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Religious Liberty for Whom? The Buddhist Politics of Religious Freedom during Myanmar's Transition to Democracy

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ABSTRACT

Myanmar's democratisation entailed political liberalisation and legal reform, but contrary to liberal expectations, also further restrictions on the right to religious freedom. This article examines four laws that were passed by the President and the Parliament in 2015 in order 'to protect race and religion'. The laws seek to regulate marriages between Buddhist women and non-Buddhist men, to prevent forced conversions, to abolish polygamy and extra-marital affairs, and to promote birth control and family planning in certain regions of the country. The laws were passed in great part due to mobilisation of certain sections of the Buddhist monastic order. This article investigates the rationale behind the laws and how Buddhist activists succeeded in their legal agenda.

KEYWORDS

Religious Freedom;
Democratisation; Politics of
Religious Freedom;
Myanmar; Buddhism; Muslim
Minorities

I. Introduction

In democratising states government leaders are expected to introduce political reforms that improve citizens' rights and relax previously imposed repressive policies and activities. Empirical studies have shown how the level of democracy decreases the rate at which repression is applied; democratisation ensures less repressive governance.¹ Does this also hold true in the case of the right to freedom of religion or belief? Autocracies tend to score high on research indexes of government regulation of religion, and democracies tend to protect the right to religious freedom to a greater extent than autocracies.² However, it is less clear what happens to religious freedom in *democratising* societies. By analysing legal regulation of religion during Myanmar's democratisation process, the article seeks to add to our knowledge and understanding of religious freedom and democratisation. Why and how did Buddhist pressure groups succeed in introducing increased legal regulation of religion – with severe implications for the right to religious freedom, the right to non-discrimination of minorities and women's rights?

Since 2011, Myanmar has experienced a rapid political transition and an opening up to the outside world, after more than half a century of military rule. The reformist agenda of President Thein Sein's semi-civilian government led to the release of Aung San Suu Kyi

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¹C Davenport, 'Human Rights and the Democratic Proposition' (1999) 43(1) *Journal of Conflict Resolution* 92.

²Research has failed to verify a consistent relationship between religious freedom and democracy as democratic states engage in various forms of legal regulation of religion: see J Fox and D Flores, 'Religions, Constitutions, and the State: A Cross-National Study' (2009) 71(4) *Journal of Politics* 1499.

from house arrest, increased freedom of expression and association, freedom to form political parties, as well as the release of hundreds of political prisoners, including Buddhist monks.³ Though the election did not meet international election standards of being ‘fair’, Myanmar’s first free elections in 25 years were held on 8 November 2015.⁴ Aung San Suu Kyi and the National League for Democracy (NLD) made a historic landslide victory, and the election result was accepted by both the ruling Union Solidarity and Development Party (USDP) and the military. The new NLD-dominated Parliament convened on 1 February 2016.

During 50 years of military dictatorship rule of law became one of the most important appeals by the pro-democracy movement. The need for legal reform in Myanmar is clear: the Judiciary and the Supreme Court remain *de facto* dependent upon the executive; arbitrary detentions are frequent and there are high levels of corruption; there is a general lack of trained lawyers and judges, and lack of transparency to name just a few examples of areas in need of legal reform.⁵ The semi-civilian government initiated broad legislative reforms and steps were taken to amend laws that did not meet international human rights standards.⁶ In fact, more than 220 laws were passed in Parliament in the period 2011 to 2015. One important reform, that improved the legal operating space for civil society organisations (CSOs), came with the enactment of the new Association Registration Law in July 2014. Another important human rights development during this reform period was the creation of the Myanmar National Human Rights Commission in 2011.

Despite this wave of political liberalisation and legal reform, the Parliament and the President also passed legislation that implies increased regulation of religion, which according to the UN Special envoy Yanghee Lee indicated a ‘backtracking in the political reform process’.⁷ In 2015 a package of four laws, referred to as the ‘race and religion laws’ were passed, which seek to regulate marriages between Buddhist women and non-Buddhist men, to prevent forced conversion, to abolish polygamy and extra-marital affairs, and to promote birth control and family planning in certain regions of the country. Mobilisation of sections of the Buddhist monastic order (the Sangha), in two separate but inter-related Buddhist protection movements (*wunthanu athin*), the 969 and the MaBaTha (an acronym for *Ah-myo Batha Thathana Saun Shaung Ye a-Pwe*, or the Organisation for the Protection of Race and Religion) was key to getting the legislation passed. Their major motivation for legal activism was the alleged ‘islamisation’ of Myanmar and claims of violations of religious freedom for Buddhists, particularly female Buddhists. The laws were met with strong opposition from various religious groups and civil society organisations, as well as from local and international human rights organisations who argued that the

³This positive trend is also noted by UN Special Rapporteur to Myanmar, Yanghee Lee: see UN Human Rights Council, ‘Report of the Special Rapporteur on the Situation of Human Rights in Myanmar’ A/HRC/31/71, 18 March 2016.

⁴International election observer reports highlight structural problems such as the constitutional provision which reserves 25% of the seats to the military (giving it a *de facto* veto over constitutional reform), the disenfranchisement of the Rohingya population and that the security situation in several ethnic minority areas prevented people from casting their vote: see ‘Preliminary Statement’, European Union Election Observation Mission Myanmar, General Elections, 2015’ (10 November 2015) <http://eeas.europa.eu/archives/euom/missions/2015/myanmar/index_en.htm> accessed 29 March 2016.

⁵For more detail on Myanmar’s legal system, see N Cheeseman, *Opposing the Rule of Law: How Myanmar’s Courts Make Law and Order* (CUP 2014); M Crouch and T Lindsey, *Law, Society and Transition in Myanmar* (Bloomsbury 2014).

⁶For example, the Wireless Telegraphy Act (1934), the Printer and Published Registration Act (1962) and the Law Relating to the Forming of Organizations (1988).

⁷UN Office of the High Commissioner, ‘UN Myanmar Rights Expert: Backtracking on Democratic Space Gains Momentum in Election Year’ press release 19 January 2015 <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15494&LangID=E#sthash.iH8eBNGS.dpuf> accessed 24 January 2017.

laws did not comply with international human rights standards and that they would deteriorate interreligious relations at a politically sensitive and uncertain period in Myanmar's history.

This article offers a contextual explication of the new 'race and religion laws'. First, the article considers regime continuity and historical legacy of codification of ethnic and religious identities in Myanmar. Second, the article identifies the importance of the rise of Islamophobia and Buddhist legal activism. Third, I examine the politicisation of religion as a result of political liberalisation, and fourth, I address what I define as the 'Buddhist politics of religious freedom'. The article discusses how the 'Buddhist politics of religious freedom' and Buddhist legal activism are informed by the global language of human rights, but in fragmentary and ambiguous ways. In making this argument, the article points to larger debates about religious freedom as a modality of power, and the Myanmar case serves as a reminder that religious freedom can be used as a tool in majoritarian identity politics against ethnic and religious minorities.

II. The Politics of Religious Freedom

There is arguably no clear pattern of how democratising states have handled issues of religious 'recognition' and/or restriction of religious liberty.⁸ Religious liberty is not a fixed and neutral concept, and researchers have recently argued that religious freedom and democratisation in Europe in the nineteenth century was constantly renegotiated. Furthermore, recent research focuses on power struggles in relation to religious freedom, even suggesting that religious freedom is 'impossible' due to antinomies of the concept and its biased application in the courtroom.⁹ Building on this 'critical turn' in the study of religious freedom, my starting point is that religious freedom rather than being an elevated and neutral concept *above* politics, is defined, articulated and negotiated as *part of* politics.¹⁰

This article adds to the growing literature on the politics of religious freedom in South and Southeast Asia. Since the 1990s, the region has witnessed numerous controversies over the right to religious freedom, particularly in relation to legitimate or illegitimate restrictions on the right to proselytise.¹¹ The right to proselytise is protected under article 18 on religious freedom of the International Covenant on Civil and Political Rights (ICCPR), but represents, as Peter Danchin points out, an overlapping constellation of rights and competing claims 'not only with other fundamental rights ... but also within the right to religious liberty itself.'¹²

So-called anti-conversion legislation has been passed in several states in India,¹³ and three anti-conversion bills have been proposed in Sri Lanka, but *not* adopted.¹⁴ Hindu

⁸J Anderson, *Religious Liberty in Transitional Societies: The Politics of Religion* (CUP 2003).

