

Mandates of the the Special Rapporteur on the situation of human rights in Myanmar; Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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MMR 5/2015:

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pursuant to Human Rights Council resolutions 28/23, 23/7, 22/20, 24/6, 25/5, and 25/32.

We would like to bring to the attention of your Excellency's Government information we have received concerning **four bills; the Religious Conversion Bill, the Population Control Healthcare Bill, the Buddhist Women's Special Marriage Bill and the Monogamy Bill, which together constitute the "laws on safeguarding race and religion" and appear to be discriminatory against minorities as well as against women and girls and have the potential to fuel existing tensions in the country.**

The Religious Conversion Bill has been the subject of an earlier communication (A/HRC/28/85, case MMR 4/2014) to which your Excellency's Government replied on 25 July 2014 without addressing the substance of the communication.

The package of four bills

According to information received:

In July 2013, the "969" movement and the "Central Nationality and Religion Safeguarding Association (Mabatha)" presented President Thein Sein with a

petition calling for the enactment of four laws to safeguard “nationality and religion” together with 1,335,600 signatures supporting this request.

On 25 February 2014, President Thein Sein asked the legislature to discuss the proposals. On 7 March 2014, he established a Commission to draft the Religious Conversion Bill and the Population Control Healthcare Bill. The Supreme Court took charge of drafting the Buddhist Women’s Special Marriage Bill and the Monogamy Bill. On 27 May 2014, the Religious Conversion Bill was published in the media with an invitation to the public to provide comments before 20 June. On 26 November 2014 President Thein Sein submitted the four bills to the legislature. On 1 December 2014, the Population Control Healthcare Bill, the Buddhist Women’s Special Marriage Bill, the Monogamy Bill and a revised version of the Religious Conversion Bill were published on the Ministry of Information’s website and comments sought from the public.

We are concerned that the four bills, which constitute a package to “safeguard race and religion,” are highly discriminatory both in terms of their intent and practical application. They discriminate against ethnic and religious minorities, particularly those of the Islamic faith, as well as against women – with regards to their rights to marriage, and sexual and reproductive health. Furthermore they have the potential to fuel existing tensions in the country.

By approaching race and religion together, the package of bills also fails to recognise the specificities of each human right, such as freedom of religion or belief that has specific components, including the right to change one’s religion or belief that distinguishes it from races and ethnicities.

Religious Conversion Bill

According to information received:

The second version of the Religious Conversion Bill was published along with the Population Control Healthcare Bill, Myanmar Buddhists Women’s Special Marriage Bill and Monogamy Bill on 1st December 2014. The revised version of the Bill retained almost all of the problematic aspects of the previous draft that were raised in the earlier communication mentioned above.

The Bill was tabled for debate at the Upper House on 3 April 2015.

As with the earlier version of the bill, the amended version establishes a State-regulated system for changing religions, involving application (sections 2 (c) and 5), justification (section 5 (c) (xi)), and registration (section 6) for religious conversion, followed by an interview (sections 6 (d) and 7 (a)-(c)), study (section 7 (d)-(f)), and approval (sections 8 and 10) process. Article 34 of the Constitution of Myanmar guarantees the freedom of conscience and the right to freely profess and practice religion. Any such regulation of religious conversion would neither be in conformity with article 34 of the Constitution of Myanmar, nor with international human rights law, as it

fundamentally violates the right to freely change one's religion, which is an indispensable part of the right to freedom of religion or belief. The right to change one's religion or belief or to adopt atheistic views is a human right that must not depend on administrative registration procedures, or on State approval. Furthermore, the Bill restricts the rights of children to freedom of thought, conscience and religion as it requires that only persons above 18 years old may convert.

The Population Control Healthcare Bill

According to information received:

The Population Control and Healthcare Bill was presented to the Government for signature on 6 April 2015. The President returned the Bill to Parliament with comments, which will be considered at the next Parliamentary session.

The Bill aims to improve living standards while alleviating poverty as well as ensuring sufficient quality healthcare, and developing maternal and child health. It applies to certain regions designated as zones for healthcare, based upon the results of a survey to be conducted in areas with high maternal and child mortality, high migration rates, poor resources, declining socio-economic indicators, and food scarcity. In those regions, the Ministry and region/state government have a duty to implement specified healthcare and population control activities.

While acknowledging that alleviating poverty, ensuring quality healthcare and developing maternal and child health are necessary priorities, we are concerned that the Bill adopts a selective and coercive approach to improving living standards of the population, and that a number of provisions are excessively vague and not in line with international human rights standards. The Bill also lacks essential safeguards to ensure freedom from all forms of discrimination – in particular for women belonging to marginalized and minority groups – and puts women's sexual and reproductive health rights at risk.

