, 5, 6 and 7 of the 1982 Law.
- Associate citizenship is defined in Section 23 of the 1982 Law.
- Naturalised citizenship is defined in Sections 42, 43, 44 and 45 of the 1982 Law.

*Source: Smile Education and Development Foundation (SEDF), and Justice Base. "A Legal Guide to Citizenship and Identity Documents in Myanmar." 2018.*

<sup>490</sup> 1983 Procedures implements the 1982 Citizenship Law and provides for three types of scrutiny cards that correspond to the three classes of citizenship.

# APPENDIX D: CITIZENSHIP DECISION TREE



Source: "A Legal Guide to Citizenship and Identity Documents in Myanmar," Justice Base, December 2018, p.18.



## APPENDIX E: OFFENCES AGAINST RELIGION

### E.1 Table of 1861 Penal Code Offences Against Religion

Section	Elements	Penalty
Penal Code, S.295	<ul style="list-style-type: none"> <li>Whoever “destroys, damages or defiles” any place of worship or any object “held sacred by any class or person,”</li> <li><i>With the intention</i> of insulting religion, or with the knowledge that it will likely be considered insulting.</li> </ul>	Up to two years in prison and/or fines.
Penal Code, S.295(a)	<ul style="list-style-type: none"> <li>Whoever insults, <i>or at</i></li> <li><i>tempts to insult</i>, religious beliefs through written or spoken word, or visual representation,</li> <li><i>With</i> the deliberate and malicious intention.</li> </ul>	Up to two years and/or fines.
Penal Code, S.296	<ul style="list-style-type: none"> <li>Whoever voluntarily “causes disturbance” to <i>lawful</i> assembly in the performance of the religious worship or religious ceremonies.</li> </ul>	Up to one year and/or fines.
Penal Code, S.297	<ul style="list-style-type: none"> <li>Whoever trespasses onto any place of worship, burial grounds, causes disturbance to funeral ceremonies, or offers any indignity to any human corpse,</li> <li><i>With</i> the intention of wounding the feelings of any person or insulting any religion, or with the knowledge that feelings are likely to be wounded, or that religion of will likely to be insulted</li> </ul>	Up to one year and/or fines.
Penal Code, S.298	<ul style="list-style-type: none"> <li>Whoever utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person,</li> </ul>	Up to one year and/or fines.

	<ul style="list-style-type: none"><li>• <i>With</i> deliberate intention of wounding the religious feelings of any person.</li></ul>	
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## APPENDIX F: GLOSSARY

**Accession:** whereby a State Party agrees to be bound by a treaty after it has been negotiated and signed by other states. Accession is usually after a treaty has been entered into force. In effect, it is the legal equivalent of ratification.

**Declaration:** a term used for various international instruments. A declaration is generally not considered legally binding under international law. When a State Party signs a declaration, however, it is establishing a commitment to the principles and aspirations expressed within a declaration.

**Customary law:** under international law, customary law refers to established international practices that have become accepted as law.

**Ma Ba Tha:** an extremist Buddhist protectionist group with a well-documented anti-Muslim agenda. The name is an acronym in Burmese for a name that is most commonly translated into English as the 'Organisation for the Protection of Race and Religion.'

**Non-derogable:** there are certain rights which are absolute and for which exception is permitted, not even in times of war or emergency. Peremptory norms are non-derogable.

**Peremptory norm (*jus cogens*):** a type of customary law which is non-derogable.

**Principle of Legality:** This principle requires criminal offences to be clearly and narrowly defined by law. As a general principle essential to the rule of law, the principle of legality has obtained binding customary law status when it comes to international criminal law, applicable to international organisations, tribunals, and states.<sup>491</sup> See also 5.2: Principle of Legality.

**Ratification:** the process in which State Party consents to be legally bound to a treaty.

**Refugee:** a refugee is a person who is unable or unwilling to return to their country of origin owing to *well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion*. 1951 Convention relating to the Status of Refugees, Art. (1)(A)(2). Myanmar is not a party to this Convention.

**State Parties:** State Parties are States who have signed, ratified, or acceded to a particular international instrument.

**Tatmadaw** (တပ်မတော်): Myanmar's armed forces.

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<sup>491</sup> For more, see Gallant, K. *The Principle of Legality in International and Comparative Criminal Law*, Cambridge University Press, 2009, p.12 and p.404

**Taingyintha** (တိုင်းရင်းသား): is a problematic term used to refer to Myanmar's 'national races.' It literally means 'sons of the region.' In the 1982 Citizenship Law, *taingyintha* ('Kachin, Kayah, Kayin, Chin, Bamar, Mon, Rakhine, Shan, and so forth' (Section 3)) are considered citizens by birth. Chinese and South Asian ethnicities are generally excluded from this category. Section 4 of the Citizenship Law gives the Council of State the power to decide which groups are and are not taingyintha. See Box 1: Who are taingyintha?

**Treaty:** in relation to international law, it is an agreement between different countries that is legally binding on State Parties.

**Union Election Commission (UEC):** This Commission is responsible for overseeing elections. All UEC members are appointed by the executive branch. Union Election Commission Election Law (2010), S.3, S.6, and S.8.