⁹W Sullivan, E Hurd, S Mahmood and P Danchin (eds), *The Politics of Religious Freedom* (University of Chicago Press 2015).

¹⁰A Gill, *The Political Origins of Religious Liberty* (CUP 2008).

¹¹J Finucane and M Feener, *Proselytizing and the Limits of Religious Pluralism in Contemporary Asia* (Springer 2014).

¹²P Danchin, 'Of Prophets and Proselytes: Freedom of Religion and the Conflict of Rights in International Law' (2008) 49(2) *Harvard International Law Journal* 249, 252.

¹³India has a history of anti-conversion legislation, but linked to the rise of Hindu nationalism in the 1990s, four more states adopted similar legislation: see CS Adcock, *The Limits of Tolerance: Indian Secularism and the Politics of Religious Freedom* (OUP 2014).

¹⁴I Frydenlund, 'Particularist Goals through Universalist Means: The Political Paradoxes of Buddhist Revivalism in Sri Lanka' in H Kawanami (ed), *Buddhism and the Political Process* (Palgrave MacMillan 2016); B Schontal, 'Securing the Sasana

and Buddhist interest groups have started these legal initiatives in order to prevent ‘unethical’ Christian propagation.¹⁵ While such controversies are often due to concern over Evangelical missionary activities, the anti-conversion bills in Sri Lanka quickly turned into a controversy about the state’s obligation to protect Buddhism.¹⁶ Comparing Myanmar’s race and religion laws to other religious freedom controversies in the region, there are three major differences. First, concern over proselytism in combination with faith-based social welfare services was not the motivation behind the law proposal in Myanmar. The military regime had regulated Christian missionary activities for decades, but the *de facto* relaxation of this policy was not of concern to Buddhist activists as it was Islam, not Christianity, that was conceptualised as a threat to Buddhism.¹⁷ Second, unlike anti-conversion legislation in India, the race and religion laws were not made with reference to constitutional clauses on public order as legitimate restriction on the right to religious freedom, but with reference to the right to non-coercion (protected under article 18.2 of the ICCPR).¹⁸ Third, where anti-conversion legislation in India and Sri Lanka aims to limit missionary activities in public spaces or in educational institutions, the Myanmar legislation deals with religious freedom in interreligious marriages.

Despite these crucial differences, however, the Myanmar case fits into a broader trend of religious legal activism across the region: religious groups who consider minority religious practices a threat to the majority religion call for increased legal regulation of religion in the name of religious freedom. In the case of Buddhist legal activism, this is a growing phenomenon, but so far the subject has not received much academic attention.¹⁹ While international pressure prevented anti-conversion bills from being adopted into law in Sri Lanka, international pressure did not prevent such laws in Myanmar. Why did Buddhist legal activists succeed in Myanmar? I will argue that the rise of Buddhist protectionist groups alone cannot explain the laws. Rather, it is my contention that they are the result of four factors, and I will proceed with discussing the continuity of strict regulation of religion and legal approaches to managing cultural difference, the rise of Islamophobia and Buddhist legal activism, the politicisation of religion, and finally, the ‘Buddhist politics of religious freedom’.

III. Method and Materials

Myanmar’s legislation to protect race and religion is a package consisting of four laws passed in Parliament and signed by the President in 2015. It consists of the Control of Population and Health Care Law, the Religious Conversion Law and the Myanmar Buddhist Women Special Marriage Law and the Monogamy Law.²⁰ So far, few academic studies have been published on these laws and few have analysed the laws with explicit

through Law: Buddhist Constitutionalism and Buddhist-Interest Litigation in Sri Lanka’ (2016) 50(6) *Modern Asian Studies* 1; M Hertzberg, ‘The Rhetorical Shadows of the Anti-Conversion Bill: Religious Freedom and Political Alliances in Sri Lanka’ (2016) 34(3) *Nordic Journal of Human Rights* 189.

¹⁵For details on such conversion controversies in Muslim majority countries in the region, see Finucane and Feener (n 11).

¹⁶Schontal (n 14).

¹⁷Islamic missionary movements like the *Tablighi Jemaat* approach fellow Muslims, not followers from other religions.

¹⁸UN General Assembly, *International Covenant on Civil and Political Rights* (16 December 1966) 999 UNTS vol 171.

¹⁹B Schontal and T Ginsburg, ‘Setting an Agenda for the Socio-Legal Study of Contemporary Buddhism’ (2016) 3(1) *Asian Journal of Law and Society* 1.

²⁰Control of Population and Health Care Law No 28/2015; the Religious Conversion Law (Conversion Law) No 48/2015; the Myanmar Buddhist Women Special Marriage Law No 50/2015 (Marriage Law); the Monogamy Law No 54/2015.

regard to religious freedom. A recent study has shown the negative effect of the Monogamy Law for Buddhist women and how the Myanmar Buddhist Women Special Marriage Law can be used to displace the application of Islamic law.²¹ Other research has shown that the immediate ideological background for the laws is an alarming rise of Islamophobia in Buddhist Myanmar,²² or discussed the importance of understanding women's support to the laws.²³

Why did legal regulation of religion increase during Myanmar's first democratisation phase (2011–2015)? What is the aim of the laws? What is the agenda of the Buddhist legal activists who propagated the laws? A variety of data is used in examining these questions, including the four race and religion laws (in Burmese), draft laws (in unofficial English translations), MaBaTha's own drafts (in Burmese), official statements, statements by religious leaders and local and international human rights actors. In addition, I build on interview data gathered in Myanmar in the period 2014 to 2016. I interviewed more than 40 activists, lawyers, religious leaders and politicians who were openly engaged in the process; some were deeply involved in drafting the laws; others were public critics. Also, I rely on two focus group interviews with inter-religious peace activists; one all-male group in Mandalay, and one women's group in Yangon, which helped me understand how the laws might affect particular communities or inter-religious relations.²⁴ This method of relying on both text analysis of legal documents (of varying official status) and semi-structured qualitative interviews has allowed for a deeper understanding of the social context of the laws.

There were numerous conspiracy theories about whether the laws were a creation of the military to divert the public's attention from constitutional reform. Local human rights groups and women's groups who openly criticised the laws became the targets of threats and abusive language. As one of Myanmar's most prolific women rights activists explained: 'When we oppose the MaBaTha they attack us and call us traitors, and they produce hate speech in social media. They use very vulgar language and intimidate us in public.'²⁵ Accusing people who opposed the bill of betraying the nation and Buddhism became an important tool in marginalising human rights activists and political opponents from the public debate about the laws. There was also an element of fear, as the MaBaTha was believed to be backed by the military. The Myanmar National Human Rights Commission (MNHRC) did not communicate its position on the laws to the public,²⁶ indicating the political sensitivity of the laws at the time, as well as the weak position of the MNHRC. In this environment of violence and repression, doing fieldwork requires particular caution. Except for interviews with public figures – such as leading monks, politicians or other prominent community leaders – all informants are fully anonymised. Interviewees were selected on the basis of their engagement with the laws, or interreligious engagement more broadly. Through previous engagements in religious dialogue work in

²¹M Crouch, 'Promiscuity, Polygyny, and the Power of Revenge: The Past and Future of Burmese Buddhist Law in Myanmar' (2016) 3(1) *Asian Journal of Law and Society* 85.