In section 2 (a), the Bill refers to “population control” which could be seen as a regressive and coercive approach to population and development policies and imposes restrictions on women's reproductive autonomy. Evidence shows that, instead of imposing population control growth restrictions, it is more effective to focus on sustainable and inclusive growth and development, including on gender equality and women's empowerment through access to quality and respectful health services, enhanced nutrition, and improved access to information, education and employment.

In chapters III, V and VI the Bill describes the functions of the Regional, State, and Township bodies established to implement the law. According to chapter II, these bodies will, with the assistance of experts, designate areas as zones for healthcare. This will be done on the basis of a survey, using what appear to be neutral indicators, including high maternal and child mortality, high migration rates, poor resources,

declining socio-economic indicators. However, such descriptors could potentially lead to targeting areas with a high concentration of minority groups.

While the Bill does not mention any specific community or religion, it gives wide discretion to the relevant bodies to decide how to discharge their task. In addition, there are no guarantees to ensure that the composition of these bodies to implement the law will ensure gender parity and the meaningful representation of minorities or local communities.

In section 14 (f), the Bill includes “organizing” married couples to practice 36-month birth spacing between pregnancies in the list of functions and duties of Township groups. As the term “organizing” seems too vague, we are concerned that it could be used to justify discriminatory, coercive and abusive application of the law. Any requirement of birth spacing would constitute an unacceptable interference by a State in the sexual and reproductive rights of women and would violate women’s right to choose freely and responsibly the number and spacing of their children. In addition, evidence shows that attempts to impose strategies aimed at “controlling population growth” often target marginalized and minority groups and have a discriminatory, coercive and punitive approach that goes against basic rights and freedoms, particularly of women. Approaches that focus on a voluntary regulation of population are more effective in ensuring sustainable economic and social development.

Female education is a particularly important element for the empowerment of women. Research shows that women who are educated tend to have fewer children, be mothers at a later stage, and raise healthier children who stay longer in school. In this connection, women should have access to comprehensive sexual education and information, including about safe and reliable contraceptive options and their use. Moreover, women should be able to make informed decision about birth control and for this they should have choices in family planning services and access to quality and respectful care.

By targeting “married women” the Bill also seems to discriminate on the basis of legal status and does not address the situation of unmarried women and men with respect to access to quality health services, enhanced nutrition, and improved access to information, education and employment. In addition, the Bill also fails to provide protection for children born in contravention of the established requirements.

Overall, we are concerned that the Bill does not contain an explicit commitment to adopt human rights compliant strategies, methods and procedures for the formulation and implementation of population and development policies. It lacks non-discrimination clauses and gives wide discretion to those implementing it on the manner in which they discharge their tasks. Whilst the Bill does not explicitly refer to specific minorities or regions, it could be used to discriminate against minority communities in contravention of international human rights law.

The Buddhist Women’s Special Marriage Bill

According to information received:

The Buddhist Women's Special Marriage Bill was passed by the Lower House on 19 March 2015 and by the Upper House in the last week of March. It is now awaiting review by the bicameral parliament.

The Bill applies to Buddhist women who decide to enter or who live in interfaith marriages and regulates a number of areas including marriage, divorce, succession, separation and guardianship of children. This Bill aims primarily to protect Buddhist women from conversions brought by marriage with non-Buddhist men and to facilitate "the enjoyment of equal rights by Myanmar Buddhist Women and non-Buddhist men with respect to marriage, divorce, division of matrimonial property and guardianship of children."

We are concerned that this Bill tends to discourage interfaith marriages between Buddhist women and men of other faiths by imposing disproportionate penalties and gender discriminatory barriers on non-Buddhist men. Even though registration is desirable for all marriages, this Bill sets out to regulate only interfaith marriages between Buddhist women and non-Buddhist men, where a common framework which is not differentiated on the ground of religion should be adopted to regulate betrothal, marriage, dissolution, custody and guardianship of children, as well as matrimonial assets.

We are concerned that this Bill discriminates against women by restricting the right to marry for Buddhist women and places restrictions only on Buddhist women who wish to marry outside their faith, while no such restrictions are placed on Buddhist men wishing to marry non-Buddhist women. This results in a discriminatory effect against individuals already in or intending to enter into these marriages or relationships and on their right to equal protection before the law. Furthermore, it introduces multiple discriminations, targeting Buddhist women's equal autonomy to make decisions regarding their own lives.

In section 9 (c), the Bill requires that women above 18 and under the age of 20 must seek parental consent to enter into marriage with non-Buddhist men. However, this requirement is not imposed on Buddhist men. As this requirement allows parents and relatives to object to and stop interfaith marriages, this provision has a discriminatory impact on women and it erodes and eliminates women's agency to marry freely.

In chapters VI and VII, the Bill presumes that a cohabiting couple, where the female partner is Buddhist and the male partner is not, shall be assumed to have married under the Bill. It is also provided that a Buddhist woman's parents, guardians and relatives may provide information about this cohabitation which will result in the couple being forced to marry or to be sued in court. This provision is only required for Buddhist women being in a cohabitation with non-Buddhist men and does not apply to Buddhist men living with non-Buddhist women. This provision is discriminatory against Buddhist women and interferes greatly with the right to choose a partner or start a family. It also restrict women's right to enter into marriage only with free and full consent and exposes the couple to violence perpetrated by the family or relatives that oppose such unions.

Therefore, women would be more exposed to home confinement, killing and other forms of violence committed against women who elect to marry outside their religion, ethnicity or caste or in the face of parental or community approval.

In chapter IX, the Bill provides protections against some forms of domestic violence only for Buddhist women married to men of other faiths. We are concerned that these protective provisions do not apply to all women, including non-Buddhist women married to Buddhist men. The State has a due diligence obligation to eliminate all forms of violence against women and to provide domestic violence legislation which would be accessible to all women, without distinction of any kind, including religion and race. Furthermore, we are concerned that section 35 reinforces gender and religious discriminatory stereotypes that Buddhist women are “vulnerable” and that non-Buddhist men are more likely to disrespect their wives, abandons and abuse them.

Section 24 and chapter X of the Bill set broad provisions that considerably restrict non-Buddhists husbands’ rights. These provisions discriminate against men from minority faiths by imposing additional restrictions and penalties on them. Furthermore section 24, notably subsections (e) and (g) and chapter X subjects non-Buddhist men to broadly drafted and ambiguous obligations which entail penalties, including potential prison sentences, that may be used to discriminate against or persecute persons belonging to minority faiths.

In cases of separation, dissolution of marriage or divorce, section 32 (b) of the Bill gives custody of children to Buddhist mothers, denying non-Buddhist fathers custody of children under all circumstances. This discriminates against non-Buddhist fathers, and appears to violate international legal standards which require that the best interests of the child be the primary consideration in custody decisions.

Monogamy Bill

According to information received:

A draft of the Monogamy Bill was published in December 2014. The Bill was tabled for debate by the Lower House on 11 March 2015.

The Bill criminalizes polygamy and prohibits extramarital affairs.

While we recognize that the ban on polygamy is in accordance with international human rights requirements, we are concerned that some provisions of the Bill adopt a restrictive and discriminatory approach to regulate marriage. In particular, the Bill makes specific references to “non-Buddhist persons,” only prohibits polygamy, which is a practice that is common amongst particular minorities and does not prohibit other forms of marriage which are discriminatory to women, including early and forced marriages, which are practised by other population groups. Furthermore, this Bill does not specifically address the root causes of polygamy, such as poverty, non-integration, social isolation, and lack of education, and does not ensure adequate redress and remedies for women living under this form of marriage and for children of such marriages.

In any case, we understand that polygamy is already prohibited by the Penal Code and therefore the Bill is redundant and breaches the principle of necessity.

The Bill also prohibits extramarital relationships. This prohibition is contrary to UN human rights experts' call for decriminalisation of adultery because it discriminates against women and violates their right to privacy. In practice, adultery legislation where implemented, discriminates against women and disproportionately imposes criminal liability on women and girls compared to men.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to identify existing and emerging obstacles to the enjoyment of human rights and present technical advice to overcome such obstacles. We would be grateful for your observations on the following matters:

1. Please clarify the overall objectives of this set of bills which appears to be in violation of international human rights law in general and targets minorities and women in particular.
2. Please provide information on the progression of each bill in the legislative process.
3. Is there any opportunity of constitutional or judicial review of these bills by individuals, civil society organizations or administrative agencies? If so, have such reviews been requested?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge your Excellency's Government to set aside all four bills which, for the reasons set out above, violate international human rights law and deeply discriminate against minorities and women.

It is our intention to publicly express our concerns in the near future. In our view, the information upon which the press release will be based is sufficiently reliable and serious as to warrant public attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with above, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

Article 18 of the Universal Declaration of Human Rights (UDHR) explicitly guarantees the "freedom to change" one's religion or belief as an inextricable component of the human right to freedom of religion or belief. Article 1 (1) of the 1981 Declaration on the Elimination of All Form of Intolerance and of Discrimination Based on Religion or Belief also states that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". Theistic, non-theistic and atheistic believers and those who do not profess any religion or belief are equally protected under Article 18 of the UDHR and the 1981 Declaration. Furthermore, article 2.1 of the 1992 Declaration on the Rights of Minorities states the right of persons belonging to minorities to profess and practise their own religion and article 2.2 stresses their right to participate effectively in religious life.

The Convention on the Rights of the Child recalls that parents' rights must always be seen in conjunction with the human rights of the child. Article 14 (1) of the Convention requires States to "respect the rights of the child to freedom of thought, conscience and religion". Besides, Article 14 (2) obliges States parties to "respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child". The requirement to take into account the evolving capacities of the child reflects the insight that children themselves are rights-holders in international human rights law and, consequently, that their own convictions deserve respect.

Regarding the need for human rights compliant strategies, methods and procedures for the formulation and implementation of population and development policies, we would like to refer to the Secretary General report for the follow-up to the Programme of Action of the International Conference on Population and Development (ICPD) beyond 2014 (E/CN.9/2014/4).

The Programme of Action was structured around a set of fundamental principles, defining a new paradigm for population and development that is people-centred and endorses a holistic approach to development with a strong emphasis on the nexus of human well-being and environmental sustainability. The Programme of Action redefined population policies away from achieving demographic targets and towards empowering people and securing conditions for equal opportunity and accountable, transparent governance systems. It acknowledged that human beings are ultimate actors in addressing their quality of life.

The persistence of poor sexual and reproductive health outcomes among the poor and socially excluded underscores the need to strengthen the reach, comprehensiveness and quality of health systems. The right to health obligates Governments to identify and eliminate economic, social, systemic and service-related barriers so that individuals can enjoy the highest attainable standard of health, including sexual and reproductive health. Quality family planning programmes are essential to this but need well-trained and supported personnel to ensure fully informed decisions free of discrimination and coercion, and based on life circumstances. Further, a selection of user-friendly birth control or contraceptive methods and services must be available, affordable and accessible.

In order to achieve these goals, Governments should facilitate active participation of all people, including through non-governmental actors, in the development, implementation, monitoring and evaluation of policies and programmes, and in the quality delivery of basic social and health services to all. Representatives of the intended beneficiaries of development programmes should be intentionally included and empowered, with particular attention to groups and communities living in poverty, or who frequently experience discrimination, exclusion or marginalization.

Article 16 of the UDHR guarantees the right to equally marry and found a family without any limitation due to religion, the rights to equality and equal responsibilities of spouses as to marriage, during marriage and at its dissolution, including regarding the protection of children, and the right to enter a marriage with the free and full consent from both spouses.

In addition, article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) condemns all forms of discrimination against women. Article 5 requests the modification of social and cultural patterns of conduct in order to eliminate the prejudices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. Article 12, requires that all appropriate measures be taken 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. Article 16 requires the adoption of all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, on a basis of equality between men and women, including the right to freely choose a spouse and enter into marriage with their free and full consent, and the right to decide freely and responsibly on the number and spacing of their children.

In its General recommendation n°21, the Committee on the Elimination of all forms of Discrimination against Women (CEDAW Committee) reaffirms equality between men and women in family relationships. It also stresses that women owe the right to choose a spouse and enter freely into marriage and this right is central to her life and to her dignity and equality as a human being (para. 16). It also highlights that the number and spacing of their children have an important impact on women's lives, including their economic and social lives, and affect their physical and mental health due to inequitable burdens of work on women (para. 21). Therefore, women are entitled to decide on the number and

spacing of their children. The Committee also specified that the States Parties are required to establish equality between partners and prohibition of bigamy and polygamy (para. 39). In its General Recommendation n°19, the CEDAW Committee recommended to States to, ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity, without any limitation due to religion or ethnicity (para. 24 b). In its General Recommendation n°31, the CEDAW Committee recalled the importance of banning polygamy and stressed various discriminatory impacts this practice has on women and girls (section C).

In a public statement published on 18 October 2012, the Working Group on the issue of discrimination against women in law and in practice denounced adultery laws which violate women's human rights and adultery should not be a criminal offence and must not be punishable by fine, imprisonment, flogging, or death by stoning or hanging.