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ADVANCING RELIGIOUS FREEDOM AND COEXISTENCE IN MYANMAR: RECOMMENDATIONS FOR THE NEXT U.S. ADMINISTRATION

By Susan Hayward and Matthew J. Walton

Freedom of religion has long been restricted in Buddhist-majority Myanmar, both by formal regulation and by common practice. While non-Buddhist faiths have always had some space to practice their faith, government restrictions placed on religious minorities, particularly during the fifty-year period of military dictatorship, limited that practice and created deep grievances and mistrust, fueling several ethnic insurgencies. Religious minority communities and actors, on the whole, are more vulnerable to intimidation, arbitrary arrest, and social bias. The country’s 2008 constitution, which led the way for the military’s “discipline-flourishing” transition to democracy that reached its nominal conclusion in 2011, includes protections for religious freedom, even as it affirms Buddhism’s “special place.” However, some old restrictions remain in practice, while new laws have been passed that challenge religious freedom anew. Meanwhile, the judiciary and other rule of law institutions fail to protect religious minorities and sometimes enable discrimination, a legacy of their historical abuse by previous military regimes.

As a new U.S. administration takes office, it will need to capitalize on the renewed diplomatic relationship between the U.S. and Myanmar, and the country’s new freedoms, democratic institutions, developing rule of law, and increasingly robust democratic processes. If carefully oriented, U.S. support can help to secure the advancement of religious freedom so that Myanmar’s diverse communities can flourish and a primary root driver of violent conflict can be transformed. The country’s nascent national

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political dialogue is usually seen as primarily addressing the longstanding grievances of ethnic groups, but in fact, national reconciliation would necessarily include the treatment and status of all marginalized groups, including religious minorities. With the National League for Democracy (NLD) taking over leadership of this dialogue, as well as the government, there is cause for optimism. However, the U.S. Administration must remain cognizant of Buddhist nationalist organizations ascendant in Myanmar and the region in recent years, the long history of suspicion toward non-Buddhist religions and foreign agendas, and low levels of trust between different ethnic and religious groups. These have been the products of limited inter-group connections and divide-and-rule tactics of the colonial government and successive military regimes.

Background

The country known until 1989 as Burma, thereafter as Myanmar, was ruled by a series of autocratic military regimes beginning in 1962, when General Ne Win overthrew the democratically elected Prime Minister U Nu. This lasted until 2011, when the military junta began to relinquish its political chokehold through a gradual and closely managed transition to civilian rule. Home to dozens of ethnic groups (the total number of which is still disputed), many with their own distinct languages, cultural and religious practices, and historical memory, historic Burma and modern Myanmar’s reality has been defined by shifting alliances of competition and allegiance between its diverse communities.

Today, the majority ethnic group is the Burmans, who constitute approximately 68 percent of the population. Other major ethnic groups include the Shan (9 percent), Karen (7 percent), Rakhine (4 percent), Mon (2 percent), and Kachin (1.5 percent). Many of these non-Burmans live in outlying states that border neighbors Bangladesh, India, China, and Thailand. Ethnic difference and religious difference overlap only to a degree. Theravada Buddhism is the religion of the Burman ethnic majority and of many non-Burmans, practiced by about 89 percent of the overall population. Some ethnic minority groups, including the Karen, Kachin, and Chin, have sizeable or even majority Christian populations; the overall percentage of Christians in the population is 4 percent (mostly Baptist). Muslims comprise 4 percent of the population, and the remaining 3 percent are practitioners of indigenous spirit worship (nat) or other religions (including Hinduism and Bahai).

Under the military regimes that ruled Myanmar from 1962 until the recent reforms began, religious freedom for non-Buddhists was severely limited. Christians, Muslims, and others faced restrictions on free movement, ability to construct buildings, and public worship. For the ruling military, religious difference, like ethnic difference, marked individuals and groups as potential threats to the integrity and stability of the country. Partly as a result of this, Burmese nationalism became increasingly conflated with Buddhist religious identity, such that to be a Myanmar citizen was to be Buddhist (and ethnically Burman) (Walton 2013). Outside support from Western or other foreign elements to insurgency efforts and anti-junta democratic movements fed the perception of non-Burman, non-Buddhist “others” as a threat to the State, and tools of regional or global power interests.

There is a good deal of evidence of religious discrimination in Myanmar. But it can be difficult to separate violence and oppression visited on communities because of their religious beliefs from more general political and military actions, simply because most of the non-Burman areas have been active conflict zones for the past 50 years. That is, the military carries out violence that targets non-Buddhist populations, and monitors and restricts their activities, but in some cases justifies these actions as a necessary response to ethnic insurgenacies rather than religious discrimination. By extension, the religious repression faced by Christians in Kachin and Karen states (both more intense conflict zones over the past several decades) has been qualitatively greater than that faced by Christians in other areas, such as the Chin and Naga Hills and even in urban areas in the center of the country.