²²N Kyaw, 'Islamophobia in Buddhist Myanmar: The 969 Movement and Anti-Muslim Violence' in M Crouch (ed), *Islam and the State in Myanmar: Muslim-Buddhist Relations and the Politics of Belonging* (OUP 2016).

²³M Walton, M McKay and K Kyi, 'Women and Myanmar's "Religious Protection Laws"' (2015) 13(4) *The Review of Faith and International Affairs* 36.

²⁴All interviews were carried out in English, or with Burmese-English translation.

²⁵Interview with women's rights activist (anonymous), Yangon, 28 May 2015.

²⁶Interview with Dr Nyan Zaw, Myanmar National Human Rights Commission member, Yangon, 26 May 2015.

Myanmar, I had personal connections to MaBaTha monks, and through these connections I got access to leading MaBaTha monks and lay leaders, as well as MaBaTha written material.

IV. Regime Continuity: Strict Regulation of Religion and Ethnicity

In order to understand the success of Buddhist legal activism in Myanmar, we need to take into account the nature of the democratic transition as well as the historical precedence of strict regulation of religion and ethnicity. Myanmar's democratic development is a top-down process initiated by the regime in the early 2000s, out of a recognised need for foreign investment, less economic dependence upon China and modernisation of society. The ideology behind the transition to democracy is expressed in a 2003 document called 'The Roadmap to Discipline-flourishing Democracy',²⁷ which shows that 'democratisation' was to be implemented within the confines set up by the military. The process was initiated and controlled by the military-backed USDP and its semi-civilian government led by President Thein Sein. Thus, by the time of the 2015 elections the regime had not changed fundamentally, and to what extent political and legal reforms would bring about real democratic change was (and still is) an open question, given the 2008 Constitution's undemocratic nature, including the provision that 25% of the parliamentary seats are reserved for the military.²⁸ In the following section I will discuss how regime *continuity* mattered for state regulation of religion and ethnicity during the transition period. I begin this discussion by looking at constitutional regulation of religion, but also other relevant state policies, such as the 1982 Citizenship Law. These policies reveal a particular logic of codification of ethnic and religious identities as basis for legal rights, which as we shall see, is also an important framework in the four race and religion laws. The position of religion in the Constitution has been contested since Independence.²⁹ The 2008 Constitution does not proclaim Buddhism as state religion, but article 361 grants Buddhism a special position as the majority religion.³⁰ Also, article 362 'recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union'. Thus, the Constitution recognises other religions, but clearly sets Buddhism apart from and above the others, expressing a particular form of Buddhist constitutionalism.³¹ However, the Constitution does not indicate what this preference for Buddhism entails – or the implications for religious minorities. Demands for constitutional reform have been at the heart of pro-democracy activism in Myanmar, but discussions about constitutional regulation of religion have been remarkably absent, even though religious minorities have long objected to the state's preference for Buddhism.

The Constitution bans religion from formal politics as well as the use of religion for electoral purposes.³² Moreover, members of religious orders are deprived of their voting

²⁷Published in *The New Light of Myanmar* (Yangon, 17 September 1993).

²⁸Thus, a distinction has to be made between *liberalisation* and *democratisation*: see J Linz and A Stepan, *Problems of Democratic Transition and Consolidation* (Johns Hopkins University Press 1996) 3.

²⁹Buddhism was established as state religion in 1961, but this changed again with the 1962 military coup. The 1974 Constitution did not recognise Buddhism as having a special place.

³⁰Constitution of the Republic of the Union of Myanmar (2008).

³¹Schontal (n 14).

³²Constitution, art 121.

rights, and they are banned from forming political parties.³³ Furthermore, the Political Parties Registration Law prohibits political parties from ‘writing, speaking, and campaigning causing the conflicts and violence among the individual, groups, religions and ethnics’.³⁴ In this regard, the state is strictly secularist, which can be explained as the result of the military’s need to assert control over religious groups, but is also in line with pre-colonial Buddhist political ideology, which separates the monastic order from the political realm. In short, the Constitution expresses an ambiguity between strict secularism and Buddhist constitutionalism; the former implying limitations on civil and political rights for religious clergy, the latter potential discrimination of religious minorities.

Jonathan Fox argues that constitutions are of importance to government policy on religion, but that ‘they do not matter nearly as much as many would expect’.³⁵ In other words, constitutional clauses on religion are not sufficient proof of state policies on religion. In addition to constitutional protection, the state has adopted several policies that favour Buddhism to the extent that it is reasonable to argue that Buddhism *de facto* serves as state religion. The Department for the Promotion and Propagation of the Sasana, under the Ministry of Religious Affairs, for example, is responsible for implementing a specific policy of Buddhist missionary activities in ethnic minority areas dominated by non-Buddhist religions. The Ministry of Religious Affairs reaffirms the constitutionally protected right of religious freedom, but gives priority to Buddhism on a *numerical* basis.³⁶ For example, the Ministry favours Buddhism over other religions in the higher education sector, as seen in state funding of the State Pariyatti University and the International Theravada Buddhist Missionary University.

Article 34 of the Constitution ensures citizens’ right to ‘freedom of conscience and the right to freely profess and practice religion’ but this is ‘subject to public order, morality or health or to other provisions of this Constitution’. This leaves the legislature free to ban any practice it considers disruptive.³⁷ The qualification has been broadly applied, for example through strict control of the Sangha, and strong censorship of foreign missionaries. Moreover, numerous claims of violations of religious minority rights have been made throughout the years, including allegations of forced conversions to Buddhism.³⁸ Also, the strong identification of Buddhism with the state has made it almost impossible for citizens belonging to religions other than Theravada Buddhism to hold high-ranking positions, for example in the military. Generally speaking, there is freedom of worship, but Burmese nationalism, state preference for Buddhism and the Citizenship Law (discussed below) have jointly produced an environment conducive to minority discrimination. As one prominent Catholic priest explained: ‘We have freedom of worship, but not freedom of religion’, pointing to his disenfranchisement, obstacles in obtaining building permits for churches, and intelligence surveillance of his congregation.³⁹

³³Constitution, art 392 (a).

³⁴Political Parties Registration Law No 2/2012, art 6(d).

³⁵J Fox, ‘Out of Sync: The Disconnect Between Constitutional Clauses and State Legislation on Religion’ (2011) 44(1) Canadian Journal of Political Science 59.

³⁶Ministry of Religious Affairs and Culture, ‘Objectives’ Department of Religious Affairs website <www.mora.gov.mm/mora_department1.aspx> accessed 26 January 2017.

³⁷D Williams, ‘What’s So Bad About Burma’s 2008 Constitution? A Guide for the Perplexed’ in Crouch and Lindsey (n 5) 117–140.

³⁸See e.g. Report by the Chin Human Rights Organisation, ‘“Threats to Our Existence”: Persecution of Ethnic Chin Christians in Burma’ (September 2012) Canada, available at http://www.chro.ca/images/stories/files/PDF/Threats_to_Our_Existence.pdf.

³⁹Interview, Yangon, 27 May 2015.

The 1982 Citizenship Law acknowledges three categories of citizenship of different rights and status; only those who belong to one of the 'national groups' (*taing-yin-tha*) count as full citizens. The law has denied, or significantly delimited the rights of hundreds of thousands of people, and has 'removed the normative basis for some person's claims to legal rights, on the pretext of protecting the rights of others'.⁴⁰ The state has the power to determine which groups are to be considered 'national' and thus qualify for citizenship. The Citizenship Law recognises eight broad classifications of 'national races'.⁴¹ In addition, the state makes use of a list of 135 'national groups'.⁴² The origin of this list remains obscure⁴³ and its formal status is not clear, but its use was confirmed by the Ministry of Immigration and Population as late as 2016.⁴⁴ Based on the list, the state codifies ethnic and religious identities through national identity cards, which citizens are obliged to carry at all times. The card states religious affiliation, which only can be one, and ethnic identity, which can be multiple. Ethnic groups that are not mentioned on the list, e.g. the Rohingya, are not granted citizenship, nor identity cards.⁴⁵ Furthermore, ethnic and religious identities ascribed to an individual matter fundamentally for his or her status in family law. Religious difference is recognised in Myanmar's legal system, which is marked by a high degree of legal pluralism, including separate Muslim, Christian, Hindu and Burmese Buddhist customary laws.

