

37th Session of the Universal Periodic Review – Myanmar

A Submission by Christian Solidarity Worldwide (CSW)

Introduction

1. CSW is a human rights organisation specialising in the right to freedom of religion or belief (FoRB).
2. This submission seeks to highlight violations of FoRB and related human rights which have taken place in Myanmar during the reporting period. It details Myanmar's failure to implement the legal reforms necessary to ensure full respect for FoRB, the rise of Buddhist nationalism, and violations resulting from these two factors, specifically against the Rohingya people, Muslims, and Christians. It also briefly touches on violations of freedom of expression.
3. During its second Universal Periodic Review (UPR), Myanmar accepted 16 recommendations relating to FoRB, including calls to promote religious tolerance and interfaith harmony (China, Indonesia, Malaysia, Republic of Korea, Sudan, Turkey), to investigate violence and discrimination against religious minorities (Iceland), to prosecute perpetrators of violence against religious minorities (Iceland), and to take steps to prevent and avoid conflicts on ethnic or religious bases (Ethiopia, Russia).
4. Myanmar did not accept a further 46 recommendations relating to FoRB. Rejected recommendations included those which urged Myanmar to repeal or amend laws which facilitate discrimination on the basis of religion,

such as the 1982 Citizenship Law¹ and the Protection of Race and Religion Laws.² Myanmar also rejected all recommendations which called on the country to ensure full rights to the Rohingya or Islamic or Muslim minorities.³

5. Other more general recommendations to take steps to eliminate discrimination were also rejected, as was a specific recommendation to “amend the Constitution to provide guarantee for freedom of religion in Myanmar, in line with Article 18 of the Universal Declaration of Human Rights” (Bahrain).
6. Despite some accepted recommendations, the situation for FoRB and related rights has deteriorated significantly during the reporting period.

Legal framework

7. As noted, Myanmar did not accept any recommendations to make reforms to laws which facilitate discrimination on account of an individual's religion or belief. As such, the legal framework in Myanmar has remained highly discriminatory during the reporting period.
8. While Article 34 of the 2008 constitution appears to protect FoRB for all, this is contradicted by Article 361 which affords a special position of Buddhism, effectively leaving space for the enacting of policies which discriminate against religious minorities in the name of the

¹ States that made recommendations relating to the 1982 Citizenship Law were Germany, Iceland, Saudi Arabia and the United States.

² States that made recommendations relating to the Race and Religion Laws were Australia, Canada, Czechia, Denmark, Germany, Italy, Turkey and Uruguay.

³ States that made recommendations relating to the rights of the Rohingya were: Argentina, Australia, Belgium, Costa Rica, Egypt, Guatemala, Libya, Luxembourg (x2), Malaysia (x2), Netherlands, Nigeria, Oman (x2), Pakistan, Saudi Arabia (x4), Senegal, Slovenia, Sudan (x2), Sweden, United Kingdom, and the United States.

protection of Buddhism, the majority religion.⁴

9. Furthermore, the constitution only protects the rights of 'citizens.' This is problematic as it means that groups like the Rohingya, who are denied citizenship under the 1982 Citizenship Law, are not afforded the protections for FoRB and other human rights laid out in the constitution.
10. Section 295 of Myanmar's Penal Code can also limit FoRB. The law was designed to reduce communal tensions in the country and stipulates that the "deliberate and malicious intention of outraging the religious feelings of any class by insulting its religion or religious beliefs" shall be punished with imprisonment or fine.⁵ The vague wording of this law leaves concepts such as 'deliberate', 'malicious' and 'insulting' open to interpretation and therefore vulnerable to misuse against religious minorities.
11. Myanmar's 'Race and Religion' Laws, drafted by the Buddhist nationalist Ma Ba Tha group, introduce further restrictions on FoRB and other human rights, including the rights of women, the rights of the child, and freedom of expression. The laws place restrictions on religious conversion and interfaith marriage, and introduce legislation aimed at population control which fails to include any provisions to protect against discrimination.

Recommendations to the government of Myanmar:

12. Review and repeal or reform all discriminatory and repressive laws which restrict freedom of religion or belief, freedom of expression, freedom of peaceful assembly and other basic human rights.

