



SSRC

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New Religious Legislation in Myanmar

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Introduction

Since Myanmar's opening in 2011, the country has seen a rise in Burman-Buddhist nationalism. Monk-led groups such as '969' and the Organization for Protection of Race and Religion ('MaBaTha') and their messages of religious chauvinism enjoy strong popular support. Islam and its followers are particular targets. In addition to sporadic outbreaks of mob violence, this nationalist sentiment has expressed itself in calls for laws to promote and protect Buddhism.

This paper provides an overview of the current status of this draft legislation. It looks at origins of the bills currently before the legislature, a summary of their key provisions, the likely next steps and their political implications. It also discusses the recent moves to disenfranchise over a million Temporary Registration Card holders – most of whom are Muslim, and many of whom are in Rakhine State.

Background to the Legislation

Myanmar is a Buddhist-majority country, with the religion being professed by most Burmans, as well as several ethnic minorities – including most Shan, Mon and a majority of Karen. Others are Christian, including most Kachin and Chin, and some Karen. There are also significant numbers of Muslims and Hindus – many of whom are of Indian descent.

Links between religion and state have long been a contentious issue in the country. Prime Minister Nu's abortive attempts² in the early 1960s to designate Buddhism as the state religion were divisive, being one of the factors behind the Kachin rebellion, as well as drawing criticism from Muslim and Christian religious leaders. The current constitution treads a careful line, recognizing the "special position of Buddhism as the faith professed by the great majority of the citizens" (section 361) but "also recognizes Christianity, Islam, Hinduism and Animism" as having adherents in the country (section 362). There is a Ministry of Religious Affairs, established in 1948, which mainly deals with Buddhist affairs.

Since the political opening in 2011, there has been an increase in religious nationalism in Myanmar. During the course of 2013, the '969' movement and the aligned

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² The State Religion Promotion Act of August 1961, personally championed by Nu, was repealed by General Ne Win following his 1962 coup d'état.

‘Organization for Protection of Race and Religion’ began collecting signatures in support of the enactment of faith-based legislation. In total, several million signatures were collected, and in July 2013 these were forwarded to President Thein Sein together with a request for the enactment of four laws restricting inter-faith marriage, polygamy, religious conversion and unequal population growth.

The President initially took no action on the matter. However, for reasons that remain unclear, some six months later he decided to act. On 25 February 2014, he forwarded the demands of the petitioners to the speaker, asking the legislature to discuss the proposal to enact these laws. The speaker replied that it was most appropriate that the bills be drafted in the first instance by the respective government ministries (a position publicly backed by Aung San Suu Kyi).

On 7 March 2014, the president established a Commission tasked with drafting Bills for two of the proposed laws – on religious conversion, and population balance.³ Regarding the inter-faith marriage law and the law on monogamy, he urged the legislature to work directly with the Supreme Court on the issue, and the latter took charge of the drafting. The president submitted the four bills to the legislature on 26 November 2014, and they have been tabled for discussion in the current session of the legislature, which began on 19 January 2015 and is scheduled to run until mid-March.

There is clearly a recognition among political leaders in Myanmar that the issues raised by such legislative proposals are highly sensitive and controversial. However, there is strong grassroots and nationalist support for such laws, making it difficult for political leaders to reject the proposals. How these two considerations will be reconciled will be indicative of how populism is being balanced with prudence in Myanmar politics, particularly in an election year.

The bills have also drawn considerable international attention, given that the intention behind them appears discriminatory and targeted at Muslims, potentially violating not only Myanmar’s constitutional provisions on religious freedom and non-discrimination, but also its treaty obligations under various international human rights conventions.

‘Protection of Race and Religion’ Bills

Key elements of the four bills, as submitted to the legislature, are set out below.

Buddhist Women’s Special Marriage Bill

The preamble states that the aim of the law is to “effectively protect and guarantee equitable rights to Myanmar Buddhist women married to non-Buddhist men.” The bill applies only to the marriage of a Buddhist woman to a non-Buddhist man, and provides as follows:

³ The Ministry of Religious Affairs took the lead on the former, and the Ministry of Immigration and Population the latter.