It is my contention that the laws can be seen as a *continuation of previous policies* on religious and ethnic identities. The Marriage Law, for example, builds very clearly on the 1954 Buddhist Women's Special Marriage and Succession Act, the first in Asia to give specific protection to Buddhist women in interreligious marriages. The Conversion Law does not relate to customary laws directly, but it clearly identifies religious identity as determinant for the legal status of the individual, for example in terms of inheritance and child custody. In sum, codification of ethnic and religious identities as basis for legal rights was continued during Thein Sein's transitional regime, but the new legislation (the Marriage Law and Monogamy Law in particular) are used to trump Burmese Buddhist law over Islamic law.⁴⁶

V. Fear of Islam and the Rise of Buddhist Legal Activism

Since 2011, strong anti-Muslim sentiments have swept Myanmar. The following excerpt from an interview with U Wirathu, a leading 969 and MaBaTha monk, is representative of such anti-Muslim discourses:

⁴⁰N Cheeseman, *Opposing the Rule of Law. How Myanmar's Courts Make Law and Order* (CUP 2014) 111.

⁴¹The 1982 Myanmar Citizenship Law, Chapter II, section 3 reads: 'Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories (...) from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens.' Thus, the Law does not explicitly strip the Rohingya population of citizenship.

⁴²Composition of the Different Ethnic Groups under the 8 Major National Ethnic Races in Myanmar', list made available at the website of the Embassy of Myanmar, Brussels, at <http://www.embassyofmyanmar.be/ABOUT/ethnicgroups.htm>, accessed 15 August 2016.

⁴³The list is partly built on the British linguistic classification system from the 1931 census. The UN makes a short reference to a set of 'Procedures' from 1983 to the 1982 Law, most probably in connection to the 1983 census. See 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar', Report of the United Nations High Commissioner for Human Rights, 20 June 2016, A/HRC/32/18 (n 1). However, such 'Procedures' are not mentioned in Myanmar legal libraries or in existing research literature.

⁴⁴Y Mon, 'Chinese minority to get 'Bamar' designation' Myanmar Times (Yangon, 30 March 2016) <http://www.mmmtimes.com/index.php/national-news/19717-chinese-minority-to-get-bamar-designation.html>, accessed 10 June 2016.

⁴⁵It is to be noted that it remains unclear if the race and religion laws apply to non-citizens, for example the Rohingyas.

⁴⁶Crouch, 'Promiscuity, Polygyny' (n 21) 99.

There are lots of difficulties due to the Muslims, they cause problems. They rape Burmese Buddhist women in many towns and cities. They rape teenagers and children under age ... The women are very vulnerable (in marriage). The man pretends to be Buddhist, and then she is allured into Islam and she is forced to wear burqa. Some women are tortured if she continues the practices of her religion. If she is pregnant, she will be mistreated until miscarriage. In one case, a woman was even killed. If a woman of another religion marries a Muslim man she loses all her religious freedom and all her human rights ... Then they are forced to commit sacrilege, for example to step on Buddha images. They force Buddhist women to sin ... When we as monks give sermons we inform laypeople about these stories so that they can shy away from Muslim males.⁴⁷

These collective fears are tied to larger concerns about 'islamisation' of Myanmar and the possible eradication of Buddhism, in what has been called a 'myth of deracination'.⁴⁸ On the basis of these fears, Buddhist activists call for legal action to protect Buddhism.⁴⁹ The perceived threat to majority religion, which leads to restrictions in religious freedom, is by no means unique to Myanmar and follows a global pattern of increased regulation of religion and active discrimination of religious minorities.⁵⁰ This has been explained as the outcome of globalisation, a process resulting in increasing number of minority religions and perceived threats to majority religions. In Myanmar it is clear that the opening up of the country resulted in a strong ethno-religious counter-reaction, which took the form of aggressive Islamophobia. In addition, the country has a historical legacy of 'Indo-phobia'.⁵¹ This resentment towards the ethnically and religiously diverse Indian communities is the result of the 'colonial trauma' brought about by Indian political and economic dominance during British colonial rule, and one which has been nurtured and exploited by political and military leaders in post-Independent Burma. Over the past decades the anti-Indian rhetoric and anti-Indian policies (in terms of citizenship laws and nationalisation programs) have taken a clearer anti-Muslim turn, while other Burmese Indian communities of Sikh, Hindu and Christian background face less discrimination today. Between 2012 and 2014, Myanmar experienced severe Buddhist-Muslim violence, particularly affecting the Rohingyas, but also other Muslim communities throughout the country. Furthermore, the fear of Islam in Buddhist Myanmar can, at least partly, be explained by anxieties brought about by rapid social and economic change.⁵² Such concerns were explicitly addressed in Buddhist sermons, and 969 and MaBaTha monks called for a boycott of local Muslim shops, and foreign companies like the Qatar-owned Ooredoo.⁵³ In a traditional society like Myanmar, religious leaders exert enormous influence in their communities, and monks' call for the protection of Buddhism came to gain wide acceptance among the Buddhist majority population.

⁴⁷Interview, trans English to Burmese, Mandalay, 5 June 2015.

⁴⁸Kyaw (n 22) 191.

⁴⁹Interestingly, the Young Men's Buddhist Association (YMBA), which was among the most important Buddhist protectionist movements under British rule, did not support the legal strategy of the MaBaTha and remained silent on this issue in public: interviews with YMBA leadership, Yangon, June 2015.

⁵⁰P Bloom, P Arian and U Sommer, 'Globalization, Threat and Religious Freedom' (2014) 62 *Political Studies* 273; J Fox, 'Religious Discrimination: A World Survey' (2007) 61(1) *Journal of International Affairs* 47.

⁵¹R Egretau, 'Burmese Indians in Contemporary Burma: Heritage, Influence, and Perceptions since 1988' (2011) 12(1) *Asian Ethnicity* 33.

⁵²M Walton and S Hayward, *Contesting Buddhist Narratives: Democratization, Nationalism, and Communal Violence in Myanmar* (71 Policy Studies, Honolulu: East-West Center, 2014).

⁵³N Htwe, 'Nationalists Call for Ooredoo Boycott' *Myanmar Times* (Yangon, 6 June 2014) <<http://www.mmtimes.com/index.php/national-news/10588-nationalists-call-for-ooredoo-boycott.html>> accessed 27 January 2017.

But how did the monks turn their religious capital into an effective lobbying movement? As previously noted, religion – including Buddhist monks – came under strict state regulation under military rule. The 2011 political reforms led to a relaxation of this policy and monks gained wider freedoms to associate and to voice their opinions in public. The most dominant of the Buddhist protectionist groups are 969 and the MaBaTha, which jointly drafted the first version of the race and religion laws. The formation of the 969 in 2012 – and the MaBaTha in 2013 – and the legislative process are organisationally, ideologically and historically intertwined. As a religious and political phenomenon, Buddhist protection movements are not new and have generally been anti-colonial and anti-state.⁵⁴ With political liberalisation, such movements have reclaimed centre-stage in the public sphere, largely under government protection. Importantly, the new Buddhist protection movements were state-affirmative, seeking state assistance for the protection of Buddhism against the ‘Islamic threat’.

