

# PROTECTION FOR WHOM?

## Violations of International Law in Myanmar's New 'Race and Religion Protection' Laws

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## Introduction

In recent years, Myanmar has undergone a significant political transformation. In 2011, after nearly sixty years of iron-fisted rule, the governing military junta transferred power to a quasi-civilian government.<sup>1</sup> The new government has undertaken various political and economic reforms<sup>2</sup> and has become a signatory to and ratified several international treaties.<sup>3</sup> In response, the United States, the European Union and others have opened up relations with the country and eased sanctions.<sup>4</sup> Despite these advances, however, Myanmar has several obstacles to overcome before it can be considered a pluralistic, functioning democracy. The analysis here focuses on two issues of concern: discrimination against minority ethnic and religious groups, particularly Muslims, and discrimination against women, and how the two have intertwined in dangerous new state policy.

Myanmar president Thein Sein recently signed into law a set of four bills that exemplify the challenges facing the country.<sup>5</sup> These new laws are allegedly aimed at ‘preserving race and religion,’ but have a clear goal of discriminating against Muslims and other non-Buddhist groups by, in part, reinforcing traditional gender stereotypes.<sup>6</sup> The group of bills, first proposed in 2013 by the anti-Muslim Association for the Protection of Race and Religion (known as Ma Ba Tha) and supported by a petition supposedly signed by 1.3 million people,<sup>7</sup> consists of legislation to outlaw polygamy and adultery, regulate religious conversions, restrict the marriage of Buddhist

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<sup>1</sup> *U.S. Relations With Burma*, U.S. DEP’T OF STATE (Sept. 3, 2014), <http://www.state.gov/r/pa/ei/bgn/35910.htm>.

<sup>2</sup> Beina Xu, *Understanding Myanmar*, COUNCIL ON FOREIGN RELATIONS, <http://www.cfr.org/human-rights/understanding-myanmar/p14385> (last updated June 12, 2015).

<sup>3</sup> *Ratification Status for Myanmar*, UNHCR, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN) (last visited Aug. 31, 2015) (stating that Myanmar has recently signed the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, among others).

<sup>4</sup> *U.S. Relations With Burma*, *supra* note 1; *EU Relations with Myanmar (Burma)*, EUROPEAN UNION EXTERNAL ACTION, [http://eeas.europa.eu/myanmar/index\\_en.htm](http://eeas.europa.eu/myanmar/index_en.htm) (last visited Oct. 20, 2015).

<sup>5</sup> *Myanmar’s president signs off on law seen as targeting Muslims*, REUTERS, Aug. 31, 2015, available at <http://www.reuters.com/article/2015/08/31/us-myanmar-politics-idUSKCN0R011W20150831>.

<sup>6</sup> ‘Protection Laws’ Submitted to Burma’s Parliament, THE IRAWADDY (Dec. 2, 2014), <http://www.irrawaddy.org/burma/protection-laws-submitted-burmas-parliament.html>.

<sup>7</sup> Lawi Weng, *Thein Sein Orders Commission, Court to Draft ‘Protection of Religion’ Law*, THE IRAWADDY (Mar. 7, 2014), <http://www.irrawaddy.org/burma/thein-sein-orders-commission-court-draft-protection-religion-law.html>.

women to non-Buddhist men, and institute population control measures.<sup>8</sup> While some of the provisions of these bills may seem innocuous, the timing of their passage, shortly before the November 2015 elections,<sup>9</sup> and the surrounding rhetoric by ultra-nationalists belie any ostensibly benign motives. These initiatives could, both as passed and in practice, further exacerbate religious, ethnic and gender strife, violate both the Burmese constitution as well as international norms and obligations, and pose a particular threat to women's health and empowerment.

### **Discrimination Against Muslims and Women in Post-Junta Myanmar**

Despite becoming a more open society, there remain many significant issues in Myanmar that undermine any meaningful progress toward a free and open society. One such challenge is the tension and conflict between Buddhists, who make up 89 percent of the country's population, and minority ethnic and religious groups.<sup>10</sup> Tensions between Buddhists and Muslims are particularly fraught. Rohingya Muslims, who live primarily in Rakhine State, are targets of systemic structural and cultural persecution.<sup>11</sup> Influential Buddhist nationalists, particularly fundamentalist monks, have helped fuel these tensions, equating Muslims with terrorists as a type of fear-mongering, warning of their alleged nefarious plans to conquer and convert Buddhists, and even targeting Muslim businesses.<sup>12</sup> These fundamentalists have rejected and

<sup>8</sup> *Burma: Discriminatory Laws Could Stoke Communal Tensions*, HUMAN RIGHTS WATCH (Aug. 23, 2015) [hereinafter HRW Burma], <https://www.hrw.org/news/2015/08/23/burma-discriminatory-laws-could-stoke-communal-tensions>.

<sup>9</sup> *APHR: Discriminatory 'Race and Religion' bills in Myanmar threaten to fuel tensions ahead of elections*, ASEAN PARLIAMENTARIANS FOR HUMAN RIGHTS (APHR) (Aug. 21, 2015), <http://aseanmp.org/2015/08/21/race-and-religion-bills-in-myanmar-threaten-to-fuel-tensions/>. The Myanmar constitution forbids the abuse of religion for political purposes—the passage of these bills, which surely will inflame interreligious tensions, on the eve of significant elections seems to constitute such abuse. CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR 2008, ch. VIII, art. 364.

<sup>10</sup> *Burma*, CIA WORLD FACTBOOK (last updated Sept. 24, 2015), <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>; Xu, *supra* note 2.

<sup>11</sup> See, e.g., SIMON-SKJODT CENTER FOR THE PREVENTION OF GENOCIDE, U.S. HOLOCAUST MEMORIAL MUSEUM, "THEY WANT US ALL TO GO AWAY:" EARLY WARNING SIGNS OF GENOCIDE IN BURMA (2015).

<sup>12</sup> See, e.g., Sara Perria, *Why is Aung San Suu Kyi silent on the plight of the Rohingya people?*, THE GUARDIAN (May 19, 2015), <http://www.theguardian.com/world/2015/may/19/why-is-aung-san-su-kyi-silent-on-the-plight-of-the-rohingya-people> (citing one influential monk as saying, "They will come with swords, they will kill us....Muslims reproduce like rabbits; they want to kill us with swords; they want to conquer us—we have to defend ourselves and our religion"); Alex Preston, *Saffron Terror: an audience with Burma's 'Buddhist Bin Laden' Ashin Wirathu*, GQ (Feb. 11, 2015), <http://www.gq-magazine.co.uk/comment/articles/2015-02/12/ashin-wirathu-audience-with-the-buddhist-bin-laden-burma>; Swe Win, *Myanmar Now, With Official Help, Radical Buddhists Target Muslim Businesses*, THE IRAWADDY (Sept. 17, 2015), <http://www.irrawaddy.org/news/with-official-help-radical-buddhists-target-muslimbusinesses.html>.

decried any international efforts to curb these abuses, even calling the UN Special Rapporteur on Myanmar sexist and degrading names after she expressed concern about the new laws and the plight of the Rohingya.<sup>13</sup> Thousands of Rohingya, who have lived in Myanmar for decades, have fled to nearby countries, encountering perilous conditions.<sup>14</sup> Many have been forced to make devastating choices, such as choosing between staying or fleeing and leaving behind children or being sold into marriage.<sup>15</sup> The Rohingya who remain in Myanmar face virulent discrimination and violence, including restrictions on travel, birth, and marriage, land confiscation and forced relocation.<sup>16</sup> The United States Holocaust Memorial Museum cautions that the violence and discrimination against the Rohingya are early warning signs of genocide.<sup>17</sup>

According to Wai Wai Nu, a young Rohingya activist, in this conflict, “the vast majority of the victims [are] women and children.”<sup>18</sup> While sex-disaggregated data about refugees and internally displaced persons in Myanmar is difficult to find, the UN High Commission for Refugees and the Women’s Refugee Commission have extensive evidence to suggest that globally, women and children comprise up to 80 percent of forcibly displaced populations.<sup>19</sup> Thousands of refugee Rohingya women and girls have been forced into marriage in order to pay for passage out of the

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<sup>13</sup> *UN condemns Myanmar monk Wirathu’s ‘sexist’ comments*, BBC (Jan. 22, 2015), <http://www.bbc.com/news/world-asia-30928744>.

