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Myanmar: Parliament must reject discriminatory ‘race and religion’ laws

Joint statement by Amnesty International and the International Commission of Jurists

Myanmar’s Parliament must reject or extensively revise four draft laws addressing “race and religion” that are currently under its consideration, said Amnesty International and the International Commission of Jurists (ICJ). These draft laws are discriminatory and could result in violations of a number of human rights, including the right to freedom of thought, conscience and religion, the right to privacy, children’s rights and the right to freedom of expression.

In December 2014, President Thein Sein submitted to Parliament a package of four draft laws aimed at “protecting race and religion”. The four draft laws – the Religious Conversion Bill, the Buddhist Women’s Special Marriage Bill, the Population Control Healthcare Bill and the Monogamy Bill – contain many discriminatory provisions, in particular on religious and gender grounds, and do not accord with international human rights law and standards, including Myanmar’s legal obligations as a state party to the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC).

Two of the bills – the Religious Conversion Bill and the Buddhist Women’s Special Marriage Bill – are inherently flawed and incompatible with human rights and should therefore be rejected completely. The Population Control Healthcare Bill and the Monogamy Bill require significant revisions and the inclusion of adequate safeguards against all forms of discrimination before they should be considered, let alone adopted.

The submission and consideration of these draft laws comes at time when religious intolerance and ethnically discriminatory attitudes have been rising in Myanmar and have led to violence and mass displacement. Amnesty International and the ICJ are concerned that these draft laws, if adopted, will not only result in increased discrimination and violate human rights; they could heighten already existing religious tensions in the country.

Some of the key human rights concerns with the four proposed laws are set out below (the analysis provided below is not exhaustive and relies on the latest publicly available English translations).

THE RELIGIOUS CONVERSION BILL

The passage of the Religious Conversion Bill would jeopardize the ability of ethnic and religious minorities in Myanmar to exercise their rights, and, coming as it does at a time of heightened ethnic and sectarian hostility and violence (particularly directed against Muslims), it could be interpreted as signalling government acquiescence, or even assent, to discriminatory actions and violence.

The Religious Conversion Bill aims to establish a system by which individuals who want to change religion must apply to a state-governed body, which will review their application and decide whether to approve it and issue a certificate of conversion. Although the Religious Conversion Bill refers in its preamble to Article 34 of Myanmar's 2008 Constitution, which states that "[e]very 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," in attempting to regulate religious conversion, the Religious Conversion Bill grants inappropriate and unnecessary powers to the state. It not only risks violating the right to freedom of thought, conscience and religion, but also the right to privacy – which is enshrined in Article 12 of the Universal Declaration of Human Rights (UDHR). For these reasons the draft law should be rejected in its entirety.

The right to freedom of thought, conscience and religion is enshrined in Article 18 of the UDHR, and includes the freedom to change one's religion or belief. A person's religion is a deeply personal – and private – matter of individual conscience, that is not the concern of the state even when individuals choose to convert to a different religion or to leave religion altogether. The freedom to have or to change one's religion or belief is inalienable and may not be infringed by the state in any circumstances.

Under the bill, only persons over the age of 18 are permitted to apply for religious conversion. This contravenes Myanmar's obligation under Article 14(1) of the CRC to respect the right of the child to freedom of thought, conscience and religion.

Article 25, which states "religious conversion is not concerned with citizenship under this law" is vaguely worded. Article 34 of Myanmar's Constitution only guarantees the right to freedom of religious belief and religious worship to "citizens", thus denying non-citizens such protection on a discriminatory basis. As a result, it is unclear whether the draft law applies to non-citizens. This lack of clarity is particularly alarming in the context of Myanmar where the Rohingya minority are denied citizenship, and as a result, many of the rights and protections afforded to citizens of Myanmar. With very few exceptions, human rights must be guaranteed to all persons irrespective of citizenship status.

We also call attention to Article 4 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which provides that States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The bill also contains provisions prohibiting the following: conversions with an intent to insult, degrade, destroy or misuse religion (Article 14); compelling conversion through bonded debt, inducement, intimidation, undue influence or pressure (Article 15); and preventing, interfering or hindering people from converting (Article 16). These provisions could be interpreted as providing additional protection to people in Myanmar, but in the current context of ethnic and religious tensions, they could more likely be interpreted as creating additional grounds for unlawful government interference, abuse and discrimination. To avoid such an interpretation, any legislation addressing these issues should include safeguards against abusive or discriminatory application of the law.