Both the 969 and MaBaTha have become controversial for their strong anti-Muslim views. U Wirathu, one of the most vocal defenders of the laws, became an international media figure after being featured on the cover of *Time Magazine*, with the headline ‘The Buddhist Face of Terror’.⁵⁵ He has been accused of hate speech against Muslims in social media and during religious sermons, as well as for abusive and sexist language against Yanghee Lee, the UN special envoy to Myanmar.⁵⁶ In 2003, he was jailed by the military for instigating anti-Muslim violence,⁵⁷ but released in 2012, along with a number of political prisoners, as part of the political reforms. By contrast, the MaBaTha has a more senior and slightly less militant profile, and has succeeded in building alliances across monastic divisions and in close relations with the highest echelon of the monastic hierarchy.

U Wirathu claims the laws can be traced back to the retired general Kyaw Lwin in the Ministry of Religious Affairs in the post-1988 era:

U Kyaw Lwin, an important retired general of Ministry of Religious Affairs, was very engaged in this issue [of Buddhist women]. In the 1990s he gave many lectures at secular universities about this subject. I met him first time in 1997. In 2001, I started giving public lectures on the marriage laws. In 2003, I was jailed and was released only in January 2012. In 2012, on June 8th, there were huge problems in Rakhine. Many Rakhines (Arakanese Buddhists) were massacred. Then I tried to revitalise the campaigns to pass the laws. I went to other monasteries and talked to famous teachers and writers. In 2011 we had drafts for the conversion and mixed marriage laws, but then I was very young and I did not succeed. I needed an organisation, and then the MaBaTha came into being.⁵⁸

According to U Wirathu, the laws must be understood in the context of the suppression of Burmese women during colonialism, as an antidote to Muslim-Buddhist violence and as a protective measure against (alleged) Rohingya aggression in Rakhine. Notably, he refers to

⁵⁴J Schober, *Modern Buddhist Conjunctures in Myanmar: Cultural Narratives, Colonial Legacies, and Civil Society* (University of Hawai'i Press 2011); A Turner, *Saving Buddhism: The Impermanence of Religion in Colonial Burma* (University of Hawai'i Press 2014).

⁵⁵*Time Magazine* (Europe, Middle East and Africa edition, 1 July 2013) 182(1) cover.

⁵⁶‘UN condemns Myanmar monk Wirathu’s “sexist” comments’, *BBC* (22 January 2015), <http://www.bbc.com/news/world-asia-30928744>, accessed 22 January 2015.

⁵⁷The exact motive behind his imprisonment remains disputed. U Wirathu himself and some of his prison inmates claim that the reason was internal monastic disputes, and that anti-Muslim violence was just a pretext to remove internal opposition: interviews, Bangkok, April and Yangon, June 2015.

⁵⁸Interview with U Wirathu, Mandalay, 5 June 2015, trans Burmese to English.

previous failures to introduce the laws; although the ideological legacy of the laws can be traced back in time, there was no political space for such legal initiatives until the 2011 political reforms. Moreover, due to the regime's strict regulation of civil society through the Association Laws, there were no monastic networks that could successfully push the legal process forward – until the foundation of the MaBaTha in 2013.

The race and religion laws were top priority to the 969 and MaBaTha, and early drafts were presented at the MaBaTha's inaugural meeting on 26–27 June 2013. At this early stage only two draft bills were presented: one on mixed marriage, the other on conversion. According to U Wirathu, the monks prepared the conversion and mixed marriage laws themselves.⁵⁹ They also discussed monogamy and birth control, but this was left for lay people and legal experts to finalise, as they did not consider it 'suitable for Buddhist monks to work on laws; it is not in accordance with the *Vinaya* (the monastic law).' At this stage, the family planning and monogamy draft laws were discussed, but were not considered ready for distribution.⁶⁰ The meeting attracted hundreds of leading monks and nuns, as well as prolific Burmese writers and intellectuals. After a period of internal discussion, MaBaTha leader U Thiloka sent a petition to the President to promulgate the laws. Simultaneously, the MaBaTha organised a signature campaign, collecting (according to its own estimates) more than five million signatures by February 2014. Even though they still had not caught the public's attention, the monks had managed to exercise their religious authority and mobilise monks and lay people alike through their monastic networks.

It was only after a meeting in Mandalay on 18 January 2014 that the MaBaTha became an important force in public life. More than 10,000 monks gathered to discuss the perceived threat to Buddhism, posed by Islam in general and Buddhist-Muslim intermarriage in particular. For the first time the laws received wide public attention, and moreover, a closer look at this meeting reveals important elements of the new Buddhist protectionist movement in Myanmar. In a written document from this meeting, entitled the '10-Point Declaration', the monks identified ten areas of particular concern.⁶¹ Several of these relate directly to the 1982 Citizenship Law and the legal status of the Rohingyas. Two out of ten demands in the document concern the Rohingya minority: point four asks for investigation of 'non-national' parliamentarians (ostensibly to exclude Rohingya parliamentarians), while point five asks for withdrawal of voting rights of those holding 'White cards'.⁶² The last and tenth point is a promise to continue the work to get the race and religion laws passed. The 10 Point Declaration also states that the MaBaTha is to be a national, but independent, power centre led by Buddhist monks. The meeting was well covered by local print press and social media, and the notion that Buddhism needed particular legal protection gained momentum. I argue that

⁵⁹This is, however, only partly true as the marriage law relies heavily on the 1954 Law, as previously discussed. Also, it should be noted that the monks approached the retired lawyer U Ye Khaung Nyint to draft short drafts of the Marriage Bill and the Conversion Bill. To Nyint, assisting the monks was a meritorious religious act: see J Carroll, 'The Man Who Wrote Ma Ba Tha's "Race and Religion" Laws', *Frontier Myanmar* (Yangon, 10 October 2015) <http://frontiermyanmar.net/en/interview/the-man-who-wrote-ma-ba-thas-race-religion-laws>> accessed 27 January 2017.

⁶⁰The information on the early history of the MaBaTha is based upon interviews with U Maung Chen, MaBaTha secretary, chief organiser and editor of two of their magazines. The interview took place at the MaBaTha Headquarters, Insein, 27 May 2015.

⁶¹'10-Point Declaration' (in Burmese) dated 15 January 2014. On file with author.

⁶²The Rohingyas are denied citizenship, but were temporarily entitled so-called 'White cards', which allowed them to participate in the 2010 and 2012 elections.

the 10 Point Declaration signalled a new and politically confident Buddhist protectionism, in which the situation in Rakhine and the exclusion of certain ethno-religious minorities from the national political community are conflated with a general notion of the 'Islamic threat'.

Early drafts circulated in social media and among civil society organisations in 2013 to 2014 prescribed that only Buddhist men could marry Buddhist women. It was also stated (in an unofficial English draft) that

If any non-Buddhist man who married a Burmese-Buddhist woman against above rules shall be punished with a ten years prison term and also all his possessions and properties shall be confiscated and given to the Burmese-Buddhist woman he married against this law.⁶³

It was not clear what would happen to the man after imprisonment in case he did not convert to Buddhism (as prescribed in the draft). This provoked concern in human rights circles, but was at this early stage not taken too seriously among local civil society groups as they doubted the government's willingness to follow up on the monks' demands. My interviews in Mandalay with MaBaTha monks in June 2014 also reveal a great deal of uncertainty about the actual content of the drafts and the legal consequences if they were to be implemented, but nonetheless strong emphasis on the necessity of *legal* protection of Buddhism.

According to the MaBaTha, their nation-wide mobilisation and pressure on the government were effective: on 25 February 2014 the President sent a letter to the Speaker of Parliament regarding the laws.⁶⁴ The following events indicate a certain degree of uncertainty regarding law-making procedures: the Speaker of Parliament returned the drafts to the President, pointing out that the draft laws had to be sent to the Ministry of Religious Affairs, Ministry of Health and Ministry of Immigration. Regardless of procedural confusion, the government showed determination in getting the laws passed, and the President's Office established a Draft Preparing Commission on 7 March 2014, led by the Deputy Attorney-General, to draft the conversion and population laws.⁶⁵ In a surprising move the President decided that the interfaith marriage and monogamy laws were to be drafted by the Union Supreme Court. The exact reason for this remains unclear, but could indicate the President's wish to pay extra attention to the formulation of these two particular laws, as both relate directly to Myanmar's complex customary family laws.

