

## Country Briefing on Freedom of Religion or Belief in the Universal Periodic Review Process - Myanmar

### Key points

An examination of the Universal Periodic Review of (UPR) Myanmar across two cycles (2009, 2014) reveals the following:

- Discrimination by the state and serious violations of Freedom of Religion or Belief (FoRB) of ethnic and religious minorities, notably the Rohingya community and also against Christians and Buddhist groups,
- Discriminatory laws might discriminate against the right to convert to another religion,
- Persecution of the Muslim community in Rakhine State, which is denied citizenship and fundamental rights, and
- Inconsistencies between domestic legal instruments on FoRB as well as non-conformity with international standards

### Key UPR recommendations on FoRB

The following recommendations, among many, were made on FoRB across two cycles:

- Bring all domestic legislation with international standards and remove restrictions on fundamental freedoms, including religious freedom
- Protect the right of ethnic and religious minorities to enjoy fundamental rights, including FoRB and end discrimination against minorities,
- Recognize the Rohingyas and grant them citizenship,
- Investigate and prosecute violators of FoRB and other fundamental rights, and
- Respect the right to convert to a religion of one's choice.

### Follow-up action for parliamentarians

Whereas the Government of Myanmar has noted its guarantees on FoRB, *Parliamentarians must follow-up in order to:*

- Monitor and ensure respect for fundamental rights of the Rohingya and other minority groups,
- Ensure that domestic legislation, notably those on the “protection of race and religion” is in line with international standards,
- Foster closer cooperation between the UN rights mechanisms and Myanmar, and
- Promote and establish independent and effective accountability mechanisms at the national level.

#### What is the UPR?

The UPR of the United Nations Human Rights Council (HRC) is a peer-review process to foster dialogue on human rights and to improve adherence to universal standards and best practices .

It was launched in 2007 through UN General Assembly Resolution 60/251.

Every 4.5 years each Member State's human rights record is examined by peers.

A number of key documents are submitted:

- National Reports from Member State concerned,
- Information from UN bodies and treaty-based rights mechanisms, and
- Information provided by relevant stakeholders, including civil society and think-tanks.

The State under review (SUR) is evaluated on its compliance with the international human rights standards and best practices.

The SUR receives recommendations

The situation of FoRB in Myanmar as revealed in the UPR is outlined hereafter.

## **Background**

### *Demographics*

1. The population of Myanmar 56,890,418 is spread over an area of 676,578 sq km. It is comprised of Burman (Bamar) 68%, Shan (9%), Karen (7%), Rakhine (4%), Chinese (3%), Indian (2%), Mon (2%), other (5%). The Government of Myanmar recognizes 135 ethnic groups. (CIA *World Factbook*, 2017) It does not recognize the Rohingya minority in Rakhine State.

### *Religious Mix*

2. The majority of the population is Buddhist (87.9%) followed by Christians (6.2%), Muslim (4.3%), Animist (0.8%), Hindu (0.5%), other (0.2%) and none (0.1%), (CIA *World Factbook* 2017)

### *Legal Provisions on FoRB*

3. The Constitution of the Republic of the Union of Myanmar of 2008 guarantees FoRB. Article 34 stipulates that “Every citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion subject to public order, morality or health and to the other provisions of this Constitution.” Article 348 stipulates that the Union shall not discriminate against any citizen of the Republic of the Union of Myanmar, based on religion.
4. Buddhism enjoys a privileged position under Article 361, which stipulates that the Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union. Under Article 362, the Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union on the day of the coming into operation of the Constitution. Article 363 stipulates that the Union may assist and protect the religions it recognizes to its utmost.
5. Under Article 354, every citizen enjoys liberty in the exercise the religion they profess, and their customs. This is limited to the extent that such enjoyment must not be contrary to the laws, enacted for the Union’s security, prevalence of law and order, community peace and tranquility or public order and morality. The abuse of religion for political purposes is forbidden under Article 364. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity. In addition, Article 360 (a) stipulates that freedom of religion “shall not include any economic, financial, political or other secular activities that may be associated with religious practice.” Section (b) states that “The freedom of religious practice so guaranteed shall not debar the Union from enacting law for the purpose of public welfare and reform.”