Both forced conversions and the forceful prevention of conversions would constitute impermissible impairment to the exercise of the right to freedom of thought, conscience and religion. If the government's aim is to minimize forced conversions (or forceful preventions of conversions), it would be appropriate to prohibit in law undue interference with individuals' right to freedom of thought, conscience or religion, to allow for an accessible and transparent process to challenge such interference, and to place the determination of whether such a law has been violated with the judiciary.

It is inappropriate – as the draft law currently provides in Article 7 – to authorize a "Registration Board" made up of local government officials and other community members to determine whether a particular religious conversion was forceful. This problem is compounded by the

absence of a clear and explicit right to appeal such a decision; the right to appeal in such cases must be guaranteed.

In addition, the process envisioned for the establishment of “Registration Boards” under Chapter 2 of the Religious Conversion Bill fails to ensure that Myanmar’s various ethnic and religious communities will be adequately represented on such boards.

Finally, the Religious Conversion Bill imposes onerous administrative burdens upon those who would seek to convert to another religion. These burdens may constitute an impermissible interference with the exercise of religious freedom.

Amnesty International and the ICJ therefore urge Parliament to reject the Religious Conversion Bill. Furthermore, we call on Parliament to review all laws relating to identity and registration to ensure that they are in line with international human rights law and standards.

THE BUDDHIST WOMEN’S SPECIAL MARRIAGE BILL

The proposed Buddhist Women’s Special Marriage Law blatantly discriminates on both religious and gender grounds and Parliament should reject it altogether.

This draft law explicitly and exclusively targets and regulates the marriage of Buddhist women with men from another religion. If the intention of this legislation is to provide greater protection to women against forced conversions as a result of marriage, then the law should apply to all religions equally, and to both men and women.

The draft law establishes “provisions to be observed by non-Buddhist man” (Chapter 5) but no similar – or any – rules or obligations are placed on the wife. Several of these provisions in and of themselves facilitate the enjoyment of human rights – for example those ensuring the wife is able to practice her religion freely, allowing any children born to freely practice the religion of their choice, preventing the husband from forcefully converting the wife to his religious faith. However, these provisions do not equally protect the non-Buddhist husband – and are to this extent clearly discriminatory and in contravention of Article 16(1) of the UDHR, which provides that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution”.

Article 24(g) of the draft law states that a non-Buddhist husband of a Buddhist wife must observe the following provision: “not to insult, in words or in writing or through visible representation or gesture, with bad intention to cause bitter feeling to the Buddhist.” This provision is discriminatory, as no similar provision exists for the wife or for any other types of cross-religious marriages. It also allows for possible excessive restrictions on the husband’s right to freedom of expression as enshrined in Article 19 of the UDHR. The provision is also impermissibly vague, in that it provides no guidance as to what behaviour or gestures could “cause bitter feelings”. The provision therefore contravenes the principle of legality, by which the terms of a law must not be vague or overbroad.

We are deeply concerned that this law also targets Buddhist women marrying non-Buddhist men. It is based on stereotypes that Buddhist women are “vulnerable” and that non-Buddhist men are likely to disrespect their wives’ religious belief and attempt to forcibly convert them. In this regard, we also note that Article 35 relies on discriminatory stereotypes that non-Buddhist men are more likely to abandon their wives and abuse them. There is no factual basis for such assertions, but they do echo claims by some extremist groups used to justify violence and discrimination against non-Buddhist groups in Myanmar, particular against the Rohingya and other Muslims.

In addition to being discriminatory, the draft law appears to grant courts the power to force two people to marry against their will (Article 27(f)), in violation of Article 16(1)(b) of CEDAW which guarantees women, on the basis of equality with men, the right to freely choose a spouse and to enter into marriage only with their free and full consent. Under the draft law (Article 27(a)), this

could be done on the basis of information received from a relative of the woman, in violation of the right not to be subjected to arbitrary interference with one's privacy, enshrined in Article 12 of the UDHR. Moreover, provisions of the bill relating to custody of the children (Articles 25(b), 32(b) 34(a)(iii) and 34(b)(bb)) do not put the interest of the child as the primary consideration as required by the CRC (for instance in Articles 3(1) and 18(1)). Instead, the law automatically grants a Buddhist woman married to a non-Buddhist man guardianship of all children in the event they should divorce.