- The marriage may only take place inter alia if (i) both parties are over the age of 18, (ii) both are of sound mind, (iii) the application is made freely and voluntarily, (iv) if the woman is under 20, she has the permission of the parents or legal guardian.
- An application for the marriage to be approved must be submitted to the township registrar, who will display it publicly for 14 days after which time the marriage can be approved, provided no objections have been lodged that the parties do not meet the above requirements. Objections are to be settled by a court.
- An official registry of marriages under this act is to be kept by the registrar and certified copies are to be made available to the public on application.
- The non-Buddhist man must allow the wife to freely follow her Buddhist faith and all its associated practices, not attempt to convert her, and allow any children to freely follow the religion of their own choice. He must not insult Buddhism in any way.
- If the non-Buddhist man fails to abide by these requirements, this shall be grounds for the wife to divorce him, and he shall also in compensation forfeit his share of jointly owned property and his rights to custody of the children and shall additionally pay child support for any underage children.
- Existing de facto marriages must be registered in accordance with the provisions of this law.
- If the non-Buddhist husband violates any provision of this law, he is liable to up to three years imprisonment or a fine not exceeding five hundred thousand kyat (approximately USD 500), or both. Misconduct on the part of the registrar is punishable by up to one year imprisonment and a fine not exceeding fifty thousand kyat (approximately USD 50).

All of the above are additional restrictions, over and above the existing laws and regulations on marriage.

Religious Conversion Bill

The preamble states that “in accordance with section 34 of the constitution that ‘every citizen shall have equal rights to freedom of religious belief and freedom of worship’ this law is enacted so that every citizen shall have the right to choose their religion freely, transparently and systematically, if not against law and order, morals, public health, or other provisions in the constitution.” The specific provisions are as follows:

- A Religious Conversion Scrutinizing and Registration Board is formed in each township, made up of the head of township religious affairs, head of immigration and national registration, head and deputy head of GAD, two towns elders selected by GAD, chair of township women’s affairs group, educator nominated by township education head.
- Everyone has the freedom to convert from one religion to another, or a person without a religion has the freedom to convert to a religion. A person who wishes to do so must be 18 years old, be converting voluntarily, and must apply to the Registration Board for permission to convert. The person shall be interviewed by the Board to ascertain whether the person has a genuine belief in the religion being converted to.

- The Registration Board shall (i) determine whether the application is made voluntarily while avoiding enticing, threatening or influencing inappropriately; (ii) record the interview; (iii) provide for a period of no more than 90 days for the applicant to study the basics of the religion they wish to convert to, as well as marriage, divorce, division of property and inheritance practices according to that religion; (iv) after a follow-up interview with the Board, if the person still wishes to convert, they shall submit this in writing and signed, and a certificate to this effect shall be issued by the Board. (Special provisions are made for those who cannot attend interviews due to age, sickness or disability.)
- It is prohibited to (i) apply for a religious conversion with an intent to insult, disrespect, destroy, or abuse a religion (penalty up to two years imprisonment or two hundred thousand kyat fine, or both); (ii) bind another person with debt, or entice, threaten, influence inappropriately or bully another into religious conversion (penalty up to one year imprisonment or one hundred thousand kyat fine, or both); (iii) deter, prevent, or harass another so as to prevent a religious conversion (penalty up to six months imprisonment or fifty thousand kyat fine, or both).

Monogamy Bill

The preamble states that the law is promulgated “with the purpose of enabling legally married couples to remain loyal to each other while building happy and peaceful families, upholding monogamous practices to protect women from becoming mistresses, and preventing emergence of family crimes arising from men practicing polygamy.” The detailed provisions are as follows:

- The law applies to all people living in Myanmar, Myanmar citizens living abroad, and foreigners who married Myanmar citizens while living in Myanmar.
- A marriage contracted in accordance with an existing law or religious or customary practice shall be deemed legitimate only if it is solemnized in accordance with monogamy.
- Any man or woman who has married one spouse or more, under any relevant law or religious or customary practice, shall not marry again or unofficially live together with another person as long as the earlier marriage remains valid. Lawful marriages contracted prior to this law coming into force shall remain valid.
- Any marriage in violation of this law shall be deemed void and the person who violated this law is guilty of a family crime. The spouse of such person can obtain a divorce and the violator shall forfeit their share of jointly-owned property. Should a wife or a husband marry another person while his or her marriage contracted in accordance with a law, or a religion, or a custom remains valid, he or she shall be deemed as committing a family crime, punishable by up to seven years imprisonment under section 494 of the Penal Code, and shall also be liable to a fine.