<sup>14</sup> See, e.g., Clara Tran, *South-East Asian migrant crisis: Who are the Rohingya fleeing Myanmar by boat?*, ABC (May 21, 2015), <http://www.abc.net.au/news/2015-05-21/explainer-who-are-the-rohingya-fleeing-myanmar/6487130>; *The most persecuted people on Earth?*, THE ECONOMIST, June 13, 2015, <http://www.economist.com/news/asia/21654124-myanmars-muslim-minority-have-been-attacked-impunity-stripped-vote-and-driven>.

<sup>15</sup> See, e.g., Chris Buckley & Thomas Fuller, *A Migrant Mother’s Anguished Choice*, N.Y. TIMES (July 5, 2015), [http://www.nytimes.com/2015/07/06/world/asia/myanmar-rohingya-refugee-crisis-malaysia.html?\\_r=0](http://www.nytimes.com/2015/07/06/world/asia/myanmar-rohingya-refugee-crisis-malaysia.html?_r=0); Chris Buckley & Ellen Barry, *Rohingya Women Flee Violence Only to be Sold Into Marriage*, N.Y. TIMES (Aug. 2, 2015), <http://www.nytimes.com/2015/08/03/world/asia/rohingya-women-flee-violence-only-to-be-sold-into-marriage.html>.

<sup>16</sup> See, e.g., Thomas Fuller, *Myanmar to Bar Rohingya from Fleeing, But Won’t Address Their Plight*, N.Y. TIMES, June 12, 2015, <http://www.nytimes.com/2015/06/13/world/asia/myanmar-to-bar-rohingya-from-fleeing-but-wont-address-their-plight.html>; Jane Perlez, *Myanmar Policy’s Message to Muslims: Get Out*, N.Y. TIMES, Nov. 6, 2014, <http://www.nytimes.com/2014/11/07/world/asia/rohingya-myanmar-rakhine-state-thailand-malaysia.html>; APCR, *DISENFRANCHISEMENT AND DESPERATION IN MYANMAR’S RAKHINE STATE: DRIVERS OF A REGIONAL CRISIS* (Oct. 2015), [http://aseanmp.org/wp-content/uploads/2015/10/APHR\\_Rakhine-State-Report.pdf](http://aseanmp.org/wp-content/uploads/2015/10/APHR_Rakhine-State-Report.pdf).

<sup>17</sup> “THEY WANT US ALL TO GO AWAY,” *supra* note 11.

<sup>18</sup> Interview by Rebecca Turkington, Georgetown Inst. for Women, Peace & Security, with Wai Wai Nu in Washington, D.C. (May 2014).

<sup>19</sup> *Women*, UNHCR (last visited Oct. 14, 2015), <http://www.unhcr.org/pages/49c3646c1d9.html>; *Children and Youth*, WOMEN’S REFUGEE COMM’N (last visited Oct. 14, 2015), <https://womensrefugeecommission.org/programs/youth/763-girlsstories>.

country.<sup>20</sup> Refugee women at border camps in Thailand and Malaysia have been gang raped,<sup>21</sup> while other refugees have been used as drug mules or forced into the sex trade.<sup>22</sup> Rohingya women who remain in Myanmar are subjected to sexual violence and discriminatory marriage and birth regulations that amount to gross violations of their human rights and dignity.<sup>23</sup> The experience of Rohingya women both in and out of the country demonstrate that Myanmar is failing to meet its obligations under international law, especially UN Resolution 1325 and its successors that comprise the Women, Peace and Security agenda, which calls for, among other things, the protection of women during war, the prevention of sexual and gender-based violence in conflict, and their participation in conflict resolution efforts.<sup>24</sup>

Women as a whole in Myanmar also experience unequal treatment and barriers to full participation in cultural and political life. Gender inequality and discrimination are rampant in Myanmar. As one women's activist avers, in Myanmar, "because of...traditional, cultural, and religious practices, women have been treated as the secondary...subordinate group."<sup>25</sup> The society is deeply patriarchal: men are perceived as leaders, while women are seen as natural followers who lack the qualities necessary to be real leaders.<sup>26</sup> There is a pervasive "cultural emphasis on male political authority" within the country, perhaps partially derived from Buddhism-based notions of women's lack of capacity to speak or lead publicly.<sup>27</sup> Even though

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<sup>20</sup> Buckley & Barry, *supra* note 15.

<sup>21</sup> *Report: Muslim Rohingya women gang raped at border camps*, MALAY MAIL ONLINE (June 2, 2015), <http://www.themalaymailonline.com/malaysia/article/report-claims-muslim-rohingya-women-gang-raped-at-border-camps>.

<sup>22</sup> *Rohingya women exploited as drug mules and prostitutes*, REPORTED.LY (May 21, 2015), <https://reported.ly/2015/05/21/rohingya-women-exploited-drug-mules-sex-slaves/>.

<sup>23</sup> See FORTIFY RIGHTS, *POLICIES OF PERSECUTION: ENDING ABUSIVE STATE POLICIES AGAINST ROHINGYA MUSLIMS IN MYANMAR* 24–30 (Feb. 2014) [hereinafter FORTIFY RIGHTS], *available at* [http://www.fortifyrights.org/downloads/Policies\\_of\\_Persecution\\_Feb\\_25\\_Fortify\\_Rights.pdf](http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf); Engy Abdelkader, *Myanmar's Democracy Struggle: The Impact of Communal Violence Upon Rohingya Women*, 23 PAC. RIM L. & POL'Y J. 511, 518–29 (2014).

<sup>24</sup> S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

<sup>25</sup> Interview by Segolene Dufour-Genneson, Georgetown Institute for Women, Peace and Security, with Tay Tay in Washington, D.C. (2014).

<sup>26</sup> OXFAM ET AL., *WOMEN & LEADERSHIP 3* (Dec. 2014), *available at* <https://www.care.org.au/wp-content/uploads/2014/12/Myanmar-Women-and-Leadership-in-Myanmar-Report.pdf>.

