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NGO: European Centre for Law and Justice
4, Quai Koch 67000 Strasbourg France

RELIGIOUS FREEDOM IN THE UNION OF MYANMAR (BURMA)

In a country with a population consisting of eighty-nine percent Buddhists and only eight percent Christians or Muslims,¹ Myanmar continues to persecute religious and tribal minorities despite the United Nations' Human Rights Council's intervention. The military regime has reportedly scheduled an election in 2010 which will likely be a sham election since the candidate for the primary opposition party is not permitted to run and the military regime has set up front parties.² Christians within the country have little hope that the persecution will cease. Christians are losing their lives, their homes, and their faith.

SECTION 1: *Legal Framework*

I. THE PROPOSED CONSTITUTION

The Burmese Army suspended Myanmar's Constitution following a military coup in 1988.³ The present military regime, the State Peace and Development Council (SPDC), drafted a new Constitution in May 2008 through a corrupt process, according to international observers.⁴ The drafting of the new Constitution was highly exclusive, with an overwhelming percentage of delegates either directly representing or obligated to the military regime.⁵ This Constitution becomes effective following elections reportedly scheduled to occur on October 10, 2010.⁶

II. CONSTITUTIONAL PROVISIONS REGARDING RELIGIOUS LIBERTY

The draft Constitution discusses the religious freedom afforded to Myanmar's citizenry, but any right granted is then subject to ambiguous caveats, such as "public order" and "morality." The Constitution enumerates specific religious freedoms that the government is ostensibly prepared to uphold, but each freedom remains subject to limitations. For example, Article 34 makes a strong declaration of religious freedom by stating, "[e]very citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion"⁷ However, this right is

¹ CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: BURMA (May 18, 2010), *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html> (last visited May 27, 2010).

² Simon Roughneen, *Burma's Looming Election Sham*, INTERNATIONAL RELATIONS AND SECURITY NETWORK, Feb. 22, 2010, <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?lng=en&id=112923> [hereinafter *Election Sham*].

³ U.S. DEP'T OF STATE, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, BACKGROUND NOTE: BURMA (January 31, 2010), <http://www.state.gov/r/pa/ei/bgn/35910.htm>.

⁴ *Id.*

⁵ See HUMAN RIGHTS WATCH, VOTE TO NOWHERE: THE MAY 2008 CONSTITUTIONAL REFERENDUM IN BURMA 44–48 (May 2008), *available at* <http://www.hrw.org/en/node/62239/section/6> [hereinafter VOTE TO NOWHERE] (describing the draft constitution as an effort by the military to legitimize and perpetuate its power by embedding it in a permanent constitution).

⁶ Radio Australia, Reports of an Election in Burma Later This Year (June 10, 2010), <http://www.radioaustralia.net.au/asiapac/stories/201006/s2924076.htm>; *Election Sham*, *supra* note 2.

⁷ CONST. OF THE REP. OF THE UNION OF MYANMAR art. 34.

“subject to public order, morality or health and to other provisions of [Myanmar’s] Constitution.”⁸ Article 360 diminishes the right further:

- (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.⁹

The full extent of the ambiguous limitations Article 360 places on freedom of conscience and religion may only be determined over time.

Additionally, the draft Constitution officially recognizes the “*special position of Buddhism* as the faith professed by the great majority of the citizens of the Union.”¹⁰ The draft constitution also acknowledges “Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution.”¹¹ The Union “*may* assist and protect the religions it recognizes to its utmost.”¹² However, this protection is only permissive, not mandatory. Thus, the draft Constitution only illusively protects “recognized” religions.

The draft Constitution could encroach on religious liberties by restricting freedom of expression and thought. For example, Article 365 gives individuals “the right to freely develop literature . . . and traditions they cherish.”¹³ However, the superior government interest in “national solidarity” supersedes this right.¹⁴ Additionally, Article 33 declares that “[t]he Union shall strive for youth to have [a] strong and dynamic patriotic spirit, the *correct way of thinking* and to develop the five noble strengths.”¹⁵ The draft constitution fails to define the “correct way of thinking” or the “five noble strengths.” The Union could easily use this broad legal authority to promote its agenda at the expense of religious freedom.

