

The potential role of a racial discrimination law in Myanmar

Nathan Willis

Ethnic discrimination has long fuelled violence and displacement within Myanmar, especially in relation to people of Rohingya ethnicity who have been fleeing in their 'tens of thousands' in 2013 alone.

Under Myanmar's new Constitutional framework, and with legislative reform in process, it seems timely to consider whether a specific racial discrimination law could help address the entrenched issue of ethnic discrimination – and thereby reduce ethnic tensions, violence and the displacement of so many people.¹

Myanmar's Constitution (Article 348) states that: "The Union shall not discriminate [sic] any citizen of the Republic of the Union of

Myanmar, based on race, birth, religion, official position, status, culture, sex, and wealth."² The determination of citizenship is prescribed by law, currently by the Citizenship Law 1982 which recognises 135 ethnic groups as 'national races' but does not include Rohingya ethnicity within these, thus denying citizenship to members of this ethnic group. Non-recognition of citizenship, in light of Article 348, also denies protection against discrimination under the Constitution.

February 2014

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)³ provides for the promotion of “universal respect for and observance of human rights, and fundamental freedoms for all, without distinction as to race, sex, language or religion’ and, further, that “there is no justification for racial discrimination, in theory or in practice, anywhere.” The Convention requires States Parties to “take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”

In recognition that no state is immune from racism, legislators need to take seriously the need to enshrine a legislative response. While in Australia racial tensions in relation to Australia’s indigenous people are not at the same level as those in Myanmar in relation to the Rohingya ethnic group, Australia’s policies in relation to its indigenous people have from time to time brought Australia, too, into disrepute. Australia ratified the ICERD in 1975 with the passage of its Racial Discrimination Act. While such legislation does not represent a panacea for racial discrimination, the legislation at least represents state recognition of a problem that demands a solution and the legislation has proven useful as a legal mechanism for redress where issues of racism arise.

In Myanmar, some have called for the Rule of Law and Tranquillity Committee (RLTC), chaired by Daw Aung San Suu Kyi,



A woman vents her frustration about living conditions and life in general since being forced to flee from her home in Set Yone Su ward, Rakhine state, during the violence in October 2012. She said people bearing weapons forced everyone in her village to flee before burning their homes and looting their possessions.

to consider the Citizenship Law issue. The Committee’s report of 31 July 2013 includes a recommendation that states “should aim to [sic] a kind of peace that allows people and ethnic nationalities live and work under protection of the law for security of their lives with peace of mind.”⁴ It is possible that the Citizenship Law could be reformed, or indeed that the Constitution could be amended. It seems reasonable to suggest that the RLTC could also consider recommending, as a parallel development, the ratification of the ICERD through a Racial Discrimination Law. Further, amendments to the Myanmar Constitution may be required to provide the relevant authorities with the power to ratify international conventions.

Nathan Willis nathan.willis@scu.edu.au is a PhD candidate at Southern Cross University, Australia, and has previously worked in Myanmar.

1. www.trust.org/item/20130912101837-el6ym See also *Forced Migration Review* issue 30 on ‘Burma’s displaced people’ www.fmreview.org/burma 2008
2. <http://tinyurl.com/Myanmar-Constitution-2008>
3. www.refworld.org/docid/3a66b3940.html
4. Rule of Law and Tranquillity Committee, Myanmar, ‘Report of the Rule of Law and Tranquillity Committee’ (31 July 2013).