<sup>27</sup> Zin Mar Aung, *From Military Patriarchy to Gender Equity: Including Women in the Democratic Transition in Burma*, 82 SOCIAL RESEARCH 531, 538 (2015); Andrea Fleschenberg, *Min Laung or Fighting Peacock? Aung San Suu Kyi's Political Leadership Via Moral Capital (1988-2008)*, in *DYNASTIES AND FEMALE POLITICAL LEADERS IN ASIA: GENDER, POWER AND PEDIGREE* 191, 201 (Claudia Derichs & Mark R. Thompson eds., 2013).



the country's most high profile politician and human rights advocate, Aung San Suu Kyi, is a woman, she has also experienced gender discrimination: some scholars of Asian politics have speculated that she would not be so harshly criticized were she a man, and that part of power comes from her portrayal of "the ideal version of a Burmese woman—soft, assertive, cautious/prudent and respectful to give men in the party their space."<sup>28</sup> Women are underrepresented in government, which is unsurprising, as the ruling class is mainly composed of members of the military, from which women are largely excluded.<sup>29</sup> In the national legislature, women hold less than six percent of the 479 seats—the lowest proportion of female representation of all Southeast Asian countries—and women make up less than four percent of all members of state and local parliaments.<sup>30</sup> Of the 6,189 candidates registered for the recent November 8, 2015 elections, only 800 were women.<sup>31</sup> After the elections, women will now make up just under 10 percent of the parliament.<sup>32</sup> Women are also underrepresented in the country's peace talks with armed ethnic groups: only one woman was part of the team that negotiated the recent National Ceasefire Agreement with these groups, and the agreement does not contain the anticipated commitment to a 30 percent quota of women in future political dialogue.<sup>33</sup> The text of the agreement contains only a vague statement that an 'appropriate' number of women take part in peace talks, a statement that the Women's League of Burma avers "provides no guarantee of meaningful women's participation, and directly contradicts the government's claims to be implementing UN Security Council Resolution 1325."<sup>34</sup> Also alarming is the "pandemic" of sexual and gender-based violence (SGBV) perpetuated against women in Myanmar, particularly

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<sup>28</sup> See Fleschenberg, *supra* note 27, at 202

<sup>29</sup> Wai Moe, *Burma's Women are Still Fighting for Their Rights*, FOREIGN POLICY (Jul. 2, 2015), <http://foreignpolicy.com/2015/07/02/burmas-women-are-still-fighting-for-their-rights-myanmar/>.

<sup>30</sup> San Yamin Aung & Feliz Solomon, *Political Parties Pilot Gender Quotas*, THE IRRAWADDY (Feb. 4, 2015), <http://www.irrawaddy.org/election/news/political-parties-pilot-gender-quotas>.

<sup>31</sup> *2015 Elections Highlight Longstanding Gender Imbalance*, BURMA PARTNERSHIP (Sept. 15, 2015), <http://www.burmapartnership.org/2015/09/2015-elections-highlight-longstanding-gender-imbalance/>.

<sup>32</sup> Fiona Macgregor, *Women MPs up, but hluttaw still 90% male*, MYANMAR TIMES (Dec. 1, 2015), <http://www.mmtimes.com/index.php/national-news/17910-woman-mps-up-but-hluttaw-still-90-male.html>.

<sup>33</sup> Sara E. Davies & Jacqui True, *Myanmar's Ceasefire: Where Do Women Sign?*, THE GLOBAL OBSERVATORY (Oct. 15, 2015), <http://theglobalobservatory.org/2015/10/myanmar-ceasefire-naypyidaw-burma-1325/>.

<sup>34</sup> *A Non-Inclusive Nationwide Ceasefire Agreement Will Not Bring Peace: Statement by the Women's League of Burma*, WOMEN'S LEAGUE OF BURMA (Oct. 13, 2015), <http://womenofburma.org/a-non-inclusive-nationwide-ceasefire-agreement-will-not-bring-peace-statement-by-the-womens-league-of-burma/>.

ethnic minorities.<sup>35</sup> Soldiers frequently use SGBV as a weapon of war against ethnic minorities like the Rohingya and the Kachin, and there is little to no accountability for these state-sponsored atrocities.<sup>36</sup>

### **The Laws<sup>37</sup>**

Reinforcing these foundations of religious and gender tensions, the four newly enacted ‘race and religion protection’ laws enshrine blatant discrimination and antiquated stereotypes into statute. These laws perpetuate false and harmful perceptions of religion and outdated gender norms, making discrimination the official policy of the supposedly more progressive government.

#### Intermarriage

The ‘Buddhist Women’s Special Marriage Bill’ is the most contentious of the four bills. In the guise of protecting Buddhist women from being forced to convert to Islam when marrying Muslim men and giving equal rights to Buddhist women married to non-Buddhist men,<sup>38</sup> the law institutionalizes religious and gender discrimination into the country’s marriage laws, and perpetuates patronizing stereotypes about women. Under the law, couples consisting of a Buddhist woman (who, if under twenty, must have the permission of her parents or legal guardian) and a non-Buddhist man must submit an application to marry to the local township’s registrar.<sup>39</sup> The registrar then publicly displays the application for fourteen days, and if after

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<sup>35</sup> Ambassador Cathy Russell, *In Burma, ‘Women’s Issues’ Can’t Wait*, HUFFINGTON POST (May 11, 2015), [http://www.huffingtonpost.com/catherine-russell/in-burma-womens-issues-ca\\_b\\_7257178.html](http://www.huffingtonpost.com/catherine-russell/in-burma-womens-issues-ca_b_7257178.html); Moe, *supra* note 29.

<sup>36</sup> See generally WOMEN’S LEAGUE OF BURMA, “IF THEY HAD HOPE, THEY WOULD SPEAK:” THE ONGOING USE OF STATE-SPONSORED SEXUAL VIOLENCE IN BURMA’S ETHNIC COMMUNITIES (2014); SARA MEGER, SEXUAL AND GENDER-BASED VIOLENCE IN BURMA/MYANMAR (2014).

<sup>37</sup> The final versions of the bills, as signed into law, seem to have not been released to the public yet as of the publication of this report. The bill provision descriptions *infra* are taken primarily from the most current English versions of the bills and are supplemented by secondary sources.

<sup>38</sup> Jared Ferrie, *Myanmar lawmakers to debate law curbing religious conversions*, REUTERS, May 28, 2014, available at <http://www.reuters.com/article/2014/05/28/us-myanmar-religion-idUSKBN0E815120140528>. Some argue that concerns about interfaith marriage are adequately addressed by the 1954 Special Marriage Act, which declares that marriage between a Buddhist woman and a non-Buddhist man is governed by Burmese customary law, and that therefore the ‘protection’ justification for this new bill is merely a front for continued religious discrimination. See Aruna Kashyap, *The Myanmar Marriage Plot*, HUMAN RIGHTS WATCH (Sept. 5, 2013), <https://www.hrw.org/news/2013/09/05/myanmar-marriage-plot>.

<sup>39</sup> The Myanmar Buddhist Women’s Special Marriage Law, chs. III & IV (December 2014 draft) [hereinafter Marriage Bill], available at [http://www.burmalibrary.org/docs21/2015-Myanmar\\_Buddhist\\_Women\\_Special\\_Marriage\\_Bill.pdf](http://www.burmalibrary.org/docs21/2015-Myanmar_Buddhist_Women_Special_Marriage_Bill.pdf) III & IV. See also RICHARD HORSEY, CONFLICT PREVENTION AND PEACE FORUM, NEW RELIGIOUS LEGISLATION IN MYANMAR 2 (Feb. 13, 2015).

fourteen days no objections to the marriage have been lodged, they can then solemnize the marriage.<sup>40</sup> *Anyone* can object to the marriage on the grounds that one of two or both are not of sound mind, are not of legal age, are already married, or, most importantly, have been coerced or unduly influenced in seeking to marry.<sup>41</sup> Upon objection, the registrar delays the marriage, and a local court examines the allegations, hears evidence from both parties and decides whether or not the marriage should take place.<sup>42</sup> This provision also applies retroactively: interfaith couples must register their pre-existing marriages.<sup>43</sup> Additionally, if a Buddhist woman and a non-Buddhist man are cohabitating without such a registration, the woman *or members of her family* may give the pertinent information to the registrar.<sup>44</sup> If both parties wish to contract a marriage, the registrar institutes the process described *supra*, but if one or both of individuals do not wish to contract a marriage, the case is referred to a local court and treated like a civil suit, in which the court will decide whether or not the man and woman are husband and wife.<sup>45</sup> In examining such a case, the court deems the party who wishes to register the marriage as the plaintiff and the party who does not as the defendant, or if neither party wishes to register the marriage, the person who filed the information with the registrar is the plaintiff, and the non-registrants are the defendants.<sup>46</sup>

The law also includes other provisions regarding treatment of the non-Buddhist husband. The husband must respect his wife's practice of Buddhism, make no attempts to convert her, allow their children to freely practice their religion and refrain from insulting Buddhism.<sup>47</sup> If he violates any of these mandates, the Buddhist woman may divorce her husband, and the husband will be forced to relinquish his share of jointly owned property and lose guardianship of their

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<sup>40</sup> *Id.*

<sup>41</sup> Marriage Bill, *supra* note 39, at chs. III & IV.