A series of ethnic insurgencies broke out in the country not long after independence was achieved from British colonial rule in 1948.
Ethnic armed groups sought to achieve independence from a central state perceived to be Burman Buddhist dominated. Among their demands was greater protection of religious freedoms, which was threatened when Prime Minister U Nu sought to establish Buddhism as the state religion through a law passed by the parliament in 1961. This move fueled existing insurgencies and sparked the rebellion of several more ethnic groups. Upon taking power in 1962, General Ne Win overturned this act. Nonetheless, due to the close relationship of patronage between state leaders and the Buddhist sangha (monkhood), and the preferential treatment given Burman Buddhists in the military government, Buddhism has retained a privileged place in state affairs.

There have been regular reports of the government refusing permission to Christians to preach or hold church services (Karen Human Rights Group 1998). Christian pastors, missionaries, and church workers have been arrested, detained, and tortured by both members of the military and local representatives of the Burmese government (CHRO 2012). Worryingly, a 2012 report by the Chin Human Rights Organization contains detailed evidence and interviews with people in the Chin and Naga Hills that attest to the fact that these abuses have continued even during the current period of democratic transition. For example, the report describes an incident in March 2012 where members of the local Burmese Army battalion disrupted a conference of Chin Christians. When a Chin Member of Parliament who was at the meeting tried to mediate, the Army Captain allegedly replied,

> Who do you think you are? What are you talking about? I will kill you. I don’t give a [expletive] about you being a Member of Parliament. We are not under the control of the Chin State authorities. We take orders from the Northwest Regional Command. (quoted in CHRO 2012, 61)

Incidents like this confirm the sense of impunity that still characterizes the Burmese military in the border regions. It also reflects the distance between reforms made in the capital and freedoms felt in the larger cities, on the one hand, and the experiences in more rural outlying areas, on the other, where military and other authorities may act in accordance with past practices. These incidents also demonstrate the precarious position of prominent non-Buddhist ethnic leaders.

Other new domestic conflicts have emerged since the democratic reform began in 2011 (International Crisis Group 2013). Perhaps the most strident conflict has been between Buddhists and Muslims, what has been referred to as “communal” conflict, often connected to the spread of rumors that demonize Muslim populations in Myanmar and elsewhere. Some of these rumors tap into fear-based claims about Muslims in Myanmar that have existed for generations while others have developed a modern twist as they are connected to broader global discourses about Islam, and given space through new freedoms of expression and media.

A little over a year after the new quasi-civilian government came to power, in June 2012, Western Rakhine State experienced violent riots between Rakhine Buddhists and primarily Rohingya Muslims, triggered by the rape of a Buddhist girl by two Muslim men and the subsequent revenge killing of ten Muslims by a group of Buddhists. The Rohingya suffered a disproportionate loss of life and property. A second wave of violence broke out in October 2012 across Rakhine State, displacing some 100,000 people, mostly Muslim (Roos 2013). Although the conflict in Rakhine state initially appeared to be an isolated incident, anti-Muslim violence soon appeared across the state border, affecting non-Rohingya Muslims. Throughout the country, including in ethnic Burman territory, several violent episodes broke out throughout 2013 and 2014 directed against Muslim homes, mosques, and schools. In the midst of this so-called communal conflict, Muslims have experienced close monitoring of their activities by security actors and authorities.

Accused of fueling these violent episodes, if not directly participating in them, are Buddhist monk-led nationalist movements, especially the group known as MaBaTha (a Burmese language acronym for its longer name, the Organization for the Protection of Race and Religion). These
movements fuel anti-Muslim bias and rumors about Muslim agendas to convert Buddhist women and “take over” the country and region through rampant reproduction. These social movements have had an explicit impact on religious freedom, fueling discrimination based on religious identity (especially against Muslims but also affecting other non-Buddhist adherents) and leading to the passage of a set of laws that further entrench religious discrimination in the Myanmar state, as will be explored further below.