Population Control Bill

The preamble states that the objective of the law is to “alleviate poverty, provide adequate quality healthcare, and ensure that family planning improves maternal and child health in the country.” The detailed provisions are as follows:

- State/region governments may with the help of experts conduct surveys in their own areas to determine if there are issues relating to high population density, high population growth, high birth rate, high maternal and child mortality rate, imbalances between the population and available natural resources due to high migration rate, declining socioeconomic conditions and/or food security concerns.
- The state/region government shall report to the President/Union Government if the above issues arise. The President has the authority to declare that special healthcare efforts be implemented in certain areas. The Union Ministry of Health shall be responsible for the work, including coordination with UN and international organizations for aid, inspection of medicine quality, delivery of medicines and healthcare materials, capacity building of healthcare staff and conducting necessary research and surveys.
- State/Region Population Control Healthcare Teams will be formed, chaired by the Social Affairs Minister of the respective region/state government. Township level teams will also be formed, chaired by the Township Administrator.
- The general responsibilities of the teams at both levels are: supervision/coordination of aid from local and international donors, delivery of necessary medicine and healthcare products, trainings for healthcare providers, healthcare and birth spacing counselling for married couples, raising awareness regarding reproductive health for youth, and public education for birth spacing information.

No coercive measures or punishments are provided for in the draft submitted to the legislature by the president. However, it might be seen as providing moral or legal justification for regulations such as Regional Order 1/2005 in Rakhine State – which is no longer in force – limiting Muslim couples to two children. The order appeared to have no legal basis at the time, and has not been enforced for several years – but in the past made marriage permission for Muslims (which was also required) contingent on an signed undertaking to ‘limit the number of children’ (usually to two).

Voting Rights for Holders of Temporary Registration Certificates

Two other bills with a religious dimension are before the current session of the legislature, both of which concern voting rights for people holding Temporary Registration Certificates (TRCs, commonly referred to as “white cards”). These TRCs are supposed to be temporary documents pending the issuance of ID cards, for example in cases where the ID card has been lost or defaced. However, in practice more than a million people – most but not all of whom are Muslims in Rakhine State – have held these cards for up to 20 years. Holders of these cards were eligible to vote in the 2008 constitutional referendum, the 2010 elections, and are enfranchised under the existing electoral legislation.

However, there were moves in the legislature to disenfranchise TRC holders. At its last session, the legislature approved a Referendum Bill, in case constitutional changes are approved that would require popular approval.⁴ The bill was almost exactly the same as the 2008 referendum law, and hence TRC holders would be able to vote. A National League for

⁴ According to the constitution, certain provisions can be amended with only a legislative super-majority, while others in addition require approval in a referendum. A constitutional amendment bill is due to be submitted to the current session of the legislature, but it is far from clear what, if any, changes will be approved.

Democracy representative proposed an amendment to disenfranchise TRC holders, which was adopted.

However, the president returned the bill, recommending inter alia that this provision be removed on the grounds that it was inconsistent with existing electoral laws (notwithstanding the fact that a proposal to amend the electoral laws to disenfranchise TRC holders is also due to be debated in the current legislative session). A vote took place on the TRC issue on 2 February, with the somewhat unexpected outcome that 328 representatives supported the president's position and 79 were against (19 abstained). Thus, TRC holders were eligible to vote in any referendum.

During the debate in the legislature, some ethnic representatives spoke up against the disenfranchisement. This was not out of concern for the Rohingya, but rather because they were worried about the implications for some ethnic communities. Many people in remote border areas (and across the country) do not have any form of identity card. At the moment, voters are not required to show identification when they vote (since polling stations are so localized that most voters are known by sight to the staff). However, there was concern that if a requirement was brought in to bar TRC holders, they would either have to be removed from the voter list or prevented from voting at the polling station. Either way, those with no identity card might have to be required to prove they are eligible for citizenship cards rather than TRCs – which could be difficult. The concern was that large numbers of ethnic voters could be disenfranchised, and this may have been the primary reason for the legislature to maintain the status quo under which TRC holders could vote.