On 27 May 2014 the Commission published a draft in official newspapers inviting the public to send their suggestions and comments to the Commission.⁶⁶ The statement leaves little doubt of the President's Office supportive role. It is worth noting that the invitation letter to the public is called 'Inviting suggestions from monks and lay people on "Religious Conversion Law (draft)"', signalling that this was largely to be considered a question for Myanmar's Buddhist population, and less so for religious minorities.

A deadline was set to 30 June 2014 for the Commission to submit drafts to the President, but only the conversion draft was delivered. In October, in order to push the process forward, the MaBaTha decided to pressurise the government by holding public

⁶³Then referred to as the 'Marriage Act (Emergency) For Burmese-Buddhist Women'. On file with author.

⁶⁴Interview, U Maung Chen (n 60).

⁶⁵Order No 19/2014. The commission was made up of officials from the Ministry of Religious Affairs, the Ministry of Immigration and Population Affairs as well as lawyers, historians, and others.

⁶⁶Attorney General's Office, 'Inviting Suggestions from Monks and Lay People on "Religious Conversion Law (draft)"' undated English draft text.

demonstrations to ‘demand their rights’.⁶⁷ They organised a public march from the famous Shwedagon Pagoda in Yangon, imbuing their protest with great religious significance. A similar event in Naypyitaw was cancelled upon government request due to an ASEAN (Association of Southeast Asian Nations) meeting, which could be seen as an indication of mutual understanding between the MaBaTha and the government. By the end of November 2014 the drafts were submitted to Parliament. On 1 December 2014, a second draft of the Religious Conversion Bill was made public, and in the subsequent days the other drafts were made public through newspaper announcements.

Crucial to the monks’ success was their ability to exercise their religious authority in the deeply Buddhist Myanmar: through preaching, rituals in sacred sites, signature campaigns, and communication through both print and social media, the monks managed to convince broad sections of the public about the threat of Islam and the necessity of the laws. The importance of religious authority was also recognised by U Maung Chen, MaBaTha secretary and chief organiser, who explained that ‘Because this is led by famous *sayadaws* [head monks] and thousands of followers, the criticism [of the laws] is like punches in the air’.⁶⁸

VI. Electoral Politics and Politicisation of the Laws

I have argued that the policy of codification of ethnic and religious identities as basis for legal rights, in addition to the rise of Buddhist protectionist movements, help explain the creation of the laws. In addition, rapid political liberalisation created the political *conditions* for monastic mobilisation. After discussions in the Parliament’s Upper and Lower Houses, all four bills – with only minor changes from the drafts – were passed by the Union Parliament and signed by the President. By and large, the USDP, together with the Arakan National Party (ANP) and the National Democratic Front voted in favour of the laws, while the NLD, together with several ethnic minority parties voted against.⁶⁹ Parliamentarians of ethnic and religious minority background saw the laws as yet another attempt by the state to suppress them. According to Zar Talam, a Chin MP: ‘This kind of law shouldn’t be issued by parliament because it is not an essential law for all ethnic [groups] in Myanmar; it is just a law that discriminates against ethnic people when it comes to religion.’⁷⁰

In contrast, political parties like the ANP – which represents the Arakanese Buddhists in the Rakhine state and has a long history of conflict with the Rohingyas *and* the Burmese government – now sided with the government and campaigned for the laws. ANP parliamentarian U Ba Shin, for example, became an ardent supporter of the laws as a measure to stem the alleged growth of the Rohingya population in Rakhine. As such, the laws were an opportunity for the government to forge political alliances with the Arakanese Buddhists. Given popular speculations about military support of the MaBaTha one might have expected military MPs to openly advocate the laws, but the military MPs were by and

⁶⁷Interview, U Maung Chen (n 60).

⁶⁸*ibid.*

⁶⁹Exactly how the MPs voted is hard to determine as an anonymous electronic voting system is used. I therefore rely on interviews with ANP and USDP MPs, and newspaper articles to substantiate this claim. See e.g. N Zaw, ‘Lower House Approves Two ‘Race and Religion’ Bills’ *The Irrawaddy* (Chiang Mai, 20 March 2015) <www.irrawaddy.com/news/burma/lower-house-approves-two-race-and-religion-bills.html> accessed 26 January 2017.

⁷⁰W Toe, ‘Myanmar’s Parliament Approves Controversial Interfaith Marriage Law’ (Washington, *Radio Free Asia*, 7 July 2015) <www.rfa.org/english/news/myanmar/parliament-approves-controversial-interfaith-marriage-law-07072015152051.html> accessed 26 January 2017

large silent during parliamentary discussion of the laws.⁷¹ Their silence could perhaps be explained by Renaud Egretau's theory about how the military MPs played less the role of defender of the old regime in the first 'post-junta legislature' (2011–2015), but rather took on the role of 'arbitrator' of civilian politics and 'guardian' of its own (un-democratic) Constitution.⁷²

The laws came to play an important role in the 2015 elections, as the USDP presented itself as the protector of the laws in contrast to the NLD. According to President Thein Sein's information minister, U Ye Htut, the reason was purely strategic:

They (the USDP) did not think that they could compete with the popularity of Daw Aung San Suu Kyi. So they tried to win the support of the monks, especially in the rural areas. The monks have a lot of power; they are the community leaders there.⁷³

By promoting the laws during the election campaign, the USDP could stand a chance against the NLD. Anthony Gill notes that in order to understand why specific laws are developed at particular times we need to understand the political elite. The USDP saw the necessity of a 'rallying cause' and subsequently chose the MaBaTha and their laws as a means for electoral mobilisation. This explanation does not necessarily exclude personal conviction, however, and U Ye Htut also claimed that Thein Sein 'got the laws passed in order to make a historical print, as the protector of Buddhism'.⁷⁴

Furthermore, the legal process must be seen in the context of the 2015 election. First of all, the elections influenced the timing of the legal process: the monks pushed for the laws to be signed by the President *before* the November elections as they feared that the laws would not be passed in the case of an NLD victory. Therefore, one might argue that the success of Buddhist legal activism was contingent upon the transitional regime's struggle for electoral victory. Second, it influenced the ways in which religion informed the actual campaigning. Back in 2014 the MaBaTha had declared its neutrality vis-à-vis party politics. But later they urged people not to vote NLD on the grounds that it was too Muslim-friendly as the NLD had voted against the laws in parliament. Moreover, USDP campaign posters explicitly mentioned the laws, and the MaBaTha issued flyers urging the people to vote for parties that supported the laws. Third, when the laws were passed and the MaBaTha celebrated its victory – by performing Buddhist rituals at symbolic places like the Shwedagon Pagoda – this was interpreted as favourable to the USDP election campaign. Notably, the regime did not charge the MaBaTha with violations of clauses on 'abuse of religion for political purposes' during the election, which indicates USDP support of the MaBaTha. In sum, the 2015 election campaign shows how political liberalisation in Myanmar opened up new political space for religious groups and religious identity politics.

VII. Buddhist Politics of Religious Freedom

As might be expected, laws to control conversion and mixed marriages, and to enforce family planning and the criminalisation of extra-marital affairs were met with fierce

⁷¹Again, how the military MPs voted is hard to determine as an anonymous electronic voting system is used.

⁷²R Egretau, 'Soldiers as Lawmakers? Assessing the New Legislative Role of the Burmese Armed Forces (2010-15)' in R Egretau and F Robinne (eds), *Metamorphosis: Studies in Social and Political Change in Myanmar* (National University of Singapore Press 2015) 15–42.

⁷³Interview in English with U Ye Htut, Oslo, 15 June 2016.