6. It is noteworthy that Article 121 (h) of the Constitution prohibits from election a person, individually or as a member of an organization, who abets the act of inciting, giving speech, conversing or issuing declaration to vote or not to vote based on religion for political purpose, and under Article 121 a member of a religious order from being elected as the Pyithu Hluttaw representatives. Under Article 392, members of religious order “shall have no right to vote.”

### **Myanmar government submissions**

7. The Government submitted that both the Constitution of 1947 and the Constitution of 1974 stated that any citizen of Myanmar regardless of race, religion and sex has the right to the freedom of faith. Similarly, the Constitution of the Republic of the Union of Myanmar (2008), which was adopted through a nationwide referendum, guarantees the freedom of religion.
8. It stated that the Constitution contained sufficient provisions on human rights. Every citizen had the right to devote him or herself to a religion they cherished without prejudice to other national races and faiths. Legal provisions were in place to prevent discrimination of any kind, including religion.
9. Buddhism was the faith professed by the majority of the population and there were also other religions professed by the minority groups. Every religion professed by the national races was equally recognized and respected.
10. It noted places of worship in the heart of Yangon City, such as the Sule Pagoda of Buddhism, the Bengali Mosque of Islam, the Immanuel Church of Christianity, the Ganesh of Hinduism, which stood side by side and thus provided clear evidence of freedom of religion in the country. It noted a balanced ratio of religious buildings: one Monastery or Nunnery for 736.80 people, one Christian Church for 444.65 people, one Islamic Mosque for 676.80 people, one Hindu Temple for 456.71 people and one building for Animism or other for 707.07 people.
11. The freedom of faith was reflected in the annual Haj pilgrimage being arranged by the Ministry of Religious Affairs of the Union of Myanmar. Under its auspices, from 1986 to 2010, 15,740 Haj pilgrims from Myanmar were sent to Saudi Arabia on pilgrimage
12. Authorities routinely approved requests for religious gatherings and celebrations. Religious teachings were also permitted. There was no closure of religious buildings in the country. Moreover, authorities allow renovation and construction of religious buildings.
13. To enhance peace and harmony and dialogues among different faiths, Interfaith Friendship Group was formed with ten executive members representing various

religions and the group was expanded down to village level. The group organized collective activities on religious ceremonies and prayers on various occasions including victims of Japan Tsunami, Indonesia earthquake and disasters and talks on anti-violence and religious harmony.

14. The Government submission in the second cycle drew attention to a few bills in parliament - the Religious Conversion Bill, the Myanmar Buddhist Women's Special Marriage Bill and the Monogamy Bill -, which it claimed were drafted in line with international human rights standards. The purpose of the Religious Conversion Bill was to promote freedom of belief and to be systematic and transparent in any religious conversion in accordance with the Constitution and international norms and standards. Registration of conversion was voluntary and there was no penalty for those who do not wish to register for their conversion. The Myanmar Buddhist Women's Special Marriage Bill was drafted to preserve protection and equal rights on marriage, divorce, inheritance, property division and child custody between Myanmar Buddhist women and non-Buddhist men. The Monogamy Bill intended to "prevent social problems" as a consequence of non-monogamous marriage.

### **Stakeholder submissions across the two cycles**

15. Stakeholders drew attention to discriminatory State practice, persecution of minority religions and ethnic minorities (most notably the Rohingya), discrimination against Buddhist groups and problematic practices related to conversions. Moreover, visits had been requested since 2007 by the Special Rapporteur on Freedom of Religion
16. Religious discrimination by the State was alleged by Christian Solidarity Worldwide (CSW). It noted that the State had "overseen" religious discrimination, and even "played an active role" in advancing it. It called attention to the 'National Race and Religion Protection' legislative package which was thought to legitimize and encourage religious discrimination. A package of four bills sought to restrict interfaith marriage and religious conversion and allow the government to regulate family planning and birth spacing in some areas. In addition, the package of laws would severely restrict the basic rights of non-Buddhists and women in Myanmar. Civil society activists opposing the proposed bills faced threats. The Becket Fund (BF) recommended that all discriminatory policies that infringe on basic religious freedoms must be removed.
17. Discrimination against children belonging to religious minorities was raised by the Committee on the Rights of the Child (CRC). It urged Myanmar to ensure that all children are registered at birth without discriminatory conditions, and recommended abolishing the statement on the national identity card of the religion and ethnic origin of citizens, including children
18. Discrimination against minority religions and ethnic groups was noted by the Special Rapporteur on the situation of human rights in Myanmar who cited the closure of

