



# NEW EXPRESSION MEETS OLD REPRESSION

ENDING THE CYCLE OF POLITICAL ARRESTS  
AND IMPRISONMENT IN MYANMAR

AMNESTY  
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**Cover photo:** A protester writes on a placard at a rally calling for the abolition of repressive laws and an end to politically-motivated arrests. Yangon, 5 January 2013.

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Map showing towns and cities in Myanmar where prisoners of conscience and political prisoners who feature in this report have been or are imprisoned. ©Amnesty International

# 1. EXECUTIVE SUMMARY

**“One of the most significant progresses that Myanmar has made in its new era is in the area of freedom of expression, freedom of peaceful assembly and of association. No one is arrested or charged for simply exercising their rights peacefully.”**

Ministry of Foreign Affairs Press release, 12 August 2015.<sup>1</sup>

**“In 2012 and 2013 the situation seemed better and more flexible but in 2014 and 2015 people started being charged and jailed again, for example the students, the farmers, the unions, media... This keeps people busy with working for their release and for supporting their families.”**

Thet Thet Aung, former prisoner of conscience, July 2015.<sup>2</sup>

Thet Thet Aung’s words speak to the worrying erosion of newly found freedoms of expression, association and peaceful assembly in Myanmar, a country which has seen rapid transformation in the last five years, as it moves from five decades of repressive and authoritarian military rule towards a more open political system.

Since the quasi-civilian government of President Thein Sein came to power in March 2011, Myanmar has embarked on a series of key economic, political and social reforms. The reforms have been accompanied by a number of measures to show that the country is on the path to promoting the rule of law and ensuring better respect and protection for human rights. Key among these measures, and often cited as one of the hallmarks of the country’s transition to date, has been the relaxation of some of the restrictions on freedom of expression, association and peaceful assembly through the passing of new laws and the release of hundreds of individuals imprisoned on politically motivated grounds.

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<sup>1</sup> Press release, Ministry of Foreign Affairs, published in *The Global New Light of Myanmar*, 13 August 2015.

<sup>2</sup> Amnesty International interview, July 2015.

Yet, as people have begun to exercise these new freedoms to assert their rights, the authorities have increasingly cracked down on peaceful expression. Since the start of 2014 hundreds of people have been arrested, charged, arbitrarily detained or imprisoned in politically motivated cases. They include student protesters, political activists, media workers and human rights defenders<sup>3</sup> and, in particular land and labour activists.

In part, this has been possible by the use of repressive, vague and broadly worded laws which were commonly used prior to 2011 to arrest and imprison thousands of people. Amnesty International has observed a disturbing resurgence in their use between 2014 and 2015 and calls on the new incoming government to repeal or reform these laws to bring them into line with international law and standards. As long as these laws remain unamended and on the books, human rights defenders and other activists will remain at risk of arrest.

Also of concern is the authorities' use of new laws, enacted during the reform process, to crack down on human rights defenders and activists. The 2012 Peaceful Assembly and Peaceful Procession Act (the Peaceful Assembly Act) and the 2013 Telecommunications Act were both passed as part of attempts to allow for greater space for freedoms of expression and peaceful assembly, yet have become new tools of repression through being used to arrest and imprison human rights defenders and others for their activities.

The use of old and new legislation to stifle criticism and peaceful dissent is further bolstered through the use of other tactics to keep human rights defenders and activists in detention or in prison for lengthy period of time. These include drawing up lengthy charge sheets, filing multiple charges for a single offence and, increasingly, resorting to charging people with non-bailable offences to hold them in pre-trial detention. Furthermore, leaders of peaceful protests and other activist groups have also been targeted by the authorities for arrest and prosecution in an apparent attempt to weaken their social and political movements. The authorities also appear to yield to pressure from Buddhist nationalist groups by harassing and arresting those speaking out for religious tolerance.

While there have been some efforts by the government to address the question of ongoing arrests and imprisonment of human rights defenders and other activists, these efforts have been largely ad hoc and focused on securing the release of only some political prisoners, often at politically advantageous moments, instead of addressing the systemic and structural issues which allow for arbitrary arrests and imprisonment on politically motivated grounds. Myanmar must bring its legal framework in line with international human rights law if it is to ensure an end to the cycle of political detention and imprisonment.

In addition, a Committee established in 2013 and reconstituted in 2015 to resolve the cases of political arrests and imprisonment has been largely ineffective, hampered by a lack of independence, transparency, a clear mandate and adequate resources to fulfil its function. However, with sufficient political will, both national and international, such a Committee could become an important mechanism not just to secure the release of prisoners of conscience, but to also address the wider structural issues that allow for arbitrary arrests and imprisonment. Political activists and human rights defenders have a vital role to play in shaping Myanmar's future at this critical juncture. However, they are unable to do so if they are locked up or at constant risk of arrest for their work.

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<sup>3</sup> Human rights defenders (HRDs) are individuals who take non-violent actions to defend and protect human rights. They can be journalists, lawyers, members of human rights organizations, trade unionists, doctors or other service providers that fulfil essential medical or educational needs, or politicians who promote human rights and speak out against human rights violations. They may be friends or relatives of victims of human rights violations who stand by their loved ones despite threats and intimidation. International human rights law establishes and protects the right to defend human rights, either individually or in association with others, and asserts the exercise and effective enjoyment of the right to defend human rights as fundamental for the effective enjoyment of many other human rights. See the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144, 8 March 1999 (Declaration on Human Rights Defenders).

## PRISONERS OF CONSCIENCE AND POLITICAL PRISONERS

Individuals in Myanmar who have been deprived of their liberty on politically-motivated grounds are often described as either “prisoners of conscience” or “political prisoners”. Although often used interchangeably, these terms have different meanings, which it is important to differentiate at the outset of this report.

