

**United Nations Human Rights Council
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Submission of The Becket Fund for Religious Liberty

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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.



United Nations Human Rights Council Universal Periodic Review of Member-State Myanmar

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in Myanmar as a contribution to the Universal Period Review of UN member-state Myanmar.

1. Background

Ongoing human rights abuses in Myanmar are only a few of the many complex and interdependent issues presently facing the Myanmar Government and its citizens.¹ In September of 1988, a military coup seized ruling power from the Burmese Socialist Program Party.² The junta established the State Law and Order Restoration Council (SLORC), suspended the Burmese constitution, and declared martial law.³ In 1990, Myanmar held its first general election since 1960, and the National League for Democracy (NLD), lead by Aung San Suu Kyi, won an overwhelming 392 out of 485 seats.⁴ However, the SLORC did not recognize the results of the election.⁵ In 1997 the SLORC changed its name to the State Peace and Development Council (SPDC).⁶

Though it has long promised democratic reforms, the SPDC continues to implement egregious systematic human rights abuses, while also maintaining that future political transitions take place under its aegis.⁷ The SPDC constructed a new constitution in 2008, which is slated to be implemented after elections in 2010.⁸ However, the date of the election has not yet been set.⁹

The population of Myanmar is overwhelmingly Buddhist (89%); the remainder of the society is roughly 4% Christian, 4% Muslim, and 1% Animist.¹⁰ Because the SPDC perceives religious minorities as threats to its power, it restricts their freedom of expression and association, among other abuses.¹¹ The SPDC controls all media, including religious publications and sermons.¹²

Myanmar is a member of the United Nations, and as such, is obliged under the Universal Declaration of Human Rights (UDHR) to recognize and properly implement the rights proclaimed therein.¹³

2. Legal Framework

The 2008 Constitution contains provisions respecting the freedom of religion, but it also has broad provisions that empower the SPDC to restrict these same freedoms at its discretion.¹⁴ The Constitution bars

¹ U.N. Human Rights Council, *Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, A/HRC/13/48* (March 10, 2010), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.48_en.pdf.

² U.S. Dept. of State, *Background Note: Burma* (January 31, 2010), <http://www.state.gov/r/pa/ei/bgn/35910.htm>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. Commission on International Religious Freedom, *Annual Report 2010* 32, <http://www.uscirf.gov/images/ar2010/burma2010.pdf>.

¹² *Id.*

¹³ U.N. Human Rights Council, *supra* note 1.

¹⁴ U.S. Dept. of State, *Burma, International Religious Freedom Report 2009* (October 26, 2009), <http://www.state.gov/g/drl/rls/irf/2009/127266.htm>.



members of religious orders from running for office, and current law “criminalizes the defamation of religion for political purposes.”¹⁵

2.1 International Commitments

Myanmar became a member of the United Nations on April 19, 1948. In doing so, Myanmar undertook the duty to “fulfill in good faith the obligations assumed by them in accordance with the present Charter.”¹⁶ Religious freedom rights are found specifically in Article 18 of the UDHR, which states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹⁷

Articles 19 and 20 add major components to religious expression as well:

19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹⁸

20.1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association.¹⁹

The UDHR recognizes that “human rights should be protected by the rule of law.”²⁰ However, the SPDC continually fails to recognize and properly implement UDHR protocol regarding human rights.

2.2 Constitutional Framework

As stated above, while certain provisions of the 2008 Constitution of Myanmar on their face protect religious freedoms, other provisions unmistakably undermine these commitments. For example, Article 34 of the Constitution states:

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.²¹

However, Article 360 of the same document restricts the freedoms set forth in Article 34:

- A. The freedom of religious right given in Section 34 shall not include any economic, financial, political or other secular activities that may be associated with religious practice;
- B. The freedom of religious practice so guaranteed shall not debar the Union from enacting law for the purpose of public welfare and reform.²²

¹⁵ *Id.*

¹⁶ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945, Art. 2.

¹⁷ Universal Declaration of Human Rights, Dec. 12, 1948, G.A. Res. 217A, U.N. Doc. A/810 (Dec. 12, 1948).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at Preamble.

²¹ Const. of the Rep. of the Union of Myanmar (2008).