The decision on the Referendum Bill was highly controversial, however. Following the 2 February decision, a week of demonstrations was announced in Rakhine State. Burman nationalist groups were also vocal in condemning the decision, with the National Politics Watch group issuing a scathing statement that has been widely shared on social media, and leading nationalist monk Wirathu issuing his own statement that warned against “betraying 50 million citizens by giving priority to 1 million illegal immigrants.” Opposition lawmakers, including the Arakan National Party and the National League for Democracy, sought to have the decision overturned, sending a request to the Constitutional Tribunal for a ruling on whether allowing TRC holders to vote was constitutional.

The president signed the amended Referendum Bill into law on 10 February, a day that saw street demonstrations in Yangon against the Bill. The next day, the president responded to the popular mood with an unexpected move to scrap Temporary Registration Certificates. He issued a notification under his executive authority to the effect that all TRCs currently in circulation would expire on 31 March 2015 and must be returned to the authorities between then and 31 May, and that the citizenship status of these individuals would be assessed in accordance with the law.⁵ This implies that there will be no (valid) TRCs at the time of any referendum or the general elections, so the question of voting rights becomes moot.

⁵ Notification No. 19/2015 dated 11 February 2015.

Implications and Next Steps

The president's move to invalidate TRCs raises many questions. Although an expedited system for the issuance of citizenship cards has been rolled out by the government, there are still many barriers for people to obtain these cards – including cost, access issues in remote areas, and the time it would take to process hundreds of thousands of applications. The updating of voter lists for the election is currently underway, and it is unclear how this process would deal with people whose applications for new identification documents are pending.

There are even more serious implications in Rakhine State, where the citizenship verification is deadlocked over government insistence that Muslims identify as 'Bengali' and Rakhine community objections to the process. It is therefore unlikely that new identity documents will be issued to the Rohingya or other Rakhine Muslims, leaving them not only disenfranchised but potentially without any form of identification document – and therefore with their last connections to the administrative and political life of the country severed.

As regards the package of four 'protection of race and religion' bills, some discussion has taken place in the current session of the legislature, which began on 19 January, but so far none have been adopted. Based on initial debates, there appears to be strong support for the bills in the legislature, and they are likely to pass once put to a vote. When that will happen is unclear. It is possible that given the extremely crowded legislative agenda at this session, consideration of the bills will not be completed before it ends around mid-March. Debate would then continue at the next session, likely in May. They are currently being debated in the upper house, but in order to become law, they will have to be considered by both houses, and any differences reconciled. They may therefore be strengthened or weakened prior to adoption.

Following approval by the legislature, they will be passed to the president – who has the option to either sign them, or return them to the legislature with comments.⁶ The legislature may either accept or reject the president's comments (there is no presidential veto in Myanmar), and once adopted for a second time, with or without amendments, they will automatically become law. However, if the president does return them, the delay would likely mean that the legislature would run out of time to deal with them in this session, postponing their promulgation until May at the earliest.

The bills have been highly controversial. While nationalist groups are pushing hard for their adoption, and some legislative representatives have called for them to be strengthened, others have been strongly critical. Aung San Suu Kyi has said that she is against the laws from the perspective of women's rights. Neither she nor her National League for Democracy have criticized their apparent violation of religious freedoms or other human rights principles. However, other civil society groups have been very vocal. On 28 January, 180 Myanmar civil society groups issued a statement calling for the four laws to be dropped on general human rights and constitutional grounds. They have also been criticized internationally, including by the UN Special Rapporteur for Human Rights in Myanmar

⁶ For a detailed discussion of the process, see Richard Horsey, "The Myanmar Lawmaking Process", *CPPF Briefing Paper*, 4 November 2013.

Yanghee Lee – prompting abusive and derogatory comments about her from nationalist monk Wirathu.

Prima facie, the laws appear to violate Myanmar’s constitutional provisions on religious freedom and non-discrimination.⁷ This would be for the Constitutional Tribunal to rule on, but to date no request for such a ruling has been made. The laws would also appear to violate Myanmar’s treaty obligations under human rights conventions, including the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women.

⁷ This includes section 34 (“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...”), section 348 (“The Union shall not discriminate any citizen ... based on race, birth, religion, official position, status, culture, sex and wealth”) and section 354 (on rights to freedom of expression).