Amnesty International considers as a **prisoner of conscience** any person imprisoned or otherwise physically restricted solely because of his/her political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status, or for exercising his or her right to freedom of expression or other human rights, and who has not used violence or advocated violence or hatred. All prisoners of conscience must be set free at once and without conditions, and all charges or other proceedings against them abandoned. Amnesty International uses the term prisoner of conscience in the context of its work on Myanmar, as well as its work worldwide.

There is no agreed definition of a **political prisoner** in international human rights law or standards. However, it is generally used as a descriptive term to apply to a person who has been detained or imprisoned on politically motivated grounds. Unlike prisoners of conscience, political prisoners may have used or advocated violence or hatred, or in some cases they may have committed some minor offence, which is a pretext for a politically-motivated imprisonment. In Myanmar, civil society groups and others often use the term political prisoner and have been campaigning for the government to recognise the term.<sup>4</sup>

In this report the term political prisoner is used to indicate a detainee or prisoner whose case has a significant political element, which can include the motivation of the prisoner’s acts, the acts in themselves or the motivation of the authorities in imprisoning them. However this application does not mean that Amnesty International has recognised the person as a prisoner of conscience who should be immediately and unconditionally released.

## RECOMMENDATIONS

Since President Thein Sein came to power in March 2011, Myanmar has experienced rapid transformation. Yet while there have been a number of key reforms increasing the space for freedoms of expression, association and peaceful assembly, many of these do not go far enough and are seriously undermined by the ongoing arrests and imprisonment of human rights defenders and other activists simply for exercising their rights.

The National League for Democracy (NLD) led government will take power at the end of March 2016. This offers an important opportunity to end the cycle of arbitrary arrests and imprisonment and ensure that the rights to freedom of expression, association and peaceful assembly are respected and upheld in the country.

To this end the incoming government should take immediate and concrete steps to:

- Immediately and unconditionally release all those detained simply for the peaceful exercise of their human rights, and drop charges pending against those who are facing imprisonment simply for the peaceful exercise of these rights. Expunge the criminal records of all those convicted simply for the peaceful exercise of their rights. Review the cases of all detainees and prisoners not falling into the above category, who have been subjected to politically motivated prosecutions and/or unfair trials, and determine whether the individual should be released or given a prompt and fair retrial which complies with international fair trial standards;

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<sup>4</sup> Despite efforts to define the term in Myanmar, there is no consensus. See for example *AAPP & FPPS Press Release about the Definition of a Political Prisoner*, 2 September 2014, available at: <http://aappb.org/2014/09/aapp-fpps-press-release-about-the-definition-of-a-political-prisoner/>, accessed 15 February 2016.



- Repeal, or review and amend all laws that violate the rights to freedom of expression, peaceful assembly and association, including but not limited to provisions of the Penal Code, the Peaceful Assembly Act, the 1908 Unlawful Associations Act, the 2013 Telecommunications Act, and the 1923 Official Secrets Act to ensure these and other laws comply with international human rights law and standards. Pending the amendment of these laws to bring them in line with international standards, ensure that no one is arrested or detained under these provisions; and
- Relaunch the Prisoner of Conscience Affairs Committee or establish a new Committee, with a mandate to review the cases of all those charged or deprived of their liberty simply for the peaceful exercise of their human rights, with a view to securing their release and having the charges against them dropped; to formulate and present recommendations to the relevant government ministries and other authorities aimed at ending arbitrary arrests and detention. Ensure that the Committee is able to operate independently, effectively and transparently.

## METHODOLOGY

This report is based on field research conducted by Amnesty International and focuses on arbitrary arrests<sup>5</sup> and restrictions on freedoms of expression, association and peaceful assembly in Myanmar since the start of 2014, following a wide-ranging Presidential pardon announced on 30 December 2013. It builds on Amnesty International's long standing work in documenting, reporting on, and monitoring arbitrary arrests and political imprisonment in Myanmar and is part of a wider programme of work on restrictions on freedoms of expression, association and peaceful assembly in the country.

The findings of this report are based primarily on visits to Myanmar by Amnesty International in June to July 2015 and in December 2015. Amnesty International delegates visited Yangon and Mandalay where they interviewed 71 human rights defenders, activists, lawyers and journalists, members of civil society organizations, former prisoners of conscience and political prisoners, and relatives of imprisoned individuals. Interviews were conducted either in English or in the Myanmar language (Burmese) with English interpretation. All interviewees were informed of the purpose of the interview and how their information might be used. None received compensation or other financial incentives for their testimony. Due to security concerns for interviewees, some interviews were conducted by telephone. Telephone interviews and regular e-mail communication continued up until the time of publication.

Amnesty International delegates also met representatives from international non-governmental organizations (NGOs), the Myanmar National Human Rights Commission (MNHRC), the United Nations (UN), and diplomatic missions in Myanmar. Finally, the report draws on regular contact with lawyers defending political detainees; daily news monitoring of issues relating to freedoms of expression, association and peaceful assembly; extensive analysis of laws in Myanmar; previous visits to Myanmar and Thailand,<sup>6</sup> and in-depth review of relevant academic and other professional publications.

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<sup>5</sup> There are three main situations where arrest, detention or imprisonment is arbitrary: when an individual is deprived of their liberty without a clear basis in law; where persons are detained solely for the peaceful exercise of certain rights such as freedom of expression or association; or in cases of sufficiently serious violations of the right to fair trial. See Fact Sheet No. 26, The Working Group on Arbitrary Detention, Section IV(A)-(B), available at: <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>, accessed 15 February 2015. Arbitrary arrest, detention and imprisonment are prohibited under international human rights law, for example, in Article 9 of the Universal Declaration of Human Rights (UDHR) and Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). It is also prohibited in Article 37(b) of the Convention on the Rights of the Child (CRC), to which Myanmar is a state party (acceded to on 15 July 1991).