²² *Id.*



Even leaving aside Article 360, Article 34 itself allows the SPDC to suspend religious freedoms whenever these human rights impinge on “public order.” Furthermore, Article 60 allows the SPDC to define what public welfare means and what it looks like. Together, these provisions give the SPDC permission to infringe on basic human rights whenever and however it suits their purposes.

Article 354 provides freedom of religious expression and rights, but again does so within a framework of limitations:

Every citizen shall be at the liberty of the following right, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality.

- A. To express and publish freely their convictions and opinions;
- B. To assemble peacefully without arms and holding procession;
- C. To form associations and organizations;
- D. To develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

Finally, Article 364 explicitly forbids “the abuse of religion for political purposes” and provides that “any act which is intended or is likely to promote feeling of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution.”²³ At present, the junta forbids religious expression and speech that, in its judgment, threatens its political power. Article 364 of the new Constitution, with its broad and vaguely defined exceptions, ensures that the state will continue to have the power to control religious expression with which it disagrees.

Other provisions issued in the Constitution are indicate that the people of Myanmar will continue to be subject to the military. The Constitution gives the military “the power to suspend civil liberties and legislative authority whenever it deems necessary in the interest of national security.”²⁴ Furthermore, the Constitution allows the military to exercise quasi-sovereign power over civilian governors. It specifies that the elected President will be Head of the Union and Head of the Executive, but not the Commander in Chief of the armed forces.²⁵ The Constitution also gives the military “at least 25% of seats in parliament.”²⁶

3. Implementation

The SPDC continues to “severely restrict religious practice, monitor[] the activity of all religious organizations, and perpetrate[] violence against religious leaders and communities.”²⁷ The new Constitution has yet to produce any positive results for religious freedom in Myanmar. Furthermore, it is evident that every religious group in Myanmar is affected by the SPDC’s assaults on religious freedoms.²⁸

3.1 The SPDC Controlled and Condoned Persecution

The SPDC not only limits and encumbers the freedoms of religious minorities in Myanmar, it also exerts its control over Buddhist tenets and practices.²⁹ The government “infiltrates and monitors the activities of all

²³ *Id.*

²⁴ U.S. Dept. of State, *supra* note 14.

²⁵ U.S. Dept. of State, *supra* note 14.

²⁶ *Id.*

²⁷ U.S. Commission on International Religious Freedom, *supra* note 11 at 31.

²⁸ *Id.*

²⁹ *Id.*

organizations, including religious groups.”³⁰ It exercises strict control over all religious activities within its purview, especially those of the Buddhist clergy (Sangha).³¹

3.1.a Schools in Myanmar

The SPDC exerts its power in all realms of the country. For instance, the junta mandates the use of Buddhist doctrine in all government-run elementary schools and requires all children to recite Buddhist prayer daily in these schools.³² Numerous reports assert that Christian students in the Kachin state are forced to become Buddhist with or without parental consent.³³ The government also retains the right to destroy religious centers and schools.³⁴

3.1.b State Initiated Persecution

The SPDC imposes “restrictions on certain religious activities” and frequently abuses “the right to freedom of religion.”³⁵ The junta has issued “Muslim Free Areas” in Rakhine State, where it has shut down mosques and condoned violence against Muslims.³⁶ The military has conscripted Christians into forced labor, confiscated their land, and continually harassed Christians to convert to Buddhism.³⁷ Military units operating under the SPDC’s supervision routinely destroy Christian and Muslim religious venues and other structures.³⁸ The SPDC also discriminates against members of minority religious groups by “restricting educational activities, proselytizing,” and interfering with the “restoration or construction of churches and mosques.”³⁹ Unless drastic measures are taken to hold the SPDC accountable for recognizing and protecting basic human freedoms, Myanmar will continue to be saturated with state condoned and controlled persecutions for the foreseeable future.