Current Legal Protections and Challenges to Religious Freedom

Constitutional Protections
The constitution drafted by the former ruling party, the military-backed Union Solidarity and Development Party (USDP), was carefully constructed to advance the vision of the military’s “discipline-flourishing democracy.” This managed transition has consisted of a gradual and controlled relinquishing of authoritarianism to establish democratic governance and greater freedoms, with institutionalized protections for limited military control maintained with the justification of ensuring stability. The constitution includes protections for religious freedom, such as the provision in Article 348, which stipulates that no Union citizens should be discriminated against on the basis of religion. But it also notes a privileged place for Buddhism, saying in Article 361 that the government “recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union.” Provisions protecting religious freedoms include language meant to preserve the right of authorities to restrict those religious freedoms for the purpose of stability and order. For example, Article 34 of the constitution states that “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.” However, Article 354 qualifies this freedom, stating that every citizen shall be at liberty … if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality … to develop … [the] religion they profess and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

This kind of caveat for public order is not necessarily uncommon or in contradiction with international legal norms. However, given Myanmar’s history, in which the military restricted human rights for the sake of maintaining public order, there is concern, and evidence, that these caveats are overly relied on as justification for oppressing religious minority activities and for restricting the activities and speech of some Buddhist monastics deemed critical of the government in their preaching.

Four Race and Religion Laws
Beginning in 2013, and mobilizing on anti-Muslim rumors, Buddhist nationalist activists began to focus their organizing efforts on passage of a law that would restrict interfaith marriages between Buddhist women and Muslim men, requiring Buddhist women to get permission from their parents and authorities to do so. Monks carried out demonstrations to show support for the bill and joined with laypeople to allegedly collect some 2.5 million signatures in support of it. Then, Buddhist nationalist groups worked with sympathetic political parties to develop three additional bills and introduce them in Parliament in July 2013; these additional bills were related to religious conversion, monogamy, and population control. In accordance with parliamentary procedures, the laws were printed in local papers to allow citizens to offer input. In May 2014, an alliance of civil society organizations led by several prominent women’s rights activists issued a statement strongly opposing the proposed laws, claiming they violated the rights of women and minorities (Aung and Solomon 2014). In the following weeks, some of the most prominent members of the groups that signed the statement received death threats, sexually harassing phone calls, and personal attacks on social media.
The Religious Conversion Law requires those wishing to convert to complete a government application and be subjected to an interview with at least five members of an oversight committee to demonstrate that they were not coerced into conversion. The law also criminalizes coercive conversion of other people. The Monogamy Law seeks the “upholding [of] monogamous practices to protect women from becoming mistresses, and preventing emergence of family crimes arising from men practicing polygamy” by giving a blanket outlaw of multiple spouses, or of “unofficially living” with another person while married. The law specifies its application to Buddhist women marrying non-Buddhist men, in addition to inter-Buddhist and inter-non-Buddhist relationships. The Population Control Healthcare law would give the government authority to designate particular regions in which women would be required to wait at least 36 months after giving birth before becoming pregnant again. And finally, the Buddhist Women’s Special Marriage Law requires Buddhist women seeking to marry outside their faith to receive permission from parents and local authorities before so doing. Notably, the law only specifies this requirement in the case of Buddhist women marrying non-Buddhist men (but for no other situation), stipulates punishments should non-Buddhist men restrict the rights of their wives to practice freely their Buddhist faith, and denies custody of children to non-Buddhist men under all circumstances in case of divorce. As noted in the United Nations’ technical review, the four laws must be considered together as a package that unfairly targets particular communities (i.e. Muslims) in the country based on prejudicial views, and that violates several international human rights laws, including those regarding gender equality, women’s rights, and individuals’ rights to freedom of religion and belief (UN Report 2014).

The four laws were passed by the parliament in stages in Spring 2015, and signed into law by President Thein Sein shortly thereafter, despite widespread international condemnation of them as in violation of international human rights standards. Following their passage, MaBaTha held a series of celebratory rallies around the country that drew thousands, which took place in the run-up to the country’s national elections.

**Other Legal Provisions and Common Practices Restricting Religious Freedom**

In the mid-1960s, the government expelled all foreign missionaries and nationalized nearly all of the private schools and hospitals run by non-Buddhist groups. Most of these buildings have never been transferred back. In the meantime, the construction of new religious buildings by non-Buddhist groups has been limited. The government commonly refuses to give permission for the construction or repair of non-Buddhist religious buildings, even after citizens have gone through an onerous application process (CHRO 2012). In rural areas, the construction of a Buddhist meeting hall or meditation center does not usually require the same degree of permission, if any.

Section 295(a) of the penal code, introduced during British colonial rule, prohibits “deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.” In practice, this religious defamation law has tended to be applied selectively, used to target those believed to be insulting Buddhism, but not those insulting Islam or other religions. In March 2015, a New Zealander and two Burmese men were arrested under this law for posting an image online of the Buddha wearing headphone as an advertisement for their bar (Moe and Renzey 2015; Lone and Dinmore 2015). In June 2015, writer and NLD member Htin Linn Oo was sentenced to two years in prison with hard labor for defaming religion in a 2014 speech that was critical of MaBaTha, and of hardline nationalism couched in Buddhism.