churches in Chin State and called upon the Government to ensure that ethnic minorities are granted fundamental rights. CSW stated that non-Buddhist minorities faced serious restrictions, discrimination and persecution. The Beckett Fund urged the Government to allow religious minorities to exercise their religious convictions in private and public forums, for the release of several thousand political prisoners and for allowing religious minorities to migrate and establish religious forums. Amnesty International also noted that ethnic minority activists had faced extensive surveillance, harassment, religious discrimination. Jubilee Campaign (JC) argued that the Government controlled and restricted religious practices of minority religions in Myanmar and it called for an end to the discrimination against individuals who associate themselves with minority religions and for the protection of religious freedom.

19. Christians faced discrimination and persecution. Christians, particularly among the Chin, Kachin, Karen and Karenni, sometimes faced physical persecution with religious symbols torn down and replaced with Buddhist signs. Pastors were forced to close Churches and sign documents stating they will refrain from their religious activities. The European Centre for Law and Justice also reported on the persecution of Christian communities. The Chin Human Rights Organisation (CHRO) expressed similar concerns in relation to Chin Christians. CHRO recommended that Myanmar end religious persecution, discrimination and forced assimilation against Chin Christians, other religious and ethnic groups.
20. Buddhist groups also faced restrictions according to the Beckett Fund. This was reinforced by AI, which noted that several thousands of monks were detained in deplorable conditions. Monasteries were raided and closed down, property was destroyed or confiscated and monks were beaten and detained. Protesters' homes and hiding places were raided and authorities took friends or relatives as hostages to put pressure on wanted persons and to discourage further dissent. Leading activists of the 88 Generation Students group and the All Burma Monks Alliance became the main targets
21. The dismal plight of the Rohingya, referred to by the Government as Bengali, featured prominently. Their suffering as a result of multiple forms of discrimination, including restrictions on freedom of movement and local orders continued to discriminate against Muslim populations, was highlighted. It was noted that these restrictions did not apply to any other religious groups. The UN Office of the High Commissioner for Human Rights (OHCHR) noted curfew orders prohibiting gatherings of more than four people and movement on public streets after certain hours in Rakhine. Consequently, religious gatherings in mosques of more than four people were banned. Signatures from Mullahs of mosques and madrassas were being collected, assuring that they would not teach without obtaining prior permission. The renovation and construction of religious buildings continued to be controlled.

22. The Rohingya Muslims were “among the most persecuted people groups in the world” according to CSW. They were disproportionately represented in internally displaced person camps and had faced continuous persecution by the state. They have fled Myanmar, at great risk to their lives, with inadequate aid and assistance, and no freedom of movement. Furthermore, the state has restricted the access of humanitarian aid in Arakan state, leaving the Rohingya Muslims in dire hardship.
23. Violence affecting the Rohingya was highlighted in Reports of the United Nations Secretary-General (UNSG) and were referred to in the UPR. The UNSG noted violence in Rakhine State and the rift between the Buddhist and Muslim communities. He stated that those violent acts had not only resulted in increased polarization between the communities along religious and communal lines but also increased incidents of intolerance and hate speech.
24. The issue of conversions featured across the two cycles. As noted above, a set of “Protection of Race and Religion Bills” covering religious conversion raised alarm. The OHCHR expressed particular concern about those new laws, which were discriminatory against women and religious minorities. United Nations human rights experts expressed similar concerns, stating that the laws could fuel existing tensions in the country. In 2014, three special procedures mandate holders called on Myanmar to discard the draft bill on religious conversion, which might result in the arbitrary denial of the right to change or adopt a religion or belief. The experts warned that the draft bill set out a cumbersome application and approval process for conversion and provided for disproportionate criminal sanctions on offenders. In 2015, the Special Rapporteur on Freedom of Religion and Belief emphasized that the right to conversion had the status of unconditional protection under international human rights law.
25. The Committee on the Rights of the Child was concerned that some children were reportedly placed in Buddhist monasteries and converted to Buddhism without their parents’ knowledge or consent, and that the Government sought to induce members of the Naga ethnic group in Sagaing Division to convert to Buddhism.