13. Amend the constitution to ensure that the right to FoRB, as articulated in the UDHR, is fully upheld.

Rise of Buddhist Nationalism

14. Despite accepting recommendations to promote interfaith harmony and tolerance, Buddhist nationalism continued to rise in Myanmar during the reporting period.
15. The Ma Ba Tha Buddhist nationalist group, which emerged in 2014, continued to be responsible for the promotion of intolerance and hostility, particularly towards Myanmar's Muslim community. Ma Ba Tha used a number of methods to propagate and popularise a view that Myanmar should be a solely Buddhist nation, including incitement to hatred and violence, the spread of false news and the intense lobbying of government in order to bring about political change.
16. As well as fueling anti-Muslim rhetoric, particularly by capitalising on fears of radical Islam, Ma Ba Tha were also responsible for the spread of anti-Christian sentiment during the reporting period. For example, on 12 March 2016 the leader of Ma Ba Tha, U Wirathu, shared pictures of Chin Christian girls supposedly disrespecting Buddhist statues. It was later found that at least two of the images were not from Burma, but were fake images designed to defame the young women.⁶
17. On 2 June 2017 Ma Ba Tha changed its name, after an order by the Buddhist Sangha to disband, and was newly christened the Buddha Dhamma Parahita Foundation.
18. Buddhist nationalism remains a serious problem for Myanmar today. Other small local groups who share the Buddhist nationalist ideology have emerged in

⁴ Constitution of the Republic of the Union of Myanmar, 2008.

⁵ Myanmar Penal Code, Section 295(a)

⁶ United States Commission on International Religious Freedom, 'Hidden Plight: Christian Minorities in

Burma', December 2016, p.10

<https://www.uscifr.gov/sites/default/files/Hidden%20Plight.%20Christian%20Minorities%20in%20Burma.pdf>

different parts of the country, such as the Patriotic Buddhist Young Monk Association, who have engaged in violent attacks on Muslim vendors near the Shwe Dagon Pagoda in Yangon and on Muslims during the celebration of the Prophet Mohammed's birthday. They have also attempted to disturb inter-faith activities.

Recommendations to the government of Myanmar:

19. Consult with genuine, independent civil society and religious leaders when drafting legislation, strongly encourage their participation in preparations for human rights related reporting, including the UN UPR process, and invest in practical initiatives to promote interfaith dialogue, harmony and reconciliation at a grassroots level.
20. Introduce legislation to address hate speech, while being careful to protect and enhance freedom of expression.

Violations against the Rohingya

21. During the reporting period, the situation of Myanmar's predominantly Muslim Rohingya community deteriorated significantly.
22. The 1982 Citizenship Law remained in effect, prohibiting the Rohingya from obtaining citizenship and thus effectively rendering them a stateless group.
23. On 9 October 2016 an attack on three border guard posts on Burma's frontier with Bangladesh in Rakhine State led to the death of nine police officers. The attack prompted a massive crackdown as the Burmese military claimed that it was an act of terrorism by Rohingyas.

24. Throughout October 2016 there were multiple instances of summary execution, torture and mass rape; and thousands were forced to flee their homes. Human Rights Watch found evidence of more than 1,500 homes burned down during this period alone.⁷

25. The violence increased in severity after 12 November 2016. The military used heavy weapons and helicopter gunships against Rohingya villages, killing and injuring hundreds and displacing 20,000 Rohingyas in one weekend.

26. Thousands of Rohingyas also fled across the border into the Cox's Bazar camp in Bangladesh, following the crackdown. Many found themselves blocked at the Bangladesh border. Despite this, on 9 January 2017 the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that 65,000 had crossed the border into Bangladesh since 9 October.⁸ UN Officials estimated that more than 1,000 Rohingyas were killed, and there were countless testimonies from women of gang rape and the torching of homes by members of the military.⁹

27. In August 2017 the Myanmar army launched further attacks on Rohingya villages and civilians which resulted in over 700,000 people fleeing to Bangladesh, thousands killed, and hundreds of villages burned. Reports of the atrocities of mass violence perpetrated during this period include the burning of homes, schools and mosques, the deliberate burning of people to death inside their homes, mass rape, execution without trial, and the blocking of aid.

28. In 2018 CSW visited refugee camps in Bangladesh. Among those interviewed was Hafez Ziur Rahaman, a 38-year-old

⁷ Human Rights Watch, 'Burma: Military Burned Villages in Rakhine State', 13 December 2016 www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state

⁸ *Guardian*, '65,000 Rohingya flee from Myanmar to Bangladesh following crackdown: UN', 10 January 2017 www.theguardian.com/world/2017/jan/10/65000-rohingya-flee-from-myanmar-to-bangladesh-following-crackdown-un

[rohingya-flee-from-myanmar-to-bangladesh-following-crackdown-un](http://www.theguardian.com/world/2017/jan/10/65000-rohingya-flee-from-myanmar-to-bangladesh-following-crackdown-un)

⁹ *Guardian*, 'More than 1,000 Rohingya feared killed in Myanmar crackdown, say UN officials', 9 February 2017 www.theguardian.com/world/2017/feb/09/more-than-1000-rohingya-feared-killed-in-myanmar-crackdown-say-un-officials

Imam, who told CSW that on 27 August 2017 he fled his village with over 200 families after the military attacked. More than 100 people were burned, shot or stabbed to death. Soldiers came into the mosque and played football with the Holy Qu'ran ripping it apart. Then they set fire to the Qur'ans and the mosque. Accounts also emerged of babies being snatched from their mothers' arms and thrown into a fire, families burned alive, and villagers lined up and executed at gunpoint.