Some Buddhist monastics have also faced government restrictions on their activities. For example, Shwe Nya Wa Sayadaw was banned indefinitely from public preaching in April 2015 by the state’s Sangha Maha Nayaka Committee, the highest Buddhist authority in the country. He was known for preaching sermons on human rights issues and in support of the NLD, containing criticism of government practices and Buddhist nationalist groups (Min 2015).
The Emerging Political Landscape

The November 2015 election in Myanmar resulted in a landslide victory for the NLD, led by Daw Aung San Suu Kyi. In the run-up to the election, tensions between religious groups in the country flared as many prominent monks from MaBaTha campaigned on behalf of the USDP,8 achieved passage of the four race and religion laws, and criticized the opposition NLD as insufficiently willing to protect the Buddhist tradition. That the overwhelming majority of the country voted in favor of the NLD demonstrated the limits of MaBaTha’s influence and gives some cause for optimism among those concerned by inter-religious violence and exclusionary policies during the transition period. But it would be premature to interpret the NLD landslide victory as a wholesale defeat of Buddhist nationalism or anti-Muslim sentiment, or as a victory for religious minority rights.

Notably, the election campaign period, and the election itself, was not marked by the episodes of inter-religious violence that many had feared. On issues of religious freedom generally, and the four race and religion laws more specifically, the NLD election platform was woefully vague, likely a political calculation in an environment of seemingly strident Buddhist nationalism. Even as early as election day itself, it was clear that the NLD had won big. Aside from the USDP, ethnic political parties also performed poorly, with the NLD sweeping in most outlying ethnic states other than Rakhine. Though many NLD parliamentarians are from non-Burman ethnic groups, it is yet to be seen the extent to which they will push for issues of concern for their ethnic group that go against, or at least are not priorities of, the NLD. Among the vast litany of priorities Aung San Suu Kyi has laid out for the new NLD-led government, a review of the four race and religion laws and Rohingya rights do not appear to top the list. Meanwhile, the country’s nationwide ceasefire (NCA) was signed with eight of the ethnic armed groups who have been negotiating with the government beginning in 2012 (though notably, not the largest group, the Kachin Independence Organization). The signing of the partial NCA in October 2015 led to the launch of a national dialogue process on the future of the country, with a framework adopted in December and the first iteration of the Union Peace Conference held in Naypyitaw in January 2016. At the time of writing this article, it is unclear if the political dialogue framework will be adjusted by the now-ruling NLD, or if other ethnic armed groups will join the NCA. In whatever form the political dialogue moves forward, however, it is likely at some point to have to address issues of religion and state relations generally, and religious freedom more specifically. If the national dialogue process is truly inclusive, and interests and concerns of all stakeholders are engaged meaningfully, it could be an invaluable opportunity to make considerable advances in religious freedom, and in building a truly pluralist Myanmar national identity and state system.

Commensurate with this will be the need for ongoing legislative and rule of law review and reform on issues related to religious freedoms and discrimination, in order to cleanse the system of laws restricting rights, and to ensure practices by all rule of law actors, from the security sector to the judiciary, that ensure equal treatment and protections of religious freedom. But perhaps most immediate is the need for efforts to advance a social environment of respect for religious difference, and to curb inflammatory hate speech directed against groups based on their religious identity and commitments. To that end, a rebuke by the Ministry of Religion and NLD leadership of an inflammatory Facebook post by Buddhist nationalist monk U Wirathu on February 2, the day after the new NLD-led government was seated in Parliament, could be a positive sign (Lone and Min 2016). The new NLD government ought to be encouraged and empowered to take further steps to end the environment of permissiveness towards religious
hatred and instigation that was created under the previous USDP government.