<sup>42</sup> *Id.* at ch. IV. It is important to note that the registration and objection provisions mostly mirror existing law on interfaith marriages, the 1954 Special Marriage Act, but this bill adds ability to object on the basis of suspected coercion or undue influence. *See* Special Marriage Act, 1954 (Myan.), *available at* [http://www.burmalibrary.org/docs16/Burma\\_Code-Vol.XI-new.pdf](http://www.burmalibrary.org/docs16/Burma_Code-Vol.XI-new.pdf).

<sup>43</sup> HORSEY, *supra* note 39, at 3.

<sup>44</sup> Marriage Bill, *supra* note 39, at ch. VII. *See also* AMNESTY INT'L & INT'L COMM'N OF JURISTS, MYANMAR: PARLIAMENT MUST REJECT DISCRIMINATORY 'RACE AND RELIGION' LAWS 5 (March 3, 2015) [hereinafter Amnesty ICJ].

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Marriage Bill, *supra* note 39, at ch. V.

children.<sup>48</sup> Additionally, the bill contains several provisions relating to the right of the woman – in divorce, to joint property, maintenance, and guardianship of the children, especially if the husband is physically or emotionally abusive.<sup>49</sup> The law prioritizes the Buddhist woman in both marriage and divorce.

While the law contains some redeeming provisions, such as the protection of women from abusive husbands and the guarantee of freedom of religion, on the whole its discriminatory stance contravenes domestic and international law and obligations.<sup>50</sup> First, the law discriminates on the basis of both gender and religion, as many of its provisions either apply only to non-Buddhist men or exempt such men from protections given to Buddhist women. Such religious discrimination violates the country's constitution, which forbids discrimination on the basis of religion and sex,<sup>51</sup> as well as many international gender discrimination<sup>52</sup> and religious freedom protections.<sup>53</sup>

Notably, the law leaves open the possibility that two people could be married against their will: as mentioned *supra*, if a relative informs a township registrar that a couple is cohabitating, and either member of the couple or both do not wish to contract a marriage, they will be treated as defendants in a court that will decide whether or not the couple is husband and wife.<sup>54</sup> Such a couple could, in effect, be married without the consent of one or both members of the couple.

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<sup>48</sup> *Id.*; *Burma: Reject Discriminatory Marriage Bill*, HUMAN RIGHTS WATCH (July 9, 2015), <https://www.hrw.org/news/2015/07/09/burma-reject-discriminatory-marriage-bill>.

<sup>49</sup> Marriage Bill, *supra* note 39, at ch. IX.

<sup>50</sup> Incredibly, the 2015 bill is much tamer compared to the 2014 version, which would have forbidden Buddhist women from marrying non-Buddhists, forced non-Buddhists to convert before marrying a Buddhist, and required the permission of a woman's parents before she could marry a (former) non-Buddhist. *See Burma: Scrap Proposed Discriminatory Marriage Law*, HUMAN RIGHTS WATCH (Mar. 24, 2014), <http://www.hrw.org/news/2014/03/24/burma-scrap-proposed-discriminatory-marriage-law>.

<sup>51</sup> CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR 2008, Ch. I, art. 34; Ch. VIII, art. 348.

<sup>52</sup> *See, e.g.*, Universal Declaration of Human Rights, art. 16(1), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (declaring that both men and women are entitled to equal rights “as to marriage, during marriage and at its dissolution”).

<sup>53</sup> *See, e.g.*, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res 36/55 (Nov. 25, 1981); *Ass'n of Southeast Asian Nations (ASEAN) Human Rights Declaration* at 1, 22 (Nov. 19, 2012), <http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration>; Universal Declaration of Human Rights, *supra* note 52, at art. 18. *See infra* notes 101–105 for more on international protections of religious freedom.

<sup>54</sup> Marriage Bill, *supra* note 39, at ch. VII; Amnesty ICJ, *supra* note 44, at 4.

This would constitute a violation of several international laws, such as Articles 12 and 16 of the UDHR, which guarantee privacy and non-arbitrary interference in family matters and the right to marry with full and free consent, respectively;<sup>55</sup> CEDAW Article 16(b), which promotes the rights of women to choose a spouse and freely enter into marriage on an equal basis with men;<sup>56</sup> Article 10 of the ICESCR, which forbids marriage without the full and free consent of both parties;<sup>57</sup> and the ASEAN Human Rights Declaration's protection of freely consented-to marriage.<sup>58</sup> In enacting this law, Myanmar blatantly ignores many of its international legal obligations.

The law also enshrines into statute outdated and discriminatory religious and gender stereotypes. Under the bill, in order to marry, women under the age of 20 must seek the permission of their parents.<sup>59</sup> There is no comparable provision for men. The bill as a whole, in fact, is premised on beliefs that non-Buddhist men seek to prey on Buddhist women and forcibly convert them, and that women are too helpless to recognize and resist such coercion and so must be protected. Such stereotyping actually runs contrary to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which obligates state parties to eliminate views and practices based on the believed inferiority of women or on stereotypes about women.<sup>60</sup> As one woman from Myanmar remarked on the law, it implies that “women are weak and need protection from husbands, family and society...All social norms and attitudes toward women [in Myanmar] are discriminatory.”<sup>61</sup> A group of 97 women's and civil society organizations concurred, declaring in a statement that the legislation “does not respect and acknowledge the reasoning of Myanmar Buddhist women to think rationally and make decisions, and instead restricts and obstructs their freedom of choice to make decisions on issues directly concerned

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<sup>55</sup> Universal Declaration of Human Rights, *supra* note 52, at arts. 12 & 16(1).

<sup>56</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) at arts. 16(b), Dec. 18, 1979, 1249 U.N.T.S. 13

<sup>57</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), at art. 10, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>58</sup> ASEAN Human Rights Declaration, *supra* note 53, at 19.

<sup>59</sup> Marriage Bill, *supra* note 39, at ch. III.

<sup>60</sup> CEDAW, *supra* note 56, at art. 5(a).

<sup>61</sup> Cherry Thein, *Myanmar women object to proposed restrictions on interfaith marriage*, WASH. POST (Dec. 18, 2014), [https://www.washingtonpost.com/national/religion/myanmar-women-object-to-proposed-restrictions-on-interfaith-marriage/2014/12/18/36fc82e6-86f6-11e4-abcf-5a3d7b3b20b8\\_story.html](https://www.washingtonpost.com/national/religion/myanmar-women-object-to-proposed-restrictions-on-interfaith-marriage/2014/12/18/36fc82e6-86f6-11e4-abcf-5a3d7b3b20b8_story.html).

with their lives.”<sup>62</sup> Aung San Suu Kyi has denounced the law as one-sided and as a “violation of women’s rights and human rights.”<sup>63</sup> While some female survivors of domestic abuse support the law, averring it would protect women who are “too shy to speak out against [domestic or religious] abuse for traditional or cultural reasons,”<sup>64</sup> the law actually does not contain any provisions aimed at helping abuse survivors or criminalizing or preventing such abuse (other than property rights in divorce if a husband is abusive).<sup>65</sup> It is essential to protect and empower all women, not just Buddhists, against abusive relationships, but this legislation does not actually accomplish such a goal. Instead, it perpetuates stereotypes about women and utilizes such perceptions to discriminate against religious minorities.