Article 354, the most significant affirmation of the free exercise of religion, also places significant limits on religious freedom:

Every citizen shall be at liberty in the exercise of the following rights, *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;

⁸ *Id.*

⁹ CONST.OF THE REP.OF THE UNION OF MYANMAR art. 360.

¹⁰ CONST.OF THE REP.OF THE UNION OF MYANMAR art. 361 (emphasis added).

¹¹ CONST.OF THE REP.OF THE UNION OF MYANMAR art. 362.

¹² CONST.OF THE REP.OF THE UNION OF MYANMAR art. 363 (emphasis added).

¹³ CONST.OF THE REP.OF THE UNION OF MYANMAR art. 365.

¹⁴ *Id.* (“Every citizen shall, in accord with the law, have the right to freely develop literature . . . and traditions they cherish. In the process, they shall avoid any act detrimental to national solidarity.”)

¹⁵ CONST.OF THE REP.OF THE UNION OF MYANMAR art. 33 (emphasis added).

(d) to develop their . . . religion they profess[] and customs without prejudice to the relations between one national race and another or among national races and to other faiths.¹⁶

Thus, in the draft Constitution's one and only affirmative guarantee of the rights to expression, assembly, association, and religion, the drafters inserted broad conditions, subjecting all rights to public order and morality. The broad concept of public order and morality could be enforced by laws targeting religious practice. The ambiguity in other clauses provides the government with the authority to prohibit other religious activities. For example, the draft Constitution gives the government the power to punish religious activities it deems "likely to promote feelings of hatred, enmity or discord between racial or religious communities and sects."¹⁷

III. LEGISLATIVE RESTRICTIONS ON CITIZENS' RELIGIOUS FREEDOM

A number of Myanmar's domestic laws cut against religious freedom, particularly when administered by an absolutist military government. These include the 1908 Unlawful Associations Act and the 1975 State Protection Act, as well as Sections 143, 145, 152, 295(A), 505, and 505(b) of the Penal Code.¹⁸ Other laws suppress freedom of the press, conscience, association, assembly, and expression.¹⁹ These include, but are not limited to, the Official Secrets Act, the Emergency Provisions Act, and the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention Against Disturbances and Oppositions.²⁰

Specifically, the Unlawful Associations Act of 1908 makes illegal any association that "interferes or has for its object interference with the administration of the law and order, or that it constitutes a danger to the public peace."²¹ Additionally, Article 10(b) of the 1975 State Protection Law permits the Union to detain persons whom it deems to be a "threat to the sovereignty and security of the State and the peace of the people" for as many as five years.²² Other statutes burdening religious freedoms include the Printers and Publishers Registration Law, the Television and Video Act, and the Computer Science Development Law, which require government pre-approval of printed and televised materials and any computer use.²³

Section 124(a) of Myanmar's Penal Code serves effectively as Myanmar's seditious law. Section 124(a) punishes one who "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection" towards the government.²⁴ Because of this broad language, the

¹⁶ CONST.OF THE REP.OF THE UNION OF MYANMAR art. 354 (emphasis added).

¹⁷ CONST.OF THE REP.OF THE UNION OF MYANMAR art. 364.

¹⁸ Irrawaddy, *Chronology of Burma's Laws Restricting Freedom of Opinion, Expression and the Press*, THE IRRAWADDY, May 1, 2004, available at http://www.irrawaddy.org/research_show.php?art_id=3534 (Thail.) [hereinafter *Chronology of Burma's Laws*]; Special Rapporteur, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, Tomás Ojea Quintana, ¶47, delivered to the Human Rights Council and the General Assembly, U.N. Doc. A/HRC/10/193 (Mar. 11, 2009) [hereinafter *Situation of Human Rights in Myanmar*].