29. Reports of mass rape during both waves of violence indicate a failure on Myanmar's behalf to implement six accepted recommendations which called on Myanmar to protect women and girls from violence and sexual violence (Finland, Namibia, Paraguay, Serbia, Spain, Sweden).
30. Reports have emerged of military officers being responsible for torture during both waves of violence. However, despite an accepted recommendation from Lithuania to "ensure that police and military officers alleged to have committed acts of torture and ill-treatment are held accountable through the criminal justice system," Myanmar has done little to investigate these allegations.
31. In September 2018 the UN Independent International Fact-Finding Mission on Myanmar published a report which described the violations of human rights against the Rohingya in August 2017 as war crimes and crimes against humanity, and called for senior generals in the Burmese military to be investigated for genocide.¹⁰
32. On 23 January 2020 the International Court of Justice (ICJ) issued a ruling ordering the government of Myanmar to take immediate "provisional measures"

¹⁰ United Nations Office of the High Commissioner for Human Rights, 'Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military in Rakhine, Kachin and Shan States', 18 September 2018 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23575&LangID=E

to prevent genocide against the Rohingya, and to preserve evidence of alleged crimes against the Rohingya.¹¹ The ICJ decision was adopted unanimously following a three day hearing which took place from 10-12 December 2019.

33. Also in January 2020, an Independent Commission of Enquiry created by the Burmese government submitted its final report to the President of Myanmar, which stated that while the military may have been responsible for war crimes against the Rohingya, there was no evidence of genocide.

Violations against other Muslim groups

34. Aside from the Rohingya, other Muslims in Myanmar have also faced violations of FoRB during the reporting period.
35. Muslims have been vulnerable to having their homes, mosques and schools demolished or confiscated by the government, extremist monks or the local authorities. Notable examples include:
36. In March 2016 Ma Ba Tha confiscated mosque land in Myawaddy, Karen State.
37. On 25 April 2016 a prominent Buddhist monk forcibly constructed a pagoda inside the compound of Marakaz mosque.
38. In May 2016 a Muslim house in Karen State was demolished as a result of Buddhist nationalist pressure.
39. In June 2016 by authorities demolished a Muslim prayer hall in Kachin State which had stood for 30 years.

¹¹ International Court of Justice, 'Application of the convention on the prevention and punishment of the crime of genocide: The Gambia v Myanmar', 23 January 2020 <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>

40. On 1 July 2016 a mob of 200 Buddhists demolished a prayer hall in Pha Khant Township, Kachin State.
41. On 13 December 2016 two Islamic schools near Yangon were forcibly closed. A teacher from one of the schools reported that the school had been teaching and organising ceremonies with permission from the local authorities for ten years.
42. In late April 2017 Buddhist ultra-nationalists disrupted mass Muslim prayer at a madrasa in Yangon. Local police were pressured into allowing them to seal the schools shut.
43. In addition to representing a failure to protect religious minorities and promote religious tolerance, the above incidents also highlight Myanmar's failure to implement an accepted recommendation from Egypt which specifically called on the state to "prevent the destruction of places of worship and cemeteries."
44. Muslim businesses have also been targeted during the reporting period. In 2016 Muslims were banned from selling goods around the Shwe Dagon pagoda. Muslim butchers have been particularly pressured because of Buddhist beliefs about the sanctity of animal life.
45. In April 2016 Muslims from Aphouk Township were banned from getting a butcher's licence, and the construction of a Muslim slaughterhouse in Shwe Nyaung Township was cancelled after pressure from Ma Ba Tha.¹²
46. There is also evidence that Muslims face discrimination in Myanmar's judicial system. According to the Burma Human Rights Network, 44 incidents of discrimination in the judicial system took place between January and August 2016 alone.¹³
47. Several instances of mob violence against Muslims took place during the reporting

period: On 23 June 2016 a mosque, an Islamic school and a cemetery in Thuyethamain Village, Bago Region, were destroyed by mob violence in response to an allegation that a local warehouse which was under construction could be used as an Islamic school.