### Population Control

The population control bill imposes unlawful restrictions on women’s health, and could prove dangerously discriminatory in its implementation. The law, drafted without participation by or input from women,<sup>66</sup> seems to be yet another measure targeting minority groups. Human rights advocates allege the law is aimed at Muslims, particularly the Rohingya, and fear that the government would institute the law in a discriminatory fashion.<sup>67</sup> Indeed, the extremist Buddhists who pushed for the bill have warned that the high birthrates of Muslims could result in a

<sup>62</sup> *Statement of Women’s Groups and CSOs on Preparation of Draft Interfaith Marriage Law*, BURMA PARTNERSHIP (May 6, 2014), <http://www.burmapartnership.org/2014/05/statement-of-womens-groups-and-csos-on-preparation-of-draft-interfaith-marriage-law/>.

<sup>63</sup> *Suu Kyi Blasts Proposed Law on Marriage Restrictions*, RADIO FREE ASIA (June 20, 2013), <http://www.rfa.org/english/news/myanmar/marriage-06202013231513.html>.

<sup>64</sup> *Statement of Women’s Groups and CSOs on Preparation of Draft Interfaith Marriage Law*, *supra* note 62.

<sup>65</sup> *Marriage Bill*, *supra* note 39, at ch. IX. There is currently no modern statute on violence against women in the country. GENDER EQUALITY NETWORK, *MYANMAR LAWS AND CEDAW: THE CASE FOR ANTI-VIOLENCE AGAINST WOMEN LAWS 7* (Jan. 2013), [http://www.burmalibrary.org/docs20/Myanmar\\_Law+CEDAW-en-red.pdf](http://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf); Thin Lei Win, *Myanmar activists demand law to ban violence against women*, REUTERS, Sept. 30, 2014, <http://www.reuters.com/article/2014/09/30/us-foundation-myanmar-womensrights-idUSKCN0HP1VD20140930>.

<sup>66</sup> *Burma: Reject Discriminatory Population Bill*, HUMAN RIGHTS WATCH (May 16, 2015), <https://www.hrw.org/news/2015/05/16/burma-reject-discriminatory-population-bill>. Ashin Wirathu, an extremist Buddhist monk and one of the leading proponents of the law, dismissed any concerns about the lack of women’s involvement in the bill drafting: “Will it only be legal when women join the discussion? Did women have any participation in sharia law?” Sara Perria, *Burma’s birth control law exposes Buddhist fear of Muslim minority*, THE GUARDIAN, May 24, 2015, <http://www.theguardian.com/world/2015/may/25/burmas-birth-control-law-exposes-buddhist-fear-of-muslim-minority>.

<sup>67</sup> See, e.g., James Hookway & Shibani Mahtani, *Myanmar’s New Family-Planning Law Seen as Targeted at Rohingya*, WALL ST. J., May 23, 2015, <http://www.wsj.com/articles/myanmars-new-family-planning-law-seen-as-targeted-at-rohingya-1432394194>; Perria, *supra* note 66.

takeover of the country,<sup>68</sup> and the law follows in the footsteps of state policies in parts of northern Rakhine State restricting the number of children Rohingya women may have.<sup>69</sup> Supporters of the measure have pushed back against concerns expressed by civil society organizations, harassing members of women's groups and branding them traitors for speaking out against the law.<sup>70</sup>

At first glance, the law may seem innocuous or even beneficial. It has the noble goals of alleviating poverty and boosting living standards, and providing quality maternal and child healthcare.<sup>71</sup> Under the law, regional and local governments will conduct surveys to determine whether high birthrates, child and maternal mortality rates, population density, the number of migrants and other factors pose a risk to food and resource availability and quality of life.<sup>72</sup> If so, the local government will inform the President and Union Government, who will then designate that region as a zone for healthcare.<sup>73</sup> In such special zones, regional government groups will have the authority to institute population control and health measures.<sup>74</sup> The law is vague on the details of such measures, which include making information on reproductive health available to young people, providing quality health care, disseminating health and counseling services to married couples and, most insidiously, "organizing" married couples to practice birth spacing, i.e., authorizing the government to mandate a waiting period of 36 months between child births.<sup>75</sup> The law notably does not include any punitive measures for failing to abide by the time period.<sup>76</sup>

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<sup>68</sup> *Myanmar signs off controversial pregnancy law*, AL JAZEERA, May 23, 2015, available at <http://www.aljazeera.com/news/2015/05/myanmar-signs-controversial-pregnancy-law-150523125320725.html>. Again, the notion that the Rohingya are in the midst of a population explosion is false: researchers have found that the population growth rate in Rakhine State is slightly lower than the rest of Myanmar. Gemima Harvey, *Myanmar: The Worsening Plight of the Rohingya*, THE DIPLOMAT (Mar. 19, 2014), <http://thediplomat.com/2014/03/myanmar-the-worsening-plight-of-the-rohingya/?allpages=yes>.

<sup>69</sup> See FORTIFY RIGHTS, *supra* note 23.

<sup>70</sup> Perria, *supra* note 66.

<sup>71</sup> Population Control Healthcare Law, 2015, at ch. II, available at [http://www.burmalibrary.org/docs21/2015-Population\\_Balancing\\_Law\\_as\\_adopted\\_by\\_both\\_houses.pdf](http://www.burmalibrary.org/docs21/2015-Population_Balancing_Law_as_adopted_by_both_houses.pdf); see also HORSEY, *supra* note 39, at 4–5.

<sup>72</sup> Population Control Healthcare Law, *supra* note 71, at ch. III; see also HORSEY, *supra* note 39, at 5.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Population Control Healthcare Law, *supra* note 71, at ch. VI; see also HORSEY, *supra* note 39, at 5.

<sup>76</sup> *Id.*; Hookway & Mahtani, *supra* note 67.

While the law's goals may seem noble, its complete lack of safeguards, together with its anticipated discriminatory implementation, could devastate women's rights and health. International law and norms highlight women's abilities to control their own reproductive choices and to make informed and voluntary decisions about reproductive health as a central human right. Both the 1994 International Conference on Population and Development Programme of Action and the 1995 Beijing Declaration and Platform for Action emphasize the importance of reproductive rights, particularly the freedom to choose the number of children and when to have them, and the freedom to make reproductive decisions without discrimination or coercion.<sup>77</sup> As a party to CEDAW, Myanmar is obligated to ensure the freedom of women to control their own health, including ensuring access to health care services under Article 12, and guaranteeing the right to freely decide on the number and spacing of children under Article 16.<sup>78</sup> Furthermore, as a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Myanmar must ensure women have equal rights to participate fully in society and to the best possible health care.<sup>79</sup> Authorizing the government to determine birth spacing, and measures taken to enforce such determinations, violate these obligations.<sup>80</sup> Additionally, it seems evident that this law is targeted at the Rohingya community and other Muslim groups.<sup>81</sup> Such discriminatory implementation of the law, with restrictions imposed only on regions with large Muslim populations, would not only violate the religious freedom protections discussed *supra* and *infra*,<sup>82</sup> but could also constitute a genocidal act under the Rome Statute of the International Criminal Court.<sup>83</sup> Under the Statute, a state's imposition of birth restriction policies on certain ethnic groups can be considered an act of genocide.<sup>84</sup> If the government enforced this

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<sup>77</sup> CAIRO ICPD PROGRAMME OF ACTION 13 (1994), available at [http://www.unfpa.org/sites/default/files/pub-pdf/programme\\_of\\_action\\_Web%20ENGLISH.pdf](http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf); UNITED NATIONS FOURTH WORLD CONFERENCE ON WOMEN PLATFORM FOR ACTION 95 (1995), available at <http://www.un.org/womenwatch/daw/beijing/platform/health.htm>.