<sup>6</sup> Specifically, visits to Myanmar in March 2014 and to Thailand in December 2014, when Amnesty International delegates met representatives of local and international NGOs as well as lawyers, human rights defenders, and others.

On 16 December 2015, Amnesty International sent seven letters to the Myanmar authorities, each with a detailed set of questions arising from the research. Letters were sent to the President's Office, the Chair of the Prisoner of Conscience Affairs Committee, the Minister of Home Affairs, the Attorney General, the Vice-Director General of the Attorney General's Office, Parliament's Rule of Law, Tranquility and Stability Committee and the Bill Committee, with a request for input by 8 February 2016.<sup>7</sup> To date no responses have been received.

Amnesty International extends its thanks to the individuals and organizations who consented to meet with its delegates and provide information for this report. In particular, the organization wishes to extend its deep appreciation to the victims, their families and representatives who shared their stories and entrusted Amnesty International to raise their concerns. If interviewees have consented, their real names are used. Otherwise names and other identifying information have been withheld for safety and confidentiality reasons.

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<sup>7</sup> Internal correspondence, references: TG ASA 16/2015.029; TG ASA 16/2015.030; TG ASA 16/2015.031; TG ASA 16/2015.032; TG ASA 16/2015.033; TG ASA 16/2015.034; TG ASA 16/2015.035.

# 2. LONG HISTORY OF POLITICAL ARREST AND IMPRISONMENT

## DARK DAYS UNDER MILITARY GOVERNMENTS

**“There is essentially no freedom of thought, opinion, expression or association in Myanmar. The absolute power [of military government] is exercised to silence opposition and penalize those holding dissenting views or beliefs...the people live in a climate of fear in which whatever they or their family members may say or do, particularly in the area of politics, involves the risk of arrest and interrogation by the police or military intelligence.”**

Special Rapporteur on the situation of human rights in Myanmar, February 1997<sup>8</sup>

For almost five decades, since General Ne Win’s 1962 coup d’état, the people of Myanmar lived under a series of oppressive regimes which imposed severe restrictions on basic freedoms. Hundreds of thousands of people, including dissidents and members of Myanmar’s many ethnic groups, fled the country to seek refuge abroad, while those who remained grappled with the country’s poor social, political and economic situation. Many suffered wide-ranging abuses of their rights at the hands of the authorities and others in positions of power.<sup>9</sup>

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<sup>8</sup> Raismoor Lallah, Special Rapporteur on the situation of human rights in Myanmar, *Situation of human rights in Myanmar: Report of the Special Rapporteur*, UN Doc. E/CN.4/1997/64, 6 February 1997, para. 106.

<sup>9</sup> See Amnesty International, *Crimes against humanity in Eastern Myanmar*, (Index; ASA 16/011/2008), 5 June 2008; *Leaving home* (Index: ASA 16/023/2005), 7 September 2005; *The Rohingya minority: Fundamental rights denied* (Index: ASA 16/005/2004), 18 May 2004; *Ethnic*

These abuses were especially evident in the repression of the rights to freedom of expression, peaceful assembly and association. Political activities were often suppressed, media was heavily censored and public gatherings were either severely restricted or banned outright. The authorities used the law not only to limit any public discussion and debate but also to greatly restrict the flow of information, both within the country and to and from the outside world.

Political arrests were a major tool of repression, used to suppress criticism of the government, its policies and practices. Thousands of people – political activists, members of political parties, journalists, writers, lawyers, Buddhist monks and nuns, teachers, academics and others – were arrested, detained, prosecuted and imprisoned. Although patterns of arrest and imprisonment changed over time, and despite the sporadic releases of political prisoners, the overall climate of repression remained largely the same.<sup>10</sup>

Broadly worded laws restricting the rights to freedom of expression, peaceful assembly and association were used to charge and sentence political detainees to years of imprisonment. It is important to note that many of these laws still stand. Trials resulting from these political arrests routinely failed to meet international fair trial standards. Political detainees were often tried in closed courts, without access to legal representation, and without time to prepare a proper defence. These trials were often summary and concluded within a very short period of time. Many political detainees were unable to call witnesses or to appeal against their convictions. In particular, the independence of the judiciary was seriously compromised in political cases by means of intimidation and other pressures from the military.<sup>11</sup>

Torture and other ill-treatment of prisoners – including political prisoners – was institutionalized. Amnesty International received consistent reports of political prisoners being shackled in their cells, deprived of light, held in stress positions for extended periods of time, denied medicine, food, exercise and water for washing, and held for long periods in small cells, some of which are intended for dogs. Some female political prisoners were subjected to sexual violence, including rape, sexual assault, threats of rape, sexual harassment, and sexualized torture, while in prison.<sup>12</sup> High profile activists or those seen as “threats” were often held in solitary confinement.<sup>13</sup> Some prisoners were sent to carry out forced labour in work camps, often in conditions which constituted cruel, inhuman or degrading punishment. Many did not survive.<sup>14</sup>

Conditions in detention were poor, characterized by overcrowding, lack of proper food, clean drinking water, proper sanitation and access to adequate medical care and treatment. Many detainees died – either as a result of torture and other ill-treatment, or because they were denied adequate medical treatment.<sup>15</sup> Yet those responsible were rarely held to account, entrenching a climate of impunity in Myanmar which still persists.

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*minorities: Targets of repression* (Index: ASA 16/014/2001), 12 June 2001; *Exodus from the Shan State* (Index: ASA 16/011/2000) 9 July 2000; *Ethnic minority rights under attack* (Index: ASA 16/020/1997), 21 July 1997; “*No place to hide*”: *Killings, abductions and other abuses against ethnic Karen villagers and refugees* (Index: ASA 16/013/1995), 5 June 1995; and *Human rights violations against Muslims in the Rakhine (Arakan) State* (Index: ASA 16/006/1992), 30 April 1992.