Recommendations

- It is crucial that U.S. government actors understand the diversity within Buddhism in Myanmar, indeed, within all of the country’s religious communities. There is no “true Buddhism” in Myanmar or anywhere else and such claims are merely attempts at policing the boundaries of a religious community. Even as non-Buddhists face the direst threats to their religious freedom, non-mainstream Buddhist practices and beliefs have also been repressed at times.
- At the same time, consider Myanmar within its regional context, in which Buddhist nationalism has been expanding in some countries, regional criticism of Burmese government and popular attitudes towards Muslims is increasing, and Southeast Asian nations seem poorly prepared to work together to solve transnational crises such as the mass exodus of Rohingyas from Myanmar.
- Make use of the social, political, and legal fields to advance religious freedom. These areas, and the norms that govern them, are mutually constructive and advocacy must consider which is the proper domain for particular actions as well as the ways in which the three spheres overlap and influence each other.
- Do not demonize Buddhists en masse, as much of the international media coverage has done. This is not constructive, as it spurs people in the country to close ranks in the face of perceived attacks on Buddhism universally, rather than more targeted criticisms of violent or hateful rhetoric and actions. In the past, international condemnation has more often played into the hands of nationalist groups by strengthening their argument that Buddhism is under attack.
- Be patient, but don’t back down from basic principles such as the overall commitment to religious freedom. The new NLD government will already be limited in what it can control, partly because it is new to governance but also because the military still controls key areas of authority, including the Ministries of Defense, Border Affairs, and Home Affairs as well as the police. The government will need regular pressure to ensure that religious freedom issues remain on the agenda (in the face of a seemingly endless list of priorities) but will sometimes need to be supported and empowered to put pressure on the military when necessary.
- Balance freedom of expression with restrictions on hate speech. Recognize that, while hate speech is damaging, it is not necessary in Myanmar today for the demonization of Muslims; rumor, insinuation, and even factually accurate statements are all used at times to reinforce a narrative of Buddhism under threat from aggressive Islam. Ensure that the need to “combat extremism” does not justify state control over religion or pre-emptive actions based on speculation.
- Support inclusive processes for legislative reform on religious issues that include respected religious figures, but choose targets carefully. The four “Race and Religion” laws are problematic but repealing them would spark a strong backlash from MaBaTha. Furthermore, it is other laws that are more commonly used (at the moment) for purposes of religious repression and persecution.
- Draw attention to everyday violations of religious freedom, including when authorities refuse to give permits for non-Buddhist houses of worship or religious festivals.
- Ensure that the political dialogue process remains inclusive of issues of religious diversity and freedom, including new conflicts that might arise. National reconciliation in Myanmar will have to occur on multiple fronts in the coming years.
- The next administration should learn from and continue the constructive policies and practices of the current Embassy Rangoon staff.
They have supported interfaith work and peace-building initiatives and also helped facilitate the broadening of people’s conceptual boundaries by creating opportunities for Myanmar people to gain international experience, usually in non-Buddhist majority countries. Most importantly, over the past few years they have sought to actively engage with some of the more moderate elements of MaBaTha, which is absolutely essential to promoting alternate narratives about present anxieties that do not demonize Muslims or non-Buddhists.

Notes
1. While “nationalist” is not the most accurate term to describe these organizations’ outlook, it is used here in lieu of a better option. Disaggregating the “nationalist” tendencies of these groups in Myanmar is beyond the scope of this article, but suffice to say that the Burmese word a-myo, which is often translated as nationality, literally means “type of person” and in different contexts can refer to ethnic, national, or religious identities and indeed, in the Myanmar context, frequently expresses all three simultaneously as well as aspects of identity beyond these three categories.

2. These statistics on ethnicity and religion are from the CIA World Factbook [Accessed February 8, 2016. https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html]. However, it should be noted that demographic statistics related to ethnic and religious identity in Myanmar are bitterly contested and rely on estimations or outdated census data. A census was conducted in 2014 with technical assistance from the UNFPA, but, citing concerns about the effects on inter-communal conflict, the government has declined to release ethnic and religious aggregate data up through the present. Thus, the figures provided here should be considered estimates.


4. The Rohingya are a distinct identity group primarily found in the West of the country. They are a stateless group, not recognized as an ethnic group with legal status in the Myanmar or neighboring Bangladesh, where many reside. They face significant social prejudice, in addition to systematic legal and political persecution, and restrictions on freedom of movement. They were not allowed to vote in the 2015 elections unless they denied their identity as “Rohingya,” assuming instead the legal designation of “Bengali,” an identification many refused to adopt.

5. Activists recounted these experiences in interviews with author Hayward in Yangon in March 2015.

6. Language from the draft law is quoted from a version printed in the Myanmar Alin Daily on December 4, 2014 by the government with an invitation to the public to provide feedback. The other three laws were similarly printed in the newspaper for this purpose.

7. It should be noted that while the New Zealander, Philip Blackwood, was released in an amnesty in January 2016, his two Burmese co-defendants remained in prison.

8. MaBaTha spokespeople were careful to attribute these comments to individual monks, insisting that the organization itself did not have a stance in support of any particular party, simply in support of those parties that would protect race and religion. This may have been a disingenuous position, but it allowed MaBaTha to skirt both constitutional provisions and electoral regulations prohibiting the use or abuse of religion in politics.

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