3.2 Registration and Restriction Issues

Religious groups in Myanmar “are also subject to broad government restrictions on freedom of expression and association.”⁴⁰ The SPDC frustrates the ability of Christian and Muslim minorities to obtain various permits from the government. The government denies Christian groups the right to “build new churches, hold public ceremonies or festivals without permission, and import religious literature.”⁴¹ State authorities restrict local publication of the Bible, Qur’an, and other Christian and Islamic texts. The government has also produced a list of 100 words that state censors will not allow in Christian or Islamic literature.⁴² Christians are also “required to obtain a permit for any gathering of more than five people outside of a Sunday service.”⁴³ The 2010 UN Special Rapporteur on Human Rights in Burma states that Muslims face

restrictions of movement, limitations on permission to marry; various forms of extortion and arbitrary taxation, land confiscation and forced evictions; restricted access to medical care, food and adequate housing; and restrictions on Muslim marriages.⁴⁴

³⁰ U.S. Commission on International Religious Freedom, *supra* note 11 at 32.

³¹ U.S. Dept. of State, *supra* note 14.

³² U.S. Dept. of State, *supra* note 14.

³³ U.S. Commission on International Religious Freedom, *supra* note 11 at 35.

³⁴ *Id.* at 34.

³⁵ U.S. Dept. of State, *supra* note 14.

³⁶ U.S. Commission on International Religious Freedom, *supra* note 11 at 34.

³⁷ *Id.*

³⁸ *Id.* at 32.

³⁹ U.S. Dept. of State, *supra* note 14.

⁴⁰ U.S. Commission on International Religious Freedom, *supra* note 11 at 32.

⁴¹ *Id.* at 34.

⁴² U.S. Dept. of State, *supra* note 14.

⁴³ U.S. Commission on International Religious Freedom, *supra* note 11 at 35.

⁴⁴ *Id.* at 34.

Furthermore, religious organizations must register with the government and all citizens and permanent residents must carry a National Registration Card that indicates religious affiliation.⁴⁵ Christian groups have trouble “obtaining permission to buy land or build new churches in most regions.”⁴⁶ Lastly, government authorities continue to “prohibit Christian clergy from proselytizing in some areas” and routinely deny applications from Christian ministers to move to a new township.⁴⁷ Such registration and restriction procedures in Myanmar are an undue burden for religious minorities who are peacefully trying to live and exercise their own religious convictions.

3.3 Violence as a Means of Thwarting Worship

The SPDC frequently resort to violent tactics to quash religious gatherings that are out of step with the state approved dogma. The government has closed Buddhist monasteries.⁴⁸ In 2007, Buddhist monks who participated in peaceful demonstrations were “killed, beaten, arrested, forced to do hard labor in prison, and defrocked” by government forces.⁴⁹ The SPDC has continued to detain and harass monks it suspects of anti-government activity.⁵⁰ Christians and Muslims have even been forced to destroy mosques, churches, and graveyards.⁵¹ In January 2009 it was widely reported that authorities threatened to close Christian house churches in Rangoon unless they stopped conducting services. Authorities forced leaders of the same house churches to sign pledges that they would cease worship.⁵² The SPDC has also subjected people in the Kachin and Chin states to religious persecution, forced labor and attempted cultural genocide.⁵³

4. Recommendations

The SPDC must be held accountable for their unwillingness to recognize and enforce basic human rights found in their own Constitution, the UN Charter, and the UDHR. The establishment of fundamental religious freedoms in Myanmar should be implemented as follows:

1. The SPDC and its affiliates must stop persecuting Buddhists and religious minorities. This must include releasing the several thousand political prisoners that are still suffering persecution in prisons, camps, and elsewhere.
2. The SPDC should allow religious minorities to migrate and establish religious forums to their likings in accordance with the social peace of their society and within due limits. The SPDC must allow religious minorities to exercise their religious convictions in private and public forums. The exercise of said convictions cannot impede on the rights of other citizens; but the recognition and ability of religious minorities to express and exercise their religious convictions must be protected and allowed.
3. All discriminatory policies that infringe on basic religious freedoms must be removed or revamped to include and protect basic religious freedoms recognized in the UDHR.

⁴⁵ U.S. Dept. of State, *supra* note 14.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ U.S. Commission on International Religious Freedom, *supra* note 11 at 32.

⁴⁹ *Id.* at 31.

⁵⁰ *Id.*

⁵¹ *Id.* at 33.

⁵² U.S. Dept. of State, *supra* note 14.

⁵³ *Christian Solidarity Worldwide*, Burma: HART & CSW return from India-Burma border with new evidence of humanitarian crisis in Chin State (May 12, 2009), <http://dynamic.csw.org.uk/article.asp?t=press&id=931>.