### **Observations by other states**

26. Concern for ForB was voiced (Slovenia) and regret that the Government continued to control and restrict practices of minority religions. (Poland)
27. Problems with domestic legislation were noted, in particular the incompatibility of the four laws on race and religion with international human rights treaties to which Myanmar is a party. (Denmark)
28. States recommended that Myanmar:
  - a. Promptly bring its domestic legislation and Constitution in line with international standards and remove restrictions on fundamental freedoms,

including religious freedom (Australia, Austria, Canada, Ghana, Lithuania, Poland, Turkey, Uruguay); In particular, it should (a) review and/or repeal laws on the “protection of race and religion”, notably the Religious Conversion bill and the Buddhist Women’s Special Marriage bill, to ensure respect for the human rights of women and ethnic and religious minority communities, and consistency with international human rights obligations and standards (Canada, Czech Republic, Italy), (b) bring the 1982 citizenship act in accordance with international human rights obligations, (c) establish an effective birth registration system guaranteeing universal access to education and other government services (Germany), and (d) Repeal or revise Section 377 of the 1861 Penal Code to ensure the rights of, inter alia, religious minorities are protected (Australia).

- b. Ensure that all, including ethnic and religious minorities, are granted fundamental rights and end discrimination against persons belonging to these minorities (Argentina, Brazil, Botswana, France, Holy See, Mexico, Senegal, Sierra Leone, Saudi Arabia, Slovenia).
- c. Resume recognition of the Rohingya as an Ethnic Group (Sweden), grant full citizenship rights to Rohingya (Egypt, Portugal, Saudi Arabia, USA), abandon the policy and practice of discrimination, forced assimilation and persecution against ethnic and religious minorities (Italy) and pursue reconciliation among religious groups through dialogue between religious leaders (Republic of Korea).
- d. Promote inter-religious dialogue and cooperation at the key local and national levels (Philippines, Poland).
- e. End the practice of identifying any ethnic or religious group in official documents, which could allow discriminatory treatment of children, (Uruguay)
- f. Investigate and punish all cases of intimidation, harassment, persecution, torture and forced disappearances, against religious minorities and human rights defenders. (Iceland, Uruguay) Prosecute suspected perpetrators of violence against ethnic and religious minorities, in line with international standards and to ensure compliance with due process and respect for the rule of law (Iceland).
- g. Release immediately all persons who are detained solely on the basis of their peaceful political activity, ethnicity or religion (Canada).
- h. Respond positively to requests for cooperation with UN special procedures, in particular request for a visit made by the Special Rapporteur on freedom of religion or belief (since 2007) (Uruguay).
- i. Continue to point special attention to the prevention of the emergence of the situation which might lead to conflicts on ethnic and religious basis (Russian Federation).
- j. Make every effort to guarantee the right to religious conversion and to respect the freedom of religion, in particular, enabling religious practice (Holy See).
- k. Continue efforts to preserve national, cultural and religious diversity so as to promote harmony among ethnic groups and religions (China).

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## References

### General References

CIA, *World Factbook* 2017  
Constitution of Myanmar

### References on the UPR of Myanmar

Documents on the UPR of Southeast Asian States are available on the websites of UPR Info and of the OCHR. They consist of National Reports, Stakeholder Submissions and Recommendations by Peers. For Indonesia all documents are available as follows:

UPR Info: <https://www.upr-info.org/en/review>

OHCHR: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

### UPR First Cycle 2008

1. National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1. A/HRC/WG.6/10/MMR/1. 10 November 2010



2. Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1. A/HRC/WG.6/10/MMR/2. 15 November 2010
3. Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1. A/HRC/WG.6/10/MMR/3. 18 October 2010
4. Draft report of the Working Group on the Universal Periodic Review. A/HRC/WG.6/10/L.7. 2 February 2011.

### **UPR Second Cycle 2015**

5. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. A/HRC/WG.6/23/MMR/1. 5 August 2015
6. Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21. A/HRC/WG.6/23/MMR/2. 31 August 2015
7. Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21. A/HRC/WG.6/23/MMR/3. 28 August 2015.
8. Report of the Working Group on the Universal Periodic Review. A/HRC/31/13. 23 December 2015