<sup>10</sup> See Amnesty International, *Myanmar: Update on political arrests and trials* (Index: ASA 16/046/1996), 31 August 1996; *Myanmar: Prisoners of political repression*, (Index: ASA 16/006/2001), 17 April 2001; *Myanmar’s political prisoners: A growing legacy of injustice* (Index: ASA 16/019/2005), 15 June 2005; *Myanmar: No return to normal* (Index: ASA 16/037/2007), November 2007.

<sup>11</sup> See Amnesty International, *Myanmar: “In the national interest”: Prisoners of conscience, torture, summary trials under martial law* (Index: ASA 16/010/1990), 7 November 1990; *Myanmar (Burma): Unfair political trials* (Index: ASA 16/06/91), September 1991; *Myanmar: “No law at all”: Human rights violations under military rule* (Index: ASA 16/011/1992), 30 September 1992; *Myanmar: Human rights after seven years of military rule* (Index: ASA 16/23/95), October 1995; and *Myanmar: Justice on trial* (Index: ASA 16/019/2003), 30 July 2003.

<sup>12</sup> See Burmese Women’s Union & Assistance Association for Political Prisoners (Burma), *Women political prisoners in Burma*, Joint Report, September 2014; and Asia Justice and Rights (AJAR), *Opening the Box: Women’s Experiences of War, Peace, and Impunity in Myanmar*, September 2015.

<sup>13</sup> Amnesty International, *The institution of torture* (Index: ASA 16/24/00), December 2000; and *Myanmar: “No law at all”: Human rights violations under military rule* (Index: ASA 16/011/1992), 30 September 1992.

<sup>14</sup> See Amnesty International, *Myanmar: A challenge for the international community* (Index: ASA 16/028/1997), November 1997; and *Myanmar: Conditions in prisons and labour camps* (Index: ASA 16/022/1995), 21 September 1995.

<sup>15</sup> Amnesty International, *The institution of torture* (Index: ASA 16/24/00), December 2000; and *Myanmar 1988 to 1998 Happy Anniversary? Death in Custody* (Index: ASA 16/016/1998), 29 May 1998.

Poor prison conditions meant that political prisoners usually relied on family members and friends to bring medicines and food to supplement their meagre supplies. The authorities would often transfer prisoners to prisons in remote areas, robbing them of this important lifeline.<sup>16</sup> Former prisoners have told Amnesty International that this tactic was used to try to break their spirit.

By 2010, the first year that Myanmar held general elections since 1990, the situation had not improved. Tomás Ojea Quintana, the then UN Special Rapporteur on the situation of human rights in the Myanmar noted: “[t]he large number of prisoners of conscience in Myanmar demonstrates the abrogation of the fundamental rights to freedom of expression, assembly and association.”<sup>17</sup>

## PRESIDENT THEIN SEIN RENEGES ON HIS PROMISES

**“I guarantee to you that by the end of this year, there will be no prisoners of conscience in Myanmar.”**

President Thein Sein, speaking at Chatham House, London, 15 July 2013.

In 2011, a quasi-civilian government under the leadership of President Thein Sein came to power following widely criticized general elections in November 2010. Many feared a continuation of the status quo. Yet, to the surprise of many, the new government, although still heavily backed by the military, quickly set about making a number of key political, economic and social reforms, and began to relax some, but not all, of the restrictions on freedoms of expression, association and peaceful assembly.

Among the changes was the relaxation of restrictions on peaceful protests. In December 2011, Parliament adopted the Peaceful Assembly Act,<sup>18</sup> as part of efforts to enable peaceful protests. Whereas once such activities had been severely or else banned outright, they were now permitted in some circumstances. Other measures included the abolition of pre-publication censorship, with media outlets no longer required to submit in advance articles to the country’s Press Scrutiny and Registration Department (PSRD) and the relaxation of visa restrictions for foreign journalists and dissidents in exile.

International pressure to free the country’s many prisoners of conscience increased, and in May 2011 President Thein Sein announced a prisoner amnesty in which dozens of political prisoners were released. This was followed five months later in October by a second amnesty, which saw more than 200 political prisoners freed. To date, the authorities have released over 1,100 political detainees<sup>19</sup> as part of 20 prisoner amnesties and pardons.<sup>20</sup> Most prisoner releases took place in advance of high-profile events, apparently for maximum political leverage.

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<sup>16</sup> Amnesty International, *Myanmar: A challenge for the international community* (Index: ASA 16/ 028/1997), November 1997; and Tomás Ojea Quintana, UN Special Rapporteur on the situation of human rights in Myanmar, *Situation of human rights in Myanmar, report to the UN General Assembly, A/64/318*, 24 August 2009, para. 25.

<sup>17</sup> Tomás Ojea Quintana, UN Special Rapporteur on the situation of human rights in Myanmar, *Situation of human rights in Myanmar, report to the UN Human Rights Council*, 10 March 2010, A/HRC/13/48, para. 13

<sup>18</sup> Which came in to force on 5 July 2012.

<sup>19</sup> Tomás Ojea Quintana, UN Special Rapporteur on the situation of human rights in Myanmar, *Situation of human rights in Myanmar, report to the UN Human Rights Council*, 2 April 2014, A/HRC/25/64, para.4

<sup>20</sup> There were two amnesties in 2011 (16 May and 12 October); six in 2012 (4 January, 13 January, 3 July, 17 September, 15 November and 19 November), seven in 2013 (23 April, 17 May, 23 July, 8 October, 15 November, 11 December and 31 December), two in 2014 (3 January and 7 October), two in 2015 (19 January and 30 July), and one in 2016 (22 January).