⁷⁴*ibid.*

opposition from local⁷⁵ and international human rights organisations for not being in accordance with international human rights standards.⁷⁶ In addition, local human rights groups argued that the conversion law would imply a violation of article 34 (on religious freedom) of the Constitution itself.⁷⁷ Unlike the anti-conversion bill process in Sri Lanka, religious minority groups did not vocally oppose the laws.⁷⁸ Muslim communities were not in a position to protest the laws, given the recent anti-Muslim violence and widespread discrimination, although it should also be noted that many Muslims did not necessarily regard the laws as applicable to them.⁷⁹ Also, some Muslim community leaders thought the laws to be a Buddhist equivalent to *sharia* law, and thus a positive development.⁸⁰

In this section I will discuss in more detail the MaBaTha's notion of religious freedom, shedding light on a phenomenon I identify as the 'Buddhist politics of religious freedom', which so far has received little – if any – academic attention. The MaBaTha's aim to stop 'islamisation' is largely framed in a religious rights' language, exemplifying how religious freedom can serve as a tool for identity politics and for marking of communal difference. As this article has shown, there are context-specific reasons for why Buddhist legal activism has risen in Myanmar in recent years. But this activism is also informed by global discourses on religious freedom.

There is a clear difference between the language of the final law texts (which mostly refers to 'religion' in generic terms; it barely mentions Islam) and the aim of preventing 'islamisation' as articulated by the MaBaTha. While the President's Office – as well as most debates in Parliament – emphasised a general concern for conversion issues, family planning and family law, the MaBaTha itself claims to have designed the laws specifically to prevent various aspects of 'islamisation'. Both U Wirathu and U Maung Chen confirmed that the aim of the Birth Control Law is to stop the escalating numbers of 'illegal immigrants' (mostly referred to as 'Bengalis', meaning Rohingyas), the aim of the Conversion Law is to prevent forced conversion of Buddhist women to Islam, the Marriage Law is to protect Buddhist women's right to religious freedom in marriages with Muslim males and to prevent sexual violence in marriage, while the Monogamy Law aims at reducing the size of Muslim families in Rakhine. To the MaBaTha, the 1954 Law (in practice until 2015) was insufficient, as it mostly dealt with inheritance and property rights and did not protect the 'religious freedom' of Buddhist women.

How can the laws prevent 'islamisation' when Islam is barely mentioned? According to U Wirathu, the laws were designed to cover specific Muslim practices. The first aspect

⁷⁵Joint statement from 180 organisations submitted to Parliament called 'Comments from Women's Organisations/Networks and Civil Society on the 4 Bills to Protect Nation' (English version) on file with author.

⁷⁶For example, four UN special rapporteurs sent a letter to President Thein Sein to withdraw the laws: OHCHR, 'Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; and the Special Rapporteur on the situation of human rights in Myanmar' (19 June 2014) MMR 4/2014. Strong criticism was also voiced by Amnesty International, Human Rights Watch and the International Commission of Jurists, who all emphasised the laws' severe implications for inter-communal relations, in addition to non-compliance with international human rights standards.

⁷⁷'Comments from Women's Organisations' (n 75).

⁷⁸The notable exception being the Catholic Church whose international connections provided strength and protection. Cardinal Charles Bo, for example, opposed the laws in public at several occasions.

⁷⁹Focus group interviews with inter-faith activists in Yangon (May) and Mandalay (June) 2015.

⁸⁰*ibid.*

relates to the (alleged) increase⁸¹ in the Muslim population and the fear of a future Islamic tyranny where Buddhists will become a persecuted minority, while the second aspect relates to allegations of forced conversion of Buddhist women by their Muslim husbands. Again, according to U Wirathu:

There are so many stories of Buddhist women being beaten because of their Buddhist worship. We have documentation of that. One woman was beaten to death while her family held her. They even beat her vagina. In order to give Buddhist women freedom of worship, this law has to be passed. The point is that in Muslim families, unless you keep to the Islamic practice, you are considered a whore.⁸²

The MaBaTha defines domestic violence in religious terms and with reference to religious freedom, moving the politics of religious freedom from the public to the *domestic* sphere. The background for this is rooted in the legal requirement of conversion to Islam for non-*dhimmi* women for a religious wedding to be valid.⁸³ Although more research is needed to establish strong empirical data on Buddhist-Muslim intermarriages in Myanmar, my field data indicate the importance of religious marriages, and that conversion of the non-Muslim spouse is required.⁸⁴ To the MaBaTha, this conversion requirement is in itself a grave violation of the right to religious freedom. Moreover, they argue that Buddhist women marry Muslim males for economic reasons and thus that conversion is not based on ‘free will’ but out of poverty and economic ‘allurement’. This arguably rests on an understanding of religion *as belief*, and moreover, that this religious belief is autonomous vis-à-vis other kinds of rationale for action. Buddhist doctrinal notions of free will and conversion (to Buddhism) emphasise intellectual reasoning and individual choice. Conversion is regarded as a particular way of *seeing* the world, and is less concerned with outer manifestations of ‘the religious’.

One might argue that contemporary Buddhist protectionist discourse is informed by the human rights paradigm, but in ambiguous ways. On the one hand, MaBaTha monks view human rights as a western neo-colonial instrument to bring down Buddhism and the ‘national races’.⁸⁵ Accordingly, the MaBaTha deliberately refer to group rights (*lu hkwin yay osu*) and ‘human dignity’ and not individual ‘human rights’ (*lu hkwin yay*).⁸⁶ Also, the MaBaTha publicly stated that patriotism should go before human rights.⁸⁷ On the other hand, elements of human rights thinking are blended into such protectionist discourses; the very conceptualisation of ‘islamisation’ of Buddhist women in mixed marriages in terms of ‘religious freedom’ exemplifies this. One of the most striking features

⁸¹ At the time it was generally believed that the Muslim population had dramatically increased since the 1982 census. However, the 2014 census data (released in 2016) only show a small growth, from 3.9 to 4.3%. Department of Population, Ministry of Labour, Immigration and Population, ‘The 2014 Myanmar Population and Housing Census. The Union Report: Religion, Census Report Volume 2-C’ (Nay Pyi Taw, July 2016).

⁸² Interview (n 58), trans Burmese to English.

⁸³ Requirement of conversion of people who do not belong to the People of the Book (*dhimmi*) is a common principle in Islamic law. However, it should be noted that who counted as *non-dhimmi* has not been fixed through history. In India, for example, Hindus were conceptualised as People of the Book by Mughal rulers, but only few Buddhists have been granted this status.

⁸⁴ This observation is based upon interviews with Muslim civil society activists in Yangon and Mandalay, May 2015.

⁸⁵ International human rights organisations are under scrutiny for their engagement with the Rohingya population, and are accused of ignoring the sufferings of Buddhists.

⁸⁶ B Brac de la Perrière, ‘Ma Ba Tha: Les trois syllabes du nationalisme religieux birman’ in A Pesses and F Robinne (eds), *L’Asie du Sud-Est 2015: Bilan, Enjeux et Perspectives* (IRASEC 2015) 31–44.

⁸⁷ A Min, ‘Human Rights Less Important Than ‘Nationalism’: Senior Monk’, *Myanmar Times* (Yangon, 30 August 2014) <www.mmmtimes.com/index.php/national-news/11495-human-rights-less-important-than-nationalism-says-senior-monk.html> accessed 26 January 2017.

of the Buddhist Women's Special Marriage Law is found in chapter 4 (section 24), in which special provisions are identified for the 'non-Buddhist man' in order to secure the religious liberty⁸⁸ of the Buddhist woman and her children within the marriage. In a detailed list, the law specifies what this religious right includes, most importantly the right to have Buddha images in the house, to perform Buddhist rituals, donate money and to have a Buddhist funeral. Also, the law criminalises insults of her Buddhist feelings 'in words or in writing or through visible representation or gesture'.⁸⁹ In case of violations of article 24, the Buddhist wife is entitled to divorce, which, in that case, would result in the non-Buddhist man losing his portion of shared property, as well as losing guardianship of any children.