Amnesty International and the ICJ therefore urge Parliament to reject the Buddhist Women's Special Marriage Law in its entirety because of its religious and gender discriminatory nature and the other human rights violations it would entail.

THE POPULATION CONTROL HEALTHCARE BILL

The Population Control Healthcare Bill is described in its preamble as being aimed at "effectively implementing population control healthcare activities" with a view to "improving living standards while alleviating poverty in the country; ensuring sufficient quality healthcare; and developing maternal and child health". While many of these aims are generally to be welcomed, the draft law lacks essential safeguards against violations of human rights, including violations of sexual and reproductive rights and freedom from all forms of discrimination against women, prohibited under CEDAW.

As a state party to CEDAW, Myanmar is legally bound to ensure the right of women, on the basis of equality with men, to decide freely and responsibly on the number and spacing of their children – in addition to having access to the information, education and means to enable them to exercise these rights (Article 16(e)). In contrast, the draft Population Control Healthcare Law contains no provisions reaffirming women's right to decide on these matters.

There are no safeguards in the draft law to ensure that the sexual and reproductive rights of women, men and children – in particular the right guaranteed in CEDAW to freely choose whether or not to have children and the number and spacing of births – will be respected and protected during its implementation. Instead the law focuses on "population control healthcare activities" or "organizing" married couples to practice birth spacing – terms that are excessively vague and could open the way for discriminatory, coercive or otherwise abusive application of the law.

It is unclear whether and how the practice of "birth spacing" – defined in Article 2(c) as "the practice of having at least a 36-month interval between one child birth and another for a married woman" – would be enforced. Despite the absence of penalty in this draft law, it lacks essential safeguards to protect women who have children more frequently than 36-month intervals. While birth spacing may be beneficial to many women, which may warrant encouragement by the state, under the abovementioned provisions of CEDAW, it must under no circumstances be imposed.

Furthermore, there is no explicit non-discrimination clause guaranteeing the law is implemented without any discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, marital status, health status, sexual orientation, gender identity or other status. Article 12(1) of CEDAW requires the Myanmar authorities to take all appropriate measures to "eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning".

The law should include an explicit prohibition on coercion to use contraception, coerced abortion or forced sterilization. The draft law, as it stands, could be interpreted to target specific communities identified on a discriminatory basis, in violation of international human rights law. In the current context of Myanmar, where minority groups – and in particular the Rohingya – face severe discrimination in law, policy and practice, this concern is very real. We note that in the past the Rohingya have been subjected to discriminatory policies restricting Rohingya couples to having no more than two children. With this in mind, the power given to the Ministry of Health, its related departments, and Regional and State authorities to issue notifications,

orders, instructions and procedures in implementing provisions of the law without oversight (Article 19), is particularly alarming.

We further note that no provisions are made that the composition of the Regional, State, and Township bodies established to implement the law will ensure gender parity – particularly important given that the issues involved predominantly concern women – or that they will include adequate representation of minorities and local communities.

In addition, the draft law appears to exclude unmarried women and men from access to healthcare information and counselling which would constitute discrimination on the grounds of marital status, in violation of Article 16 of CEDAW.

Amnesty International and the ICJ believe that the draft law does not provide adequate human rights protections and safeguards against discrimination, and coercive reproductive control. As a result, it should not be adopted in its current form. We urge Parliament to closely scrutinize the law and the possibilities for abusive or discriminatory implementation of the law, in consultation with health and sexual and reproductive rights experts, women's rights organizations and representatives of potentially affected communities and individuals.

MONOGAMY BILL

The purpose of the Monogamy Bill is unclear, given that Myanmar already has laws relating to marriage and that polygamy is defined and criminalized in Article 494 of the Penal Code. Instead of clarifying or consolidating existing marriage laws, the bill introduces provisions that are not compatible with international human rights law and standards.

The Monogamy Bill prohibits men or women who are already married from conducting an extramarital affair (Article 9). The penalty for breaching such a provision is unclear. Extramarital cohabitation and/or consensual sexual relations must not be criminalized. This prohibition could constitute an arbitrary interference with one's privacy and family, which is prohibited under Article 12 of the UDHR.

The draft law remains silent on protections and provisions relating specifically to children in the event of a polygamous marriage and, while defining both "man" and "woman", the bill makes no reference to trans- or intersex people.

Instead of introducing new legislation, Parliament should thoroughly review all family laws to ensure compliance with international human rights law and standards.