The easing of restrictions on freedom of expression, association and peaceful assembly led people to assert these rights, with increasing demands for freedom, justice and accountability. Politically motivated arrests did not stop entirely, however, the patterns differed from before. While activists were still arrested, there were often fewer charges, filed under new legislation governing peaceful protests; terms of imprisonment were much shorter; and often people were fined rather than imprisoned. Greater press and internet freedoms also made obtaining information about politically motivated arrests much easier. One of the most striking changes is in the treatment of political prisoners, who Amnesty International's research indicates, are no longer routinely tortured as they were under the military government.

In July 2013 President Thein Sein announced his government's intention to release all prisoners of conscience, stating that none would be in jail by the end of the year.<sup>21</sup> This was followed on 30 December 2013 by the announcement of a wide-ranging Presidential pardon for all individuals who had been convicted, or whose cases were being heard, or who were undergoing investigation for acts committed on or before 31 December 2013 under seven repressive laws.<sup>22</sup> Scores of activists and human rights defenders were either released or had the charges against them dropped as a result of the pardon. Hopes were high that the cycle of imprisonment, release and re-arrest had finally come to an end.

Hope soon faded however, when it became clear that not all prisoners of conscience and other political prisoners had been released.<sup>23</sup> Moreover, political arrests resumed within days of the pardon. Since then, hundreds of individuals have been arrested, detained and imprisoned solely for peacefully exercising their rights to freedom of expression, association and peaceful assembly, creating a new generation of prisoners of conscience in Myanmar.<sup>24</sup>

Worryingly, Amnesty International's research indicates an intensification of politically motivated arrests, detentions and imprisonment since the start of 2014, with a resurgence in the use of oppressive, military era-laws, and increasing use of new laws, such as the Peaceful Assembly Act and the Telecommunications Law. The use of these laws is coupled with abusive tactics allowing the authorities to detain and imprison peaceful activists for long periods of time. The new NLD-led government coming into power at the end of March represents an important opportunity to reverse this trend.

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<sup>21</sup> Transcript: Myanmar's Complex Transformation: Prospects and Challenges, HE Thein Sein, President of the Republic of the Union of Myanmar, 15 July 2013, available at: <https://www.chathamhouse.org/sites/files/chathamhouse/public/Meetings/Meeting%20Transcripts/150713Sein.pdf>, accessed 13 January 2016.

<sup>22</sup> Presidential Pardon (Order No. 51/2013). The seven laws identified were the 1908 Unlawful Associations Act; Penal Code Sections 122 ("Treason"), 124(a) ("Sedition"), and 505(b) (inciting people to commit acts against the state or public tranquillity); the Law to Safeguard the State from the Danger of Subversive Elements; Peaceful Assembly and Peaceful Procession Law; and the 1950 Emergency Act. A second Presidential Pardon (Order No. 1/2014), reducing remaining prison sentences for all detainees – including political prisoners – was announced on 2 January 2014.

<sup>23</sup> Prisoners of conscience Tun Aung and Kyaw Hla Aung, both Muslim leaders from Rakhine State, where the persecuted Rohingya minority live and who were imprisoned on politically motivated charges in 2012 and 2013 respectively remained behind bars.

<sup>24</sup> Amnesty International, *Going back to the old ways: A new generation of prisoners of conscience in Myanmar*, (Index: ASA 16/2457/2015), 8 October 2015 (Amnesty International, *Going back to the old ways*).

# A NEW DAWN? AN OPPORTUNITY TO END THE CYCLE OF POLITICAL ARRESTS AND IMPRISONMENT

**“There should be no political prisoners in a democratic country.”**

Aung San Suu Kyi, interview with *Radio Free Asia*, November 2015.<sup>25</sup>

On 8 November 2015, Myanmar held highly publicised general elections, which saw the opposition NLD, led by Aung San Suu Kyi, secure a landslide victory. Myanmar’s new Parliament began its first session on 1 February 2016, and a new government is scheduled to assume power at the end of March 2016.

Since the elections, various NLD officials have stated that the issue of political imprisonment will be a “top priority” for the incoming administration, and that under an NLD-led government, Myanmar will refrain from arresting individuals simply for the peaceful exercise of their rights.<sup>26</sup> Aung San Suu Kyi is said to have told diplomats at a briefing shortly after the election that the continued imprisonment of peaceful political activists would not be consistent with the country’s transition to democracy.<sup>27</sup>

Although these commitments are to be welcomed, Amnesty International has serious concerns about how they will be translated into action. Under Myanmar’s flawed 2008 Constitution, the Ministry of Home Affairs, which oversees the Myanmar Police Force, including the Special Branch; the general administration of justice; and the General Administration Department (GAD), remains under military control. It is unclear to what extent an NLD-led government will be able to end arbitrary arrests and imprisonment of peaceful activists and critics without authority over these key ministries and departments.

One major opportunity for the incoming government, however, is the possibility of reforming or repealing the specific aspects of Myanmar’s legal framework that have been used to arrest and imprison peaceful activists. Bringing Myanmar’s legal framework in line with international human rights law would be an important step towards ensuring a lasting end to the cycle of political arrests and imprisonment in Myanmar.

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<sup>25</sup> *Radio Free Asia*, “Interview: Aung San Suu Kyi says it is not finished yet,” 11 November 2015, available at: <http://www.rfa.org/english/news/myanmar/myanmar-assk-11112015165922.html>, accessed 28 January 2016.

<sup>26</sup> Wa Lone, “Political prisoners will be our first priority, says NLD,” in *The Myanmar Times*, 12 November 2015 available at: <http://www.mmimes.com/index.php/national-news/17582-political-prisoners-will-be-our-first-priority-says-nld.html>, accessed 6 January 2016; and Ye Mon, “NLD pledges no more political prisoners,” in *The Myanmar Times*, 6 January 2016, available at: <http://www.mmimes.com/index.php/national-news/18343-nld-pledges-no-more-political-prisoners.html>, accessed 6 January 2016.