The Religious⁹⁰ Conversion Law seeks to protect (women) from forceful conversion. The final law text does not have a preamble, but in the second draft version, we are given a clue of the rationale behind the law. Here, the preamble repeats article 34 of the Constitution on freedom of religion, but states that there is a need for transparency and a system in place to ensure the right to freedom of religion and the freedom to choose and convert to another religion. While not stated explicitly, the underlying assumption rests on a notion of forced conversions of Buddhists. A repeated aim is to ensure conversion according to the individual's 'own free will'. Thus, the aim is not to ban conversion, but to secure *freedom from coercion*. Finally, the law allows for a change to atheism, or no-religion (*batha-me*), which secures the right not to have a religion. This was added to the second draft version, and clearly reflects the international norm of the right to religious freedom, or belief, which specifically secures this aspect of religious freedom.⁹¹ The conversion law and sections of the marriage law illustrate an important development in state policies on religion in Myanmar: the 2015 laws reflect a stronger emphasis on 'religious freedom', but one that is fragmented, selective and contradictory.

In addition to religious freedom issues for Buddhists, the MaBaTha also showed concern for violence against women. Crucial to the narrative of Buddhist-Muslim marriage is Muslim male aggression, and the 969 has organised a series of public events to document such cases, through presentation of 'real life stories'. In such events, the identified Buddhist victim is interviewed by a Buddhist monk in front of a Buddhist audience. One such event was written down and published in the form of a booklet that was distributed by U Wirathu and his supports during 2013 and 2014.⁹² In this text we are introduced to a story called 'The victim's voice who just escaped from Tigers', which is about a Burmese Buddhist woman called Ma War War Myint who left her Muslim husband. Her story – a testimony of severe domestic violence – is framed within a Buddhist-Muslim dichotomy and conceptualised as a case of violations of religious freedom and of women's rights. In the text, a binary opposition is constructed: 'Islam-violence-unfree' versus 'Buddhism-non-violence-freedom'. In this narrative of violence and suffering Buddhist monks are portrayed as rescuers of women who escape religious persecution.

⁸⁸*Lele soi* ('freedom') and *koke kiun* ('religious right').

⁸⁹s 24(g).

⁹⁰The Burmese original refers to *kokyeya* ('worship') and *batha* ('religion').

⁹¹It should be noted that outspoken atheism is very rare in Myanmar, and atheist societies operate anonymously.

⁹²Her story was recorded at a public meeting on 22 October 2012 and published in 'Human Rights Violations by Human Rights Activist', a pamphlet circulated by U Wirathu in Mandalay during 2014. Undated.

Women's groups in Yangon raised a feminist critique of MaBaTha ideology, arguing that the laws imposed 'the responsibility of preserving race, religion, culture and the traditions of a country entirely on women'.⁹³ Nonetheless, many Buddhist women supported the laws. Why would they support the laws if women's groups identified the laws as violating women's rights? The fact is that MaBaTha's focus on violence against women had great appeal, and that many Buddhist women saw the laws as necessary for their protection.⁹⁴ It should also be noted that although the MaBaTha is dominated by male monasticism, both nuns and lay Buddhist women take active part in the organisation. Female membership is allowed, but women are given an inferior role and status, following a long-established pattern of monastic gender inequality in Buddhist Myanmar. The MaBaTha nuns showed their support to the laws through various street demonstrations during 2015, events that were widely covered in local media. Their engagement needs to be taken seriously – and not reduced to their inferior position vis-à-vis monks – if we are to better understand why the laws received support in Buddhist circles. One of Myanmar's leading Buddhist nuns, who also happens to be a proud MaBaTha member, explains why she supports the laws:

The laws are necessary in order to give protection to our religion. Some people say that the laws are not necessary, but they are narrow-minded. They do not love our religion or our Myanmar women. Some say that monks and nuns should not take part in law-making or in politics, and that they should only be involved in mediation ... This is not discrimination. The MaBaTha aims to protect race (ah-myo), not only the Burmese, but all races and all religions in our country, including Christians and Muslims. ... The marriage law does not mean that that we do not allow mixed marriages. Mixed marriage is OK, but we need a law to discipline and to protect both parties in marriage.⁹⁵

This passage reveals common tropes and concerns in Buddhist protectionist ideology: the intrusion by the non-Buddhist 'Other', the need to protect Buddhism, and the justification of monastic involvement in social action. What is interesting here is to see how the nun explicitly responds to the accusations against the MaBaTha from human rights circles that the laws implied discrimination against ethnic and religious minorities. She insists that protecting Buddhism does not imply minority discrimination and that 'race' refers to all national groups identified in the Citizenship Law.

The 1954 marriage law shows that concern for Buddhist women in interreligious marriages is not new. However, as this article has shown, the discursive strategies to substantiate legal claims have shifted to include not only custody and inheritance, but also religious freedom and women's rights.

VIII. Conclusion: Religious Freedom as a Tool for Majoritarian Politics?

In his study of Buddhist constitutionalism in Sri Lanka, Schontal raises the question as to why 'an equally active climate of Buddhist-interest litigation' cannot be identified in Myanmar, or Thailand.⁹⁶ In Sri Lanka, Schontal points out, a strong culture of public law and Buddhist constitutionalism encourage a climate for Buddhist-interest litigation. As argued in this article, Buddhist constitutionalism is also strong in Myanmar, but due

⁹³Comments from Women's Organisations' (n 75).

⁹⁴Walton and others (n 23).

⁹⁵Interview, Sagaing Hills, 4 May 2015, trans Burmese to English.

⁹⁶Schontal (n 14) 43.

to military rule and lack of rule of law, public law has been weak and Buddhist-interest litigation hardly present. More important, however, is the fact that unlike Sri Lanka the Burmese military regime did not allow for extensive Buddhist political-cum-legal activism. Furthermore, it should be noted that religious issues were never at the heart of Myanmar's democratisation: pro-democracy Buddhist monks and nuns have pushed for political reforms for decades, but religious issues or religious actors did not drive the reform process. In fact, in contrast to other democratising societies, constitutional regulation of religion was not high on the agenda in Myanmar. I suggest the reason for this is that Buddhist legal activists needed the support of the transitional regime to get the race and religion laws passed. As the transition regime resisted constitutional reform (in order to protect military control over the state), the 969 and the MaBaTha did not ask for stronger constitutional protection of Buddhism. Rather, they sought to protect Buddhism through family laws and through regulation of conversion. From this perspective, the laws can be seen as an attempt by religious elites to act out the constitutional preference for Buddhism at the policy level, but without constitutional reform.

Contrary to liberal expectations, the Myanmar case shows that increased religious freedom does not necessarily follow suit with political liberalisation. While the transitional regime ensured less repressive policies and extensive legal reforms, it also imposed increased restrictions to the right to religious freedom. While the rise of religious nationalism is crucial for our understanding of this development, this explanation alone is insufficient. Rather, this article has suggested that the race and religion laws are the result of four factors. First, they can be seen as a continuation of previous policies on ethnic and religious identities in Myanmar. Second, they are the result of a rise in Islamophobia and Buddhist legal activism. Third, political liberalisation gave space to religious groups previously excluded from political activities, and the 2015 elections opened up for aggressive identity politics and politicisation of religion. Finally, the article has identified a particular form of politics of religious freedom, referred to as the 'Buddhist politics of religious freedom', which aims at protecting Buddhism against other religions. The laws suggest a rights fragmentation in which the right to religious freedom is seen in isolation from the erstwhile human rights network, such as non-discrimination. Moreover, the laws show how the incommensurability of the right to religious freedom itself, to speak with Peter Danchin,⁹⁷ is played out in majoritarian identity politics in which the (majority's) right to non-coercion is privileged over the (minority's) right to manifest religion. As such, the Myanmar case serves as an important reminder that religious freedom is not above, but part of politics.

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⁹⁷Danchin (n 12).