¹⁹ *Chronology of Burma's Laws*, supra note 18; *Situation of Human Rights in Myanmar*, supra note 18.

²⁰ *Chronology of Burma's Laws*, supra note 18.

²¹ Unlawful Associations Act § 16 (1957) (Myan.) (emphasis added).

²² Special Rapporteur, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, Tomás Ojea Quintana, on the Implementation of Council Resolutions S-5/1 and 6/33, ¶ 28, delivered to the Human Rights Council and the General Assembly, U.N. Doc. A/HRC/8/12 (Jun. 3, 2008) [hereinafter *Implementation of Council Resolutions*] (quoting Burma State Prot'n Law 175, art. 10(b)).

²³ *Chronology of Burma's Laws*, supra note 18; *Situation of Human Rights in Myanmar*, supra note 18

²⁴ VOTE TO NOWHERE, supra note 5, at 37.

government could interpret any religious exercise to “excite disaffection.” Also, the Penal Code prohibits groups of five or more people from gathering together when it would threaten the “public tranquility.”²⁵ This provision could effectively prohibit religious services simply by deeming services a threat to tranquility. Thus, Myanmar can prohibit any religious expression it deems unfavorable to national solidarity by exploiting vagueness in the law.

IV. International Agreements of which Myanmar is a Member

Myanmar has submitted a number of reports in response to the Human Rights Council’s requests for more political and religious freedom, but the SPDC remains unresponsive to the Council’s concerns, urgings, and recommendations, which include requests for the country to allow freedom of assembly and association and freedom of opinion and expression.²⁶ The SPDC, continues to ignore the “four core human rights elements” proposed by the international community.²⁷ Additionally, the SPDC fails to respect the fundamental rights guaranteed by the following treaties to which Myanmar has agreed:²⁸ 1) Myanmar signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on July 22, 1997 with a reservation to Article 29, which stipulates an arbitration requirement;²⁹ 2) Myanmar signed the Convention on the Rights of the Child on July 15, 1991, reserving the interest of maintaining order and unity against Articles 15 and 37, but quickly removed those reservations following several objections from other member states.³⁰

SECTION 2: *Incidents of Religious Persecution or Discrimination*

The following examples describe recent incidents of religious persecution or discrimination in Myanmar. Although the primary motivation behind the persecution stems from tribalism, religious minorities bear the brunt of the persecution. The Appendix contains excerpts of each news story.

I. Persecution Incidents

A. Persecution against Christians

1. Christian rock band ministering to Christians in Myanmar through Christian Freedom International claims they almost lost their lives during a standoff with army officials who threatened to cut their throats.³¹
2. Karen villagers, the majority of whom are Christian,³² continue to suffer from brutal attacks by the Myanmar regime using arms supplied primarily by China. The military regime has burned homes, raped women, and forced many into slave labor.³³

²⁵ *Id.*

²⁶ *See Situation of Human Rights in Myanmar, supra note 18; Implementation of Council Resolutions, supra note 22.*

²⁷ United Nations Human Rights Council [HRC], *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, ¶ 14, U.N. Doc. A/HRC/13/48 (March 5, 2009) [hereinafter *Progress Report*] (“the release of all prisoners of conscience; review and reform of specific national legislation, in compliance with international human rights standards; reform of the judiciary to assure independence and impartiality; and specific measures by the military and police including respecting international human rights and humanitarian law and establishing a permanent and meaningful training programme on human rights.”)

²⁸ *See Id.*

²⁹ Convention on the Elimination of all Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

³⁰ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

³¹ Posting of Steve Almsy to Belief Blog, *Christian Band: We Were Spared Death by Myanmar General*, CNN, <http://religion.blogs.cnn.com/author/cnnsteve15/> (May 19, 2010, 15:17 EST).