<sup>27</sup> Amnesty International interviews with diplomats, December 2015.

# 3. INCREASE OF POLITICALLY MOTIVATED ARRESTS AND IMPRISONMENT

Despite a series of prisoner releases in Myanmar, the last two years have seen a hardening in the authorities' attitude to human rights defenders, peaceful activists and those critical of the government. As these critics became more vocal, the authorities have increasingly resorted to arrest, detention, prosecution and imprisonment to target student protesters, political activists, media workers and human rights defenders, in particular land and labour activists.

The resumption of politically motivated arrests in 2014 prompted Amnesty International to conduct in-depth research on new cases of arbitrary arrests, detention and imprisonment. Our findings reveal that the Myanmar authorities have over the past two years increasingly used politically motivated detention and imprisonment in a way which has weakened human rights defenders and activist organizations and movements and instilled a climate of fear among them. Amnesty International's research also indicates that sentences are, for the most part, longer in duration than those handed down at the beginning of the Thein Sein administration. In some notable cases the authorities have also apparently sought to appease Buddhist nationalist groups through arrests and harassment of those speaking out for religious tolerance.

## 3.1 RESURGENCE OF LENGTHY DETENTION AND IMPRISONMENT

Prison sentences of several years or even decades were a common feature of political imprisonment in Myanmar under former military governments. Although human rights defenders and activists continued to be charged in the early years of the Thein Sein administration, they tended to face fewer charges, and were often given shorter sentences.



However, since the start of 2014, the authorities have reverted to a number of both old and new tactics, such as charging people with multiple offences for the same actions, charging people in different townships for the same action, or increasingly resorting to charging people with non-bailable offences, with the result that human rights defenders and activists are kept in prison for lengthy periods of time.

## CHARGING WITH MULTIPLE OFFENCES

In 2012 and 2013, individuals arrested and charged for their human rights or political activities often faced charges predominantly under one law: the newly adopted Peaceful Assembly Act. However since the start of 2014, Amnesty International has documented a resurgence in the number of cases where people face not only one charge but a list of different criminal offences, often for the same action. Moreover, those who receive prison sentences must, unless the judge specifies otherwise, serve them consecutively, resulting in lengthy prison terms.<sup>28</sup>

In particular, activists accused of participating in peaceful protests are often subject to additional charges known as the “public servant” clauses. These include deterring a public servant from his or her duty by “causing hurt” (Section 332 of the Penal Code) or “causing grievous hurt” (Section 333)<sup>29</sup> or by “assaulting, threatening to assault or obstructing” a public servant suppressing a riot or unlawful assembly (Section 152).<sup>30</sup>

For example, election candidate **Myat Nu Khaing** was charged with a series of offences under the Penal Code, for taking part in a peaceful protest on 29 December 2014 against the use of excessive force by state security forces at the Letpadaung copper mine in Sagaing Region. The charges levelled against her include inciting the public to commit offences “against the State or the public tranquillity” (Section 505(b)); “assaulting or preventing a public servant from the discharge of his duty” (Section 353); performing “obscene acts and songs” in public (Section 294); “assaulting or obstructing public servant when suppressing a riot” (Section 152); and “rioting” (Section 147). There is no evidence that she committed any of these offences. As a result of these charges she now faces up to nine years and nine months’ imprisonment solely for participating in the protest.

These charges are used even where reliable sources confirm that individuals did not use or incite violence, such as the case of four Rohingya men who in March 2015 were sentenced to terms of imprisonment of between eight and five years for their role in a 2013 community protest against a government-led population registration exercise in Rakhine State, which did not allow members of the community to identify as Rohingya.<sup>31</sup> These protests led the authorities to suspend the registration exercise.<sup>32</sup>

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<sup>28</sup> Amnesty International, *Myanmar: Justice on trial* (Index ASA 16/019/2003), 30 July 2003.

<sup>29</sup> Section 332 of the Penal Code provides that: “Whoever, voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or order that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.” It is a bailable offence. Section 333 of the Penal Code increases the charge from “hurt” to “grievous hurt”, and the maximum prison sentence to 10 years. It is a non-bailable offence.

<sup>30</sup> Section 152 of the Penal Code provides that: “Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”.

<sup>31</sup> The Rohingya are a Muslim ethnic minority, the vast majority of whom live in northern Rakhine State in western Myanmar, who have faced decades of state-sponsored persecution. The Myanmar authorities deny the existence of the Rohingya – insisting on referring to them as “Bengalis”, viewed by many as a divisive term used to deny recognition of the community and to imply they are actually migrants from neighbouring Bangladesh.

<sup>32</sup> See box: Targeting the leaders, p21.

As one Myanmar human rights lawyer told Amnesty International:

*“The public servant clauses are only used in political cases – and it is common. They are used to try to threaten people not to do it again. For just one protest, they [the activists] might face five charges. Then they think twice whether they want to protest or undertake their activities. The fear they can be arrested and put in prison for a longer time makes them think twice.”<sup>33</sup>*

The use of charge sheets with multiple charges is one way in which the Myanmar authorities imprison activists for a long period of time.

## **MULTIPLE CHARGES IN MULTIPLE TOWNSHIPS**

Another common pattern in politically motivated arrests and imprisonment under the Thein Sein administration is the tendency to charge activists several times in different townships, effectively lengthening their sentences. This tactic is particularly used against peaceful protesters, who are often charged under provisions of the Peaceful Assembly Act in each township they pass through during a demonstration.