<sup>78</sup> CEDAW, *supra* note 56, at arts. 12 & 16; Amnesty ICJ, *supra* note 44, at 4.

<sup>79</sup> ICESCR, *supra* note 57, at arts. 12 & 15.

<sup>80</sup> Amnesty International and the International Commission of Jurists note that the law also appears to violate CEDAW Article 16 because it seems to discriminate on the basis of marital status by excluding unmarried couples from access to health information and counseling. Amnesty ICJ, *supra* note 44, at 5.

<sup>81</sup> Perria, *supra* note 66.

<sup>82</sup> See *supra* note 53; *infra* note 101–105 and accompanying text.

<sup>83</sup> Rome Statute of the International Criminal Court, art. 6, pt. II, Jul. 1, 2002, 2187 U.N.T.S. 3 (“For the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: ... (d) imposing measures intended to prevent births within the group.”).

<sup>84</sup> *Id.*



new law solely in largely Muslim areas, it would be participating in such acts proscribed by the Statute.<sup>85</sup>

The consequences of such enforcement may also violate international human rights norms. Under the preexisting two-child policy in some parts of northern Rakhine State, due to the lack of access to quality health care and safe birth control options, many pregnant Rohingya women have fled the country, either to Bangladeshi refugee camps or by sea to other countries, or have resorted to unsafe, illegal pregnancy terminations<sup>86</sup> in order to comply with the policy.<sup>87</sup> A 2011 assessment reports that due to the restrictions, nearly 15 percent of Rohingya women in northern Rakhine State had terminated a pregnancy, and 26 percent of those had multiple such procedures.<sup>88</sup> Of course, these figures do not account for vast underreporting, and there are no official statistics for deaths from unsafe termination, although hundreds of women have developed health complications due to these procedures.<sup>89</sup> Such conditions violate international obligations, cited *supra*, to ensure women are given reproductive freedom and the best possible health care. If women do carry unpermitted pregnancies to term, the resulting children are not recorded in the state registry.<sup>90</sup> Such unregistered children—of whom there are over 60,000 in Rakhine State—have no legal or social status and do not enjoy citizenship or its benefits.<sup>91</sup> The new population control law is vague and contains no safeguards for women against forced terminations, sterilizations or contraceptive measures, and no indication of providing increased or enhanced health care services.<sup>92</sup> It could very well replicate and extend the consequences of the restrictive and discriminatory policies in Rakhine State throughout the country.

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<sup>85</sup> Some have also argued that the government's treatment of the Rohingya may amount to genocide under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. See ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC FOR FORTIFY RIGHTS, PERSECUTION OF THE ROHINGYA MUSLIMS: IS GENOCIDE OCCURRING IN MYANMAR'S RAKHINE STATE? (Oct. 2015), [http://www.fortifyrights.org/downloads/Yale\\_Persecution\\_of\\_the\\_Rohingya\\_October\\_2015.pdf](http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf).

<sup>86</sup> The Myanmar Penal Code outlaws intentional termination of pregnancy except where the woman's life is endangered. Penal Code, ch. XVI, art. 312 (Myan.), available at <http://www1.umn.edu/humanrts/research/myanmar/Annex%20K%20-%20Myanmar%20Penal%20Code.pdf>.

<sup>87</sup> FORTIFY RIGHTS, *supra* note 23, at 28–29.

<sup>88</sup> *Id.* at 28.

<sup>89</sup> *Id.* at 28–29.

<sup>90</sup> *Id.* at 29.

<sup>91</sup> *Id.*

<sup>92</sup> Amnesty ICJ, *supra* note 44, at 5; Press Statement, Concerns About Burma's Health Care for Population Control Bill, U.S. Dep't of State, May 19, 2015, available at <http://www.state.gov/r/pa/prs/ps/2015/05/242596.htm>; Perria,

### Religious Conversion

The religious conversion law is a deeply concerning example of religious discrimination, both as written and as could be implemented. The bill creates a state system of conversion approval, ostensibly to prevent alleged incidents of conversions to Buddhism for the purpose of damaging its image or forced conversions of Buddhist women marrying non-Buddhist men.<sup>93</sup> Opponents of the bill say that in practice, the bill's onerous requirements are aimed at preventing Buddhists from converting to another religion, especially Islam, and to stop non-Muslim women from marrying Muslim men by putting obstacles in their paths to conversion.<sup>94</sup> Under the bill, any citizen who wishes to convert must apply to a local registration board on religious conversion, consisting of local representatives from government ministries, which will then interview the applicant and ascertain his or her beliefs and reasons for want to convert.<sup>95</sup> The board will determine if the applicant is making the conversion of his or her own free will, ensuring the applicant has up to a 90-day period to study the religion's precepts, and then, if the applicant still wishes to convert (and the board is satisfied he or she is not converting under duress), will issue a certificate of religious certification.<sup>96</sup> The bill also prohibits conversions with the intent to insult or degrade religion, forced conversions and, ironically, interfering with a desired conversion.<sup>97</sup>

This bill, by formalizing state interference with religious freedom, violates both domestic and international law and obligations. Articles 34 and 364 of the Myanmar constitution guarantee religious freedom and prohibit the abuse of religion for political purposes, respectively.<sup>98</sup>

Requiring those who wish to convert to seek approval from a government entity, and imposing a forced 'study period' on such people, constitutes significant interference with religious freedom

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*supra* note 66 (listing the concerns of a member of the Kachin Women's Peace Network regarding the vagueness of the law, its potential application to pregnant women in jail, and possible pressure to have abortions).

<sup>93</sup> See, e.g., *Proposed bill inflames Myanmar's religious rights debate*, IRIN (June 26, 2014), <http://www.irinnews.org/report/100265/proposed-bill-inflames-myanmar-s-religious-rights-debate>; Asian Human Rights Commission, *Burma/Myanmar: Draft Anti-religious Conversion Law Released*, BURMA PARTNERSHIP (May 30, 2014), <http://www.burmapartnership.org/2014/05/burmamyanmar-draft-anti-religious-conversion-law-released/>.

<sup>94</sup> Asian Human Rights Commission, *supra* note 93.

<sup>95</sup> Religious conversion bill, 2015, at chs. 2 & 3 (Myan.), available at [http://www.burmalibrary.org/docs21/2015-Religious\\_Conversion\\_Bill\\_2nd\\_Public\\_Draft-en.pdf](http://www.burmalibrary.org/docs21/2015-Religious_Conversion_Bill_2nd_Public_Draft-en.pdf). See also HORSEY, *supra* note 39, at 3–4.

<sup>96</sup> Religious conversion bill, *supra* note 95, at ch. 3.

<sup>97</sup> *Id.* at ch.4.