3. The military regime forced Christians to destroy their own churches and graveyards. The Christians were then forced to build Buddhist temples.³⁴
4. Chin, mainly Christians, were subjected to forced labor, torture, rape, arbitrary arrest and extra-judicial killings throughout the year.³⁵
5. 2,000 Christians in Karen were forced to flee attacks from the Burmese army. One person was found decapitated, and four were shot.³⁶
6. A Christian orphanage was destroyed by the Burmese army immediately after the orphanage had been completed, displacing many Christian orphans.³⁷
7. The Burmese army regularly tortures Christians by beating them with sticks, forcing them to crawl over stones, and holding them under water.³⁸

B. Other Minority Religious Discrimination

1. The Burmese army discriminates against Rohingya Muslims: restricting movement; limiting permission to marry; extorting and arbitrarily taxing; confiscating and forcibly evicting them from land; and restricting access to medical care, food and adequate housing.³⁹
2. Hundreds of Muslims were forced into exile. Completely emaciated, the Muslims suffered brutal attacks from the Burmese military while at sea. The Myanmar regime refuses citizenship to Rohingya because they are “dark skinned” and “ugly as ogres.”⁴⁰
3. Burma is denying basic necessities and medical attention to imprisoned protest leader, Ko Mya Aye.⁴¹
4. Monks are prohibited from making public speeches or literature critical of the regime. The military regime has the power to try monks by military tribunal.⁴²
5. Children are continuously used as soldiers and women are brutally raped.⁴³

³² Christian Telegraph, *Karen Christians Pressed Between Thailand and Myanmar*, Feb. 5, 2010, <http://www.christiantelegraph.com/issue8568.html>.

³³ INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, CHALLENGES TO DEMOCRATIZATION IN BURMA: PERSPECTIVES ON MULTILATERAL AND BILATERAL RESPONSES (2001), http://www.idea.int/asia_pacific/burma/upload/challenges_to_democratization_in_burma.pdf; Scott Johnson, *Peace a Long Way Coming for Burma's Ethnic Minorities*, PERSECUTION.ORG, May 18, 2010, <http://www.persecution.org/suffering/newssummpopup.php?newscode=12369&PHPSESSID=010fe63ef8d0ac1b54d09ec271da282c>.

³⁴ U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT 33 (May 2010), available at http://www.uscirf.gov/images/annual_report_2010.pdf [hereinafter INT’L RELIGIOUS FREEDOM REPORT].

³⁵ Sam Bagnall, *Burma's 'Forgotten' Chin People Suffer Abuse*, BBC NEWS, Apr. 19, 2010, <http://news.bbc.co.uk/2/hi/asia-pacific/8626008.stm>.

³⁶ Michael Ireland, *2,000 Karen Villagers Forced to Flee Attacks by Burmese Army*, PERSECUTION.ORG, Jan. 26, 2009, <http://www.persecution.org/suffering/newsdetail.php?newscode=11616>.

³⁷ International Christian Concern, *ICC Orphanage in Burma Attacked by Burmese Government Forces*, June 5, 2009, <http://www.persecution.org/suffering/newsdetail.php?newscode=10217>.

³⁸ HUMAN RIGHTS WATCH, “WE ARE LIKE FORGOTTEN PEOPLE” (Jan. 2009), available at <http://www.hrw.org/en/reports/2009/01/27/we-are-forgotten-people>.

³⁹ INT’L RELIGIOUS FREEDOM REPORT, *supra* note 34, at 34.

⁴⁰ HUMAN RIGHTS WATCH, PERILOUS PLIGHT: BURMA’S ROHINYA TAKE TO THE SEAS 7 (May 2009), <http://www.hrw.org/en/node/83381/section/1>.

⁴¹ Press Release, Christian Solidarity Worldwide, CSW Calls for Urgent Action to Provide Medical Treatment for Burmese Political Prisoner Ko Mya Aye (Apr. 29, 2010), <http://dynamic.csw.org.uk/article.asp?t=press&id=985&search=>.

⁴² INT’L RELIGIOUS FREEDOM REPORT, *supra* note 34, at 32.

⁴³ *Progress Report*, *supra* note 27.