For example, **Naw Ohn Hla**, an ethnic Karen human rights defender, has been charged six times by six different townships in Yangon for a single, peaceful protest outside the Chinese embassy on 29 December 2014. She was among a group of some 100 people calling for an investigation into the excessive use of force by police during a protest at the Letpadaung copper mine the week before. The Dagon Township Court charged her with a range of offences under the Penal Code and with protesting without permission under Section 18 of the Peaceful Assembly Act, for which she was sentenced to a total of four years and four months’ imprisonment.

However, because Naw Ohn Hla had passed through different townships during the protest, the authorities charged her with violating Section 18 in five other townships – Kyauktada, Pabedan, Latha, Ahlone and Lanmadaw. A single charge under Section 18 carries a maximum of six months. Courts in four of those townships sentenced her to four months in prison, increasing her sentence by 16 months in total. Taken together, Naw Ohn Hla has been sentenced to a total of five years and eight months in prison for the 29 December protest.<sup>34</sup>

Charging individuals for the same offence in multiple townships is contrary to provisions in Myanmar’s Code of Criminal Procedure, in particular, Section 182.<sup>35</sup> Under this provision, when an offence is committed across differing areas, or where an offence is a continuing one, it may be tried by a court which has jurisdiction over one of the areas where an alleged offence took place. In the cases Amnesty International reviewed for this report, courts are disregarding this provision by interpreting it to mean that every court which has jurisdiction over the area where the offence took place is allowed to open a case. As mentioned above, in Myanmar prison sentences are usually served consecutively, unless the sentencing judge orders them to be served concurrently.<sup>36</sup> The authorities’ use of multiple charges for the same offence is resulting in long, cumulative sentences.

This tactic appears to be employed by the authorities with the sole aim of targeting human rights defenders, leaders of peaceful protests and political activists in order to increase their terms of imprisonment.

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<sup>33</sup> Interview with human rights lawyer, October 2015.

<sup>34</sup> The Ahlone Township Court ruled that her four month prison sentence be served concurrently with other sentences.

<sup>35</sup> Section 182 of the Code of Criminal Procedure states: “When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, where an offence is a continuing one, and continues to be committed in more Local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

<sup>36</sup> See Amnesty International, *Myanmar: Justice on trial* (Index ASA 16/019/2003), 30 July 2003, p25.

Although human rights lawyers told Amnesty International that they do challenge the legality of this tactic in court, judges usually fail to respond. One lawyer remarked: “Of course we raise with the judge that law does not allow it. But the judges are totally silent. They just follow orders from above.”<sup>37</sup>

## ELEVEN CHARGES IN ELEVEN COURTS: THE CASE OF HTIN KYAW

**Htin Kyaw is the leader of the community-based organization the Movement for Democratic Current Force (MDCF) and is currently serving a sentence of 13 years and 10 months’ imprisonment.**

In April and May 2014 Htin Kyaw distributed leaflets in different townships throughout Yangon criticizing the Myanmar government and calling on members of parliament to resign. He was arrested while doing so in South Okkalapa Township at 9am on 5 May 2014 and subsequently charged under Section 505(b) of the Penal Code.

However, Htin Kyaw was not charged solely in South Okkalapa Township, but in all 11 townships in which he distributed leaflets. As a result, between 23 June and 30 October 2014, Htin Kyaw was sentenced to a total of 12 years and six months’ imprisonment under Section 505(b) by 11 different Yangon courts for distributing leaflets.<sup>38</sup>

He was also sentenced for violating Section 18 of the Peaceful Assembly Act, charges stemming from his involvement in a series of peaceful protests. He is currently serving a total of 13 years and 10 months’ imprisonment in Insein prison in Yangon.

## USE OF NON-BAILABLE OFFENCES

**“More and more people are charged with [Section] 505(b). They [the authorities] don’t want activists out, free to keep doing their activities, so they use non-bailable charges to make sure they stay in jail.”**

Former prisoner of conscience and member of the Assistance Association for Political Prisoners (Burma).<sup>39</sup>

Since the beginning of 2014, Amnesty International has observed an alarming increase in the number of cases which feature charges for “incitement” under Section 505(b) of the Penal Code. Section 505(b) had been regularly used by the military government between 2006 and 2010 to imprison peaceful political activists and other dissidents;<sup>40</sup> however use of the provision became less common in the early years of the reform process (2011-2013).

Section 505(b) is a non-bailable offence.<sup>41</sup> Under Myanmar law, any person accused under Section 505(b) (or any other non-bailable offence), must be taken into custody, although they can later be granted bail if they are under the age of 16, are female, are sick or infirm and as long as there are no “reasonable grounds” to believe they have committed a crime which carries the death penalty or a sentence of life imprisonment.<sup>42</sup>

<sup>37</sup> Amnesty International interview with human rights lawyer, October 2015.

<sup>38</sup> On 23 June 2014 South Okkalapa Township Court sentenced Htin Kyaw to six months in prison; 21 July 2014 Eastern Dagon Township Court sentenced him to one year in prison; 21 July 2014 Northern Dagon Township Court sentenced him to one year in prison; 1 August 2014 Southern Dagon Township Court sentenced him to one year in prison; 5 August 2014 Thingangyun Township Court sentenced him to one year in prison; 11 August Mayangone Township Court sentenced him to one year in prison; 15 August 2014 Hlaingthaya Township Court sentenced him to one year in prison; 19 August 2014 Dagon Seikkan Township Court sentenced him to one year in prison; 3 September 2014 North Okkalapa Township Court sentenced him to one year in prison; 11 September 2014 Shwe Pyi Thar Township Court sentenced him to two years in prison; 30 October 2014 Kyauktada Township Court sentenced him to two years in prison.

<sup>39</sup> Amnesty International interview, Yangon, June 2015.