<sup>98</sup> CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR 2008, Ch. I, art. 34; Ch VIII, art. 364.

and an abuse of religion for political purposes. Advocates of the bill may defend the bill by pointing to Article 360(b) of the constitution, which states that freedom of religion does not prevent the state from enacting laws to protect the public welfare,<sup>99</sup> and Article 363, which asserts that the state may assist and protect the religions it recognizes.<sup>100</sup> The timing of this bill's introduction and passage, coinciding with increasing sectarian strife and the, at the time, approaching elections, however, makes clear that the bill is not intended to protect the public welfare or recognized religions, but instead stoke religious tensions and reinforce stereotypes of minority religions, particularly Islam.

Freedom of religion, without excessive or inappropriate government interference, is paramount under international law. Both the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief<sup>101</sup> and the ASEAN Human Rights Declaration<sup>102</sup> promote freedom of religion and urge the prohibition of religious discrimination. Although neither document is legally binding, they illustrate the international norms and obligations of religious freedom by which members of the international community are expected to abide. Article 18 of the Universal Declaration of Human Rights (UDHR) enshrines the right to freedom of religion and conscience, including the freedom to change religion or belief and to manifest religious belief in public or private.<sup>103</sup> Religious practice is an intensely personal and private matter, one that may be central to an individual's life, and therefore is also protected by UDHR Article 12, which forbids interference with one's privacy.<sup>104</sup> Taking the UDHR as binding customary international law,<sup>105</sup> then it is evident that the religious conversion bill, by requiring governmental approval of religious conversion, a process that involves explaining one's reasons for converting, constitutes a violation of international law. Discriminatory

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<sup>99</sup> *Id.*, Ch. VIII, art. 360(b).

<sup>100</sup> *Id.*, Ch. VIII, art. 363. The recognized religions, besides Buddhism, are Christianity, Islam, Hinduism, and Animism. *Id.*, Ch. VIII, art. 362.

<sup>101</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, *supra* note 53.

<sup>102</sup> *Ass'n of Southeast Asian Nations (ASEAN) Human Rights Declaration*, *supra* note 53, at 1, 22

<sup>103</sup> Universal Declaration of Human Rights, *supra* note 52, at art. 18.

<sup>104</sup> *Id.* at art. 12.

<sup>105</sup> *What is the Universal Declaration on Human Rights?*, AUSTRALIAN HUMAN RIGHTS COMM'N, <https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> (last visited Sept. 3, 2015).

implementation of the law, with more denials of conversion to Islam than to other religions, would also constitute violations of such norms.

### Monogamy

The new monogamy law, which outlaws polygamy and extramarital affairs, also targets religious minorities and women. According to its text, the bill is intended to help married couples “set up peaceful and pleasant families on the basis of loyalty by practicing monogamy, to protect women from being co-wives, and to prevent crimes arising from the polygamous acts of men.”<sup>106</sup> The law targets those religions where “polygamy and extra-marital affairs are perceived to occur more frequently,”<sup>107</sup> particularly Islam.<sup>108</sup> The law may also be aimed at restricting Muslim population growth, as some in Myanmar believe, erroneously, that polygyny among Rohingya Muslims has resulted in an explosion in Muslim birth rates.<sup>109</sup> The bill outlaws polygamy and bigamy, as well as extramarital affairs.<sup>110</sup> Spouses of violators of the law can ask for a divorce, and the violator forfeits his or her property rights.<sup>111</sup> Violators of the law could be punished by up to seven years’ imprisonment.<sup>112</sup>

In some ways, the bill works in concert with international human rights norms, but in others the bill is incompatible with such obligations. For instance, the prohibition of polygamy is consistent with the demands of human rights bodies, which condemn the practice as violating the dignity and equal rights of women and urge states to criminalize the practice without exception.<sup>113</sup> The

<sup>106</sup> Monogamy bill, 2014 (Myan.), available at [http://www.burmalibrary.org/docs21/2015-Monogamy\\_Bill.pdf](http://www.burmalibrary.org/docs21/2015-Monogamy_Bill.pdf).

<sup>107</sup> HRW Burma, *supra* note 8.

<sup>108</sup> The government denies the bill is specifically aimed at Muslims. Hnin Yadana Zaw, *Myanmar’s president signs off on law seen as targeting Muslims*, REUTERS, Aug. 31, 2015, available at <http://news.yahoo.com/myanmars-president-signs-off-law-seen-targeting-muslims-113700783.html>.

<sup>109</sup> Graeme Wood, *A Countryside of Concentration Camps*, THE NEW REPUBLIC, Jan. 21, 2014, <http://www.newrepublic.com/article/116241/burma-2014-countryside-concentration-camps>. The perception of a Rohingya population boom is undermined by actual data: Harvard researchers have found that the population growth rate in Rakhine State is slightly lower than the rest of Myanmar. Gemima Harvey, *Myanmar: The Worsening Plight of the Rohingya*, THE DIPLOMAT (Mar. 19, 2014), <http://thediplomat.com/2014/03/myanmar-the-worsening-plight-of-the-rohingya/?allpages=yes>.

<sup>110</sup> Monogamy bill, *supra* note 106, at chs. 2 & 3; HORSEY, *supra* note 39, at 4.

<sup>111</sup> Monogamy bill, *supra* note 106, at ch. 4; HORSEY, *supra* note 39, at 4.

<sup>112</sup> *Id.*

<sup>113</sup> See, e.g., U.N. Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)*, U.N. DOC. CCPR/C/21/Rev.1/Add.10 (March 29, 2000), available at <http://www.unhcr.ch/tbs/doc.nsf/0/13b02776122d4838802568b900360e80>; U.N. Committee on the Elimination of

bill, however, is mostly problematic. First, the bill seems duplicative, as polygamy is already criminalized in Myanmar under Article 494 of the Penal Code.<sup>114</sup> More significantly, however, the prohibition of extramarital affairs poses several issues. First, the provision, as enacted, violates both Article 12 of the UDHR<sup>115</sup> and Article 17 of the International Covenant on Civil and Political Rights (ICCPR)<sup>116</sup> as an interference with privacy and freedom of intimate association. Second, globally, laws that criminalize adultery and consensual sexual relations often disproportionately disenfranchise women.<sup>117</sup> Research demonstrates that even ostensibly gender-neutral laws, like that in Myanmar, discriminate in practice against women, with more prosecutions of and higher penalties for women than men.<sup>118</sup> Other discriminatory and gendered consequences may follow: for example, “a rape victim may be deterred from filing a criminal complaint if the failure to win puts her at risk of prosecution for adultery” or a property-forfeiting divorce.<sup>119</sup> The monogamy bill poses serious issues for women and minorities.

### What’s at Stake?

As demonstrated in this analysis, these new laws, and Myanmar’s ongoing discrimination against Muslims and perpetuation of outdated stereotypes about women, violate international norms and obligations. Myanmar must take responsibility for and halt these abuses primarily, and most importantly, to safeguard human rights, but also to promote its own stability. The 2011 transfer of power opened up new pathways in global engagement for the country. Reforms by the new government, such as releasing Aung San Suu Kyi from house arrest, allowing greater freedom of the press and of assembly and giving amnesty to some political prisoners, led to the lifting of

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Discrimination against Women, *General Recommendation No. 21: Equality in marriage and family relations* (1994), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

<sup>114</sup> Penal Code, *supra* note 86, at ch. XX, art. 494. See also AMNESTY ICJ, *supra* note 44, at 5.

<sup>115</sup> Universal Declaration of Human Rights, *supra* note 52, at art. 12.

<sup>116</sup> Int’l Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, 999 U.N.T.S. 171. Although Myanmar is not a signatory to the ICCPR, its Human Rights Commission has recommended that the country ratify the covenant. Press Release, Article 19, Myanmar: National Human Rights Commission recommends ratifying key human rights treaties (June 21, 2013), <https://www.article19.org/resources.php/resource/37119/en/myanmar-national-human-rights-commission-recommends-ratifying-key-human-rights-treaties>.