48. On 1 July 2016 a mob of 200 people in Phakhant Town, Kachin State, vandalised a mosque; only six leaders were charged.
49. On 9 May 2017 a mob of ultra-nationalist monks began a search for Muslims living 'illegally' in Yangon. The search became violent when no illegal residents were found and two men were attacked. One Muslim man had to go to hospital.

Violations against Christians

50. During the reporting period, violations of FoRB and other human rights continued to be perpetrated against the majority Christian Kachin people in several states in northern Myanmar, particularly in Kachin and northern Shan States.
51. On 9 June 2011 Myanmar's military launched a new offensive in Kachin State, starting a conflict which has continued into the reporting period and has ensured that ethnic and religious minorities have continued to be subject to extreme and grievous abuses.
52. Human rights abuses against ethnic minority Christian communities have been observed in these states during the reporting period, including killing, arbitrary detention, torture, targeted religious persecution, sexual violence and humanitarian aid blocks which have restricted access to clean water, health care, proper hygiene and sanitation, and other basic necessities. Over 100,000 of the predominantly Christian ethnic Kachin people are now in IDP camps as a result of the conflict.
53. On 7 December 2018 three Kachin activists were charged with defamation of

¹² Burma Human Rights Network, April 2016

¹³ Burma Human Rights Network, January 2016-August 2016

the Burma Army under Article 500 of Burma's Penal Code. They were sentenced to six months in prison and a fine of 500,000 kyats (£250) each, for their role in a peaceful demonstration calling on the Burmese government to help internally displaced people fleeing attacks by the Burma Army.

54. On 30 May 2018 ethnic Lisu Christians from the majority Shan Buddhist village of Kaung Mu Lone in Putao, northern Kachin State, were forcibly relocated from their land to another location which reportedly has no drinking water supply, no school and no road for cars. The incident occurred after the Burma Army's Commander-in-Chief, Senior General Min Aung Hlaing, visited the area and announced that Christians should not be allowed to live there because it is religious land belonging to Buddhists.
55. Ethnic Kachin Christians have been vulnerable to arbitrary detention and are often falsely accused of working with resistance groups even when there is no evidence for this. Those who are detained arbitrarily are often tortured using a variety of techniques including severe beatings, the burning of skin with hot blades, repeated stabbing in non-lethal locations, and sexual assault.
56. Little has been done to investigate allegations of torture, or to hold those responsible to account, once again demonstrating Myanmar's failure to implement the aforementioned recommendation from Lithuania to do this.
57. Similarly, evidence of rape, violence and sexual violence against women in Kachin and Shan States reiterate Myanmar's failure to implement recommendations to protect women and girls from these violations. In November 2016 the Women's League of Burma published a

report which documented 18 cases of violence (not specifically sexual violence) against women by government forces from 2015 to 2016.¹⁴

58. According to a report published by the UN Special Rapporteur on Myanmar, Yanghee Lee, 22 churches have been destroyed or damaged in Myitkyina, Waingmaw and Chi Hpwi since April 2018,¹⁵ once again pointing to Myanmar's failure to implement the accepted recommendation from Egypt to protect places of worship.
59. In September 2018 the UN Independent International Fact-Finding Mission on Myanmar declared that the violations documented in Kachin and Shan States amounted to crimes against humanity and war crimes.
60. Christians and ethnic minorities outside Kachin and Shan States also face several challenges. Violations against the Karen, Karenni, Chin and Naga people have continued during the reporting period. These include widespread restrictions on the construction and renovation of Christian infrastructure, destruction of Christian crosses, violations of freedom of assembly, the imposition of Buddhist infrastructure, intimidation and violence, and institutionalised discrimination on the basis of religion.

Recommendations to the government of Myanmar

61. Hold perpetrators of crimes against humanity, war crimes and genocide accountable and ensure they are brought to justice.
62. Ensure full co-operation and transparency with all investigations into mass violence against the Rohingya.

¹⁴ Women's League of Burma, 'Access to Justice for Women Survivors of Gender-based violence committed by state actors in Burma', 24 November 2016 http://womenofburma.org/wp-content/uploads/2016/11/VAW_BriefingPaper-Nov2016-Eng.pdf

¹⁵ United Nations Office of the High Commissioner for Human Rights, UN Special Rapporteur report on the situation of human rights in Myanmar, A/73/332, 20 August 2018

63. Comply fully with the ICJ ruling, by adopting immediate provisional measures as ruled by the ICJ to prevent genocide against the Rohingya and to preserve evidence of alleged crimes in order to bring an end to all violations against the Rohingya, as well as against other religious and ethnic minorities in the country.
64. Take steps to ensure the protection of vulnerable communities, particularly in Kachin, Rakhine and Shan States.
65. Conduct detailed and transparent investigations into allegations of torture and sexual violence, holding those responsible to account.