<sup>40</sup> See Amnesty International, *Myanmar Submission to the UN Universal Periodic Review Tenth session of the UPR Working Group of the Human Rights Council January 2011* (Index: ASA 16/008/2010), 5 July 2010, p4; and Human Rights Watch, “I Want to Help My Own People” *State Control and Civil Society in Burma after Cyclone Nargis*, 28 April 2010.

<sup>41</sup> See Myanmar Code of Criminal Procedure, Schedule II: Tabular Statement of offences.

<sup>42</sup> Code of Criminal Procedure, Section 497.

Amnesty International's research indicates that judges rarely grant bail to individuals facing charges under Section 505(b). As a result, using this provision essentially allows the authorities to keep activists off the streets for the duration of their trial.

For example, five students, all members of the Confederation of University Student Unions (CUSU), **Paing Ye Htut, Zayar Lwin, Nan Linn, Min Thu Kyaw** and **Ye Zarni Tun**, peacefully protested on 30 June 2015 in Yangon to call for the resignation of military members of parliament, who comprise 25% of the seats in Myanmar's legislature. Following the protest they were all charged with breaching the terms under which permission to protest was granted, under Section 19 of the Peaceful Assembly Act. However, Paing Ye Htut, Zayar Lwin and Nan Linn, who had apparently organized the protest and who gave speeches at the event were additionally charged with "incitement" under Section 505(b), allowing the authorities to detain them immediately. The three are now currently held at Insein prison while their trial is ongoing at the Kyauktada and Pabedan Township Courts.

Amnesty International's research indicates that leaders of protests and organizations or movements are particularly likely to be charged under Section 505(b) (See Section on the targeting of leaders below).

While Section 505(b) is the most commonly used non-bailable offence, Amnesty International is also concerned that other repressive laws which feature in politically motivated cases, such as Section 295(a) of the Penal Code (religious defamation) and Article 66(d) of the 2013 Telecommunications Act (defamation over a telecommunications network), are also classed as non-bailable offences and thus can be used to keep activists in detention prior to and during their trial.

## 3.2 THE WEAKENING OF ORGANIZATIONS AND MOVEMENTS

The Myanmar authorities have been using politically motivated detention and imprisonment in a way that significantly weakens dissident movements and human rights activities, targeting their leaders in particular. Trials of these leaders can take many months, disrupting their organizations' activities. In some cases, the authorities seem to be using politically motivated charges to target entire groups of individuals, in ways which severely curtail, and may even put an end to, their activities.

### TARGETING LEADERS

**"The police asked lots of questions. They kept on asking 'Who organized the protest? Who is mobilising the people? They showed me photos of Myo Min Min and Naing Htay Lwin [trade union leaders] and asked if they were behind the protest... Now we have no more plans to protest - our leaders are in prison, and some of the workers were fired after the protests... people are afraid to take action."**

A factory worker tells Amnesty International what happened when police questioned him about strikes and labour protests at the Shwe Pyi Thar industrial zone, in Yangon in early 2015.<sup>43</sup>

Amnesty International's research indicates that leaders of movements or organizations are particularly at risk of arrest on politically-motivated charges. In the cases examined by Amnesty International, the authorities appear to have singled out the leaders of protest movements and organizations critical of the government for arrest. Where many individuals were arrested and charged for a single event, for example a peaceful protest, the leaders were invariably charged with offences carrying longer prison sentences which would also not allow them to be granted bail.

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<sup>43</sup> Amnesty International interview, Yangon, June 2015.

## TARGETING THE LEADERS

**There are a disturbing number of cases in Myanmar where leaders of protests and other movements critical of the government or campaigning for justice and accountability, have been targeted for arrest and more severely punished than others within their organization. They include:**

**Htin Kyaw**, leader of the **MDCF**, who is serving a total of 13 years and 10 months' imprisonment for peacefully protesting and handing out leaflets critical of the government.<sup>44</sup> While other members of the organization have been arrested and imprisoned for similar, peaceful activities, none have faced as many charges or have received such long sentences. He is currently in Insein prison.

**Rohingya leaders Ba Thar, Kyaw Myint** and his son **Hla Myint** who were sentenced on 3 March 2015 to eight years' imprisonment for "rioting" and other criminal offences under the Penal Code. The court also sentenced **Kyaw Khin** to five years' imprisonment. The four men were arrested following a 2013 community protest against the government-led population registration exercise, which did not allow members of the community to identify as Rohingya. These protests led the authorities to suspend the registration exercise. Credible sources have told Amnesty International that the four men did not use or incite or support any violence. Amnesty International believes that they were targeted solely because they are influential Rohingya community leaders calling for the recognition of the Rohingya identity. They were all released as part of a presidential prisoner amnesty on 30 July 2015.

**Sein Than**, leader of the Michaungkan community, who allege that the Myanmar military confiscated their land and have been protesting for its return and for compensation for their losses. Sein Than was arrested on 31 July 2014 for his role in leading the community in a series of peaceful protests and sentenced to two years' imprisonment. Although at least 27 other Michaungkan community members have also been sentenced to imprisonment for taking part in the protests, none were charged with as many offences as Sein Than, and they consequently faced shorter jail terms. He was released as part of a presidential prisoner amnesty on 30 July 2015.

Shwe Pyi Thar factory union leaders, **Myo Min Min** and **Naing Htay Lwin** and labour rights activists **Naing Zaw Kyi Win** and **Thu Zaw Kyi Win**, who were sentenced to between two and two and a half years' imprisonment in 2015. They were charged for organizing and providing support to striking garment workers from factories in Yangon's Shwe Pyi Thar Industrial Zone earlier that year. Their arrests led to a halt to the labour protests. All four are currently in Insein Prison.

**Ye Yint Aung**, a farmer from Madaya in Mandalay Region, who was charged in April 2015 along with around 40 other farmers. They are charged for a symbolic, peaceful "plough protest", that is, for ploughing land they believe is theirