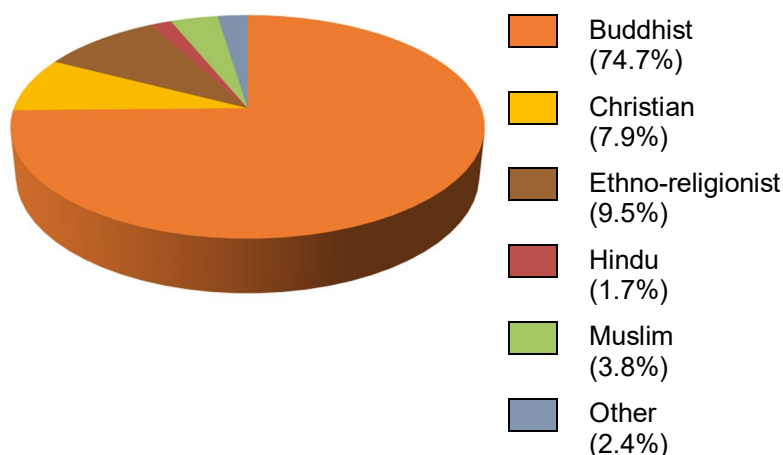


# BURMA (MYANMAR)



Area:	Population:	Political system:	Major Language(s):
676,552 km <sup>2</sup>	51.5 million	Autocracy <sup>1</sup>	Burmese

## Legal framework on freedom of religion and actual application

On 8<sup>th</sup> November 2015, the people of Burma participated in the first credible democratic elections in more than 25 years. The ruling military-backed government, led by President Thein Sein, which took power in 2011, embarked on a period of reform leading to historic multi-party elections. The National League for Democracy (NLD), led by Nobel Peace Prize Laureate Aung San Suu Kyi, won an overwhelming victory, with 86 percent of the seats in the national parliament, ending more than 50 years of military rule. There then followed a four-month transitional period, until 15<sup>th</sup> March 2016 when the new President, Htin Kyaw, was elected by parliament. He was inaugurated on 30<sup>th</sup> March 2016, and the new government took office. A new position of State Counsellor was created with powers similar to that of a prime minister; Aung San Suu Kyi was appointed to this position, as well as to that of Foreign Minister.

Aung San Suu Kyi is prohibited from becoming President owing to clause 59F in the 2008 constitution, introduced by the military, which explicitly states that no one with a spouse or children who are citizens of a foreign country is eligible for the presidency. Although her British husband Michael Aris died in 1999, her two sons retain British citizenship.

The constitution also reserves 25 percent of the parliamentary seats for the military, and gives the military control of three key ministries: home affairs, border affairs and defence. Furthermore, the military retains the constitutional right to seize power in the event of a state of emergency. The transition to genuine democracy in Burma is therefore in its infancy, and remains very fragile.

Among the major challenges facing the new government are three which relate directly to religious freedom: addressing rising religious nationalism, which has resulted in an escalation in religious intolerance since 2012; seeking a just settlement for the marginalised Muslim-majority Rohingya population, who are currently denied recognition of their citizenship rights in Burma; and ending decades of civil war between Burma's Army and the ethnic nationalities, many of whom, especially among the Kachin, Chin, Karenni and Karen, are Christians.

In 2015, Burma's first ever Cardinal was appointed. Cardinal Charles Maung Bo, Archbishop of Rangoon (Yangon), the former capital and major city, is seen as one of the country's most

courageous and outspoken voices for human rights, religious freedom, inter-religious harmony and peace. In February 2016, Cardinal Bo addressed a meeting at the United Nations Human Rights Council in Geneva, appealing for action “to prevent hate speech and incitement of violence”.<sup>2</sup> He also urged the new government in Burma to invite the UN Special Rapporteur on Freedom of Religion or Belief to visit the country.

Burma’s constitution guarantees that “every citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion subject to public order, morality or health and to the other provisions of this Constitution”. However, it also states that: “The Union recognises the special position of Buddhism as the faith professed by the great majority of the citizens of the Union,” while it simply “recognises Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this constitution”.

The constitution further states that: “The abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this constitution. A law may be promulgated to punish such activity.” Yet since 2012, a radical Buddhist nationalist movement, initially known as “969” and now known as Ma Ba Tha (which translates as the Committee for the Protection of Race and Religion)<sup>3</sup>, has emerged, and has engaged very actively in actions that promote hatred, sow division and further the political purposes of some groups. No action has been taken to prevent such activities, and there is some evidence of a close association between some elements of Ma Ba Tha and some elements of the military-backed Union Solidarity Development Party (USDP), the former government.

In 2015 four new laws, known as the Protection of Race and Religion Laws, were enacted, at the instigation of Ma Ba Tha.<sup>4</sup> These laws include measures that restrict religious conversion and inter-religious marriage. The Religious Conversion Law<sup>5</sup> requires that Burmese citizens who wish to change their religion must obtain permission to do so from a newly-established township-level Registration Board for religious conversion, which would consist of government officials from the ministries of religious affairs, immigration, women’s affairs, education and administration. The applicants would be required to undergo an interview and engage in religious study for a period of up to 90 days, before a certificate of religious conversion is issued. Penalties for failure to comply with these regulations include imprisonment for up to two years or a fine of up to 200,000 Kyats (approximately US \$170), or both.<sup>6</sup>

The Myanmar Buddhist Women’s Special Marriage Law regulates the marriages of Buddhist women to non-Buddhist men. If the woman is under 20 years of age, she must have parental consent. The law allows local registrars to post marriage applications publicly for 14 days to determine whether there are any objections to the proposed unions. A couple may get married only if there are no objections; if there are objections, the issue can be taken to court.<sup>7</sup>

The UN Special Rapporteur on the Situation of Human Rights in Myanmar (Burma), the UN Special Rapporteur on Freedom of Religion or Belief, and the United States Commission on International Religious Freedom, among others, have spoken out against this legislation, arguing that the laws violate international human rights norms and contribute to the escalating atmosphere of religious intolerance. In September 2015 Cardinal Bo issued a written appeal, calling for these laws to be reviewed and warning that the laws threaten the prospects for peace and “the dream of a united Myanmar”.<sup>8</sup>

Another piece of legislation, which has also been used over the past two years to undermine religious freedom is Section 295 of Burma’s Penal Code, relating to insulting religion. In December

2014, New Zealand bar owner Phil Blackwood and his Burmese colleagues, who used an image of Buddha to promote their bar and restaurant, were arrested, charged under Section 295 and jailed for two and a half years.<sup>9</sup> Mr Blackwood was released in 2016. In a separate case also in December 2014, Htin Lin Oo, a writer and member of the National League for Democracy, was arrested after speaking out against Ma Ba Tha and those who preach hatred and incite violence. A Buddhist himself, he criticised Buddhists who spread hatred or incite violence, saying that such ideas were incompatible with the teachings of Buddhism. In June 2015, he was sentenced to two years in prison with hard labour, charged under Section 295 with “insulting Buddhism”.<sup>10</sup> The United Nations condemned the sentence.<sup>11</sup> In 2016 he was released.

## Incidents

In July 2014, anti-Muslim violence hit the streets of Burma’s second major city, Mandalay.<sup>12</sup> Incidents of anti-Muslim violence had begun in 2012 in Rakhine State, and spread throughout 2013 to locations such as Meiktila, Oakkan and Lashio. In Mandalay, two people were killed: one Buddhist, the other Muslim. The violence, which began when Buddhist nationalist mobs attacked Muslim homes, lasted for four days. A report by the Justice Trust concluded that the violence was instigated by outside groups for political purposes as part of an effort to undermine the transition to democracy.<sup>13</sup>

In the context of the conflict in Burma’s ethnic states, and particularly in Kachin State, religious minorities have been targeted. Since the conflict in Kachin State escalated in 2011 after the Burmese army broke a 17-year ceasefire, at least 66 churches have been destroyed. In January 2015, two Kachin Christian missionary school teachers in northern Shan State were found dead, having been gang-raped and murdered. According to Christian Solidarity Worldwide’s sources, “Burma Army troops came into the church ground where the girls were sleeping and raped and then beat them to death. Villagers nearby heard the girls screaming and when they went to check they saw Burma Army boot prints and the raped and bloodied bodies of the dead girls. ... The church members went to the Burma police in this area, but the police have taken no action.”<sup>14</sup> The Kachin Baptist Convention has been leading an investigation into this case, because the authorities have failed to take action.<sup>15</sup>

In Chin and Kachin States, where the population is predominantly Christian, the military has long conducted a policy of forcing Christians to tear down crosses from hillsides and mountaintops; in some instances requiring them to build Buddhist pagodas in their place. These practices may have declined since 2012, but they have not ceased entirely. In January 2015, for example, the Chin Human Rights Organisation reported that local authorities had ordered the removal of a 54-ft cross, and a local Chin elder faced charges for erecting the cross.<sup>16</sup>

In April 2016, a Buddhist monk, Myaing Kyee Ngu, built a Buddhist pagoda and statue and erected a Buddhist flag in the compound of an Anglican church in Karen State, and later near a mosque, claiming to have had a dream which inspired him to believe that he should construct a pagoda in these places.<sup>17</sup> Local Christian leaders appealed for calm, recognising that if they responded to such provocation it could lead to violence.<sup>18</sup> In May 2016, the monk built another pagoda in the church compound.<sup>19</sup>

The most acute crisis relating to freedom of religion in Burma today is the plight of the Rohingyas in Rakhine State. Since 2012, thousands of Rohingyas have been living in desperate conditions, either held in camps without access to adequate health care or humanitarian assistance, or risking their lives escaping from Burma by boat on the open sea. Fortify Rights details the systematic persecution of the Rohingyas in their 2014 report entitled *Policies of Persecution: Ending Abusive*

State Policies Against Rohingya Muslims in Myanmar.<sup>20</sup> In 2015, two major legal research reports, one by the Allen K Lowenstein International Human Rights Clinic at Yale Law School<sup>21</sup> and the other by the International State Crime Initiative at Queen Mary University of London,<sup>22</sup> suggested there was evidence of potential genocide.<sup>23</sup> The plight of the Rohingyas shows little sign of improvement today.<sup>24</sup>

Pope Francis has spoken out, condemning their treatment as “a form of war”,<sup>25</sup> while Burma’s Cardinal Bo has said the persecution of the Rohingyas is “an appalling scar on the conscience of my country”.<sup>26</sup> He has described them as “among the most marginalised, dehumanised and persecuted people in the world. They are treated worse than animals. Stripped of their citizenship, rejected by neighbouring countries, they are rendered stateless. No human being deserves to be treated this way. Without [a solution], the prospects for genuine peace and true freedom for my country will be denied, for no-one can sleep easy at night knowing how one particular people group are dying simply due to their race and religion.”

### **Prospects for Freedom of Religion**

The election of a government led by the National League for Democracy and Aung San Suu Kyi ought to provide some hope that freedom of religion or belief in Burma will be better protected and promoted. Aung San Suu Kyi said in an interview with the BBC soon after the election that “hatred has no place” in the country and that her government would protect minorities and bring to justice those who incite hatred or violence.<sup>27</sup> In May 2016, it was announced that Aung San Suu Kyi would lead a new initiative to secure peace in Rakhine State.<sup>28</sup>

Nevertheless, her government faces significant challenges in addressing these issues; the potential for religion to be used by her political opponents, including by unleashing further waves of religiously-targeted violence to destabilise her government, remains very real. Therefore, expectations must be realistic and progress will be slow. It is unlikely that the protection of race and religion laws will be repealed in the next two years, because the government knows the fury that such a step would incite within Ma Ba Tha. Similarly, it is unlikely that Section 295 of the Penal Code will be repealed, but perhaps it will not be utilised as it has been. Some steps to counter hate speech might be more realistic, perhaps along with measures to promote inter-religious dialogue and understanding. As Aung San Suu Kyi has said herself: “Prejudice is not removed easily and hatred is not going to be removed easily”, although “the great majority of the people want peace... they do not want to live on a diet of hate and fear”.<sup>29</sup> Freedom of religion or belief in Burma will require the attention, expertise and resources of the international community in a variety of ways for some years to come.

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<sup>1</sup> The generals who ran the country suppressed dissent and stood accused of gross human rights abuses. A liberalisation process has been under way since 2010. The country is expected to see a major shift after the government changed hands early in 2016. The Burman or Bamar people has been fuelling a series of long-running rebellions, although a peace process yielded a draft ceasefire deal in 2015; <http://www.bbc.com/news/world-asia-pacific-12990563>

<sup>2</sup> See a collection of his speeches published by Christian Solidarity Worldwide, Aid to the Church in Need, Missio and the Catholic Bishops Conference of England and Wales, “The Cardinal Who Brings Poetry to the Faith: Quotes from Cardinal Charles Maung Bo,” 2016 - <http://www.csw.org.uk/2016/05/10/event/3092/article.htm>

<sup>3</sup> “Myanmar’s Ma Ba Tha monks flex their political muscle,” BBC, 8 October 2015 - <http://www.bbc.co.uk/news/world-asia-34463455>

<sup>4</sup> “Myanmar nationalist monks stage large rally as religious tensions grow,” Reuters, 4 October 2015 - <http://www.reuters.com/article/us-myanmar-politics-idUSKCN0RY0K020151004>

<sup>5</sup> “Burma: Religious Conversion Bill is Major Setback,” Christian Solidarity Worldwide, 23 January 2015 - <http://www.csw.org.uk/2015/01/23/press/2448/article.htm>

<sup>6</sup> “Burma: ‘Four Race and Religion Protection Laws Adopted,’” Global Legal Monitor, 14 September 2015 - <http://www.loc.gov/law/foreign-news/article/burma-four-race-and-religion-protection-laws-adopted/>

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