<sup>117</sup> United Nations Working Group on discrimination against women in law and practice, *Adultery as a criminal offence violates women’s human rights*, OHCHR (Oct. 18, 2012), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&>.

<sup>118</sup> See FRANCES RADAY, WORKING GROUP ON DISCRIMINATION AGAINST WOMEN, BACKGROUND INFORMATION ON THE STATEMENT ISSUED BY THE WORKING GROUP ON DISCRIMINATION AGAINST WOMEN 5–7 (2012), available at <http://www.ohchr.org/Documents/Issues/Women/WG/BackgroundNoteAdultery2.doc>.

<sup>119</sup> HRW Burma, *supra* note 8.

sanctions and debt relief by and from Western countries, as well as more friendly relations with neighboring Southeast Asian countries.<sup>120</sup> Tourism has expanded dramatically,<sup>121</sup> and foreign investment is growing at a staggering rate, reaching a record \$8.1 billion during 2014–2015.<sup>122</sup> Certain acts by the government, however, including ongoing discrimination against and repression of minorities and women and violating the freedoms of speech and expression,<sup>123</sup> risk disrupting this fragile growth. Although the country has attempted to paint itself as a strong, flowering democracy with a more open and diverse society, ongoing sectarian conflict threatens this image internationally.<sup>124</sup> The treatment of the Rohingya and the flow of Rohingya refugees to neighboring countries like Thailand and Malaysia have aggravated regional tensions.<sup>125</sup> The four new laws and the continuing violence against Muslims have raised serious concerns for potential foreign investors.<sup>126</sup> One risk management group, Verisk Maplecroft, believes the ongoing oppression of the Rohingya threatens “social stability and increasing reputational risks for investors.”<sup>127</sup> Myanmar’s treatment of the Rohingya also jeopardizes the country’s new diplomatic relations, as the international community has expressed deep concerns regarding the

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<sup>120</sup> *Timeline: Reforms in Myanmar*, BBC (July 8, 2015), <http://www.bbc.com/news/world-asia-16546688>; David L. Phillips, *Strategic Patience: Keeping Burma’s Reforms on Track*, HUFFINGTON POST (April 28, 2015), [http://www.huffingtonpost.com/david-l-phillips/strategic-patience-keepin\\_b\\_7164368.html](http://www.huffingtonpost.com/david-l-phillips/strategic-patience-keepin_b_7164368.html).

<sup>121</sup> Kayleigh Long, *Myanmar’s young tourism entrepreneurs*, BBC (Aug. 20, 2014), <http://www.bbc.com/news/business-28756061>.

<sup>122</sup> Aung Hla Tun, *Myanmar projects economic growth of 9.3 pct for 2015–2016*, REUTERS, April 24, 2015, available at <http://www.reuters.com/article/2015/04/24/myanmar-economy-idUSL4N0XL46820150424>.

<sup>123</sup> For example, the government recently arrested aid worker Patrick Khum Jaa Lee over a Facebook post that allegedly defames the country’s army. Despite failing health, Khum Jaa Lee has been denied bail. Feliz Solomon, *Aid Worker Jailed for Facebook Post Suffers from Ailing Health*, THE IRAWADDY (Nov. 6, 2015), <http://www.irrawaddy.org/burma/aid-worker-jailed-for-facebook-post-suffers-from-ailing-health.html>.

<sup>124</sup> Sophie Song, *Myanmar’s Proactive Invitation for Foreign Direct Investment (FDI) Shadowed by Anti-Muslim Violence*, INT’L BUS. TIMES (Oct. 2, 2013), <http://www.ibtimes.com/myanmars-proactive-invitation-foreign-direct-investment-fdi-shadowed-anti-muslim-violence-1414038>.

<sup>125</sup> See, e.g., Motokazu Matsui, *Rohingya exodus threatens stability of Southeast Asia*, NIKKEI ASIAN REVIEW (May 18, 2015), <http://asia.nikkei.com/Politics-Economy/International-Relations/Rohingya-exodus-threatens-stability-of-Southeast-Asia?page=1>; Nyan Lynn Aung, *Myanmar rejects Mahathir’s push for ASEAN expulsion*, MYANMAR TIMES (June 16, 2015), <http://asia.nikkei.com/Politics-Economy/International-Relations/Rohingya-exodus-threatens-stability-of-Southeast-Asia?page=1>.

<sup>126</sup> See Song, *supra* note 124; *Myanmar’s population law raises investor concerns over stability*, TODAY (June 9, 2015), <http://www.todayonline.com/world/asia/myanmars-population-law-raises-investor-concerns-over-stability?singlepage=true> (quoting an economics expert as saying that “the new laws add to perceptions of political and social instability. Never good news for investors, of course”).

<sup>127</sup> Qingzhen Chen, *The Rohingya crisis: A ticking time bomb for Myanmar?*, GLOBAL RISK INSIGHTS (June 2, 2015), <http://globalriskinsights.com/2015/06/the-rohingya-crisis-a-ticking-time-bomb-for-myanmar/>.

situation.<sup>128</sup> Myanmar must end its practices of discrimination against ethnic minorities and women, first and foremost because they violate critical human rights, but also to preserve its own internal stability and growth.

## Conclusion

The provisions of the recently enacted ‘race and religion protection’ laws constitute egregious violations of Myanmar’s obligations under international law and norms. The laws, premised on blatant religious and gender discrimination, may lead to increased violence and prejudice against ethnic and religious minorities. The laws also perpetuate antiquated and patriarchal stereotypes about women, devaluing the lives and capabilities of women in Myanmar. The international community must take a strong stance against these laws and urge Myanmar to repeal the legislation and end discriminatory practices against women and ethnic minorities through continued pressure by the UN, foreign governments and non-governmental organizations. It is possible that the overwhelming victory of Aung San Suu Kyi’s party, the National League for Democracy (NLD), in the recent elections may result in positive changes for the situation of Muslims in Myanmar.<sup>129</sup> Suu Kyi’s reluctance to speak out on the plight of the Rohingya, however, demonstrates that the NLD victories may not necessarily translate to improved human rights for beleaguered groups.<sup>130</sup> If Myanmar cannot, and will not, respect the human rights of its people, and then its supposed commitment to reform and progress will be nothing but a sham.

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<sup>128</sup> See, e.g., *Press Conference in Rangoon, Burma*, U.S. DEP’T OF STATE (May 22, 2015), <http://www.state.gov/s/d/2015/242966.htm>; *Local Statement of the European Union and European Union Member State Embassies Accredited to Myanmar*, EUROPEAN UNION DELEGATION TO MYANMAR (Jan. 12, 2015), [http://eeas.europa.eu/delegations/myanmar/press\\_corner/all\\_news/news/2015/20150112\\_en.htm](http://eeas.europa.eu/delegations/myanmar/press_corner/all_news/news/2015/20150112_en.htm).

<sup>129</sup> Marie Andrusewicz, *Aung San Suu Kyi’s Party Wins Majority in Myanmar’s Historic Election*, NPR (Nov. 13, 2015), <http://www.npr.org/sections/thetwo-way/2015/11/13/455861421/results-official-in-myanmars-historic-election>.

<sup>130</sup> See Perria, *supra* note 12; *Myanmar: The challenges Aung San Suu Kyi faces in a long-repressed country*, INDIAN EXPRESS (Nov. 11, 2015), <http://indianexpress.com/article/world/world-news/myanmar-the-challenges-aung-san-suu-kyi-faces-in-a-long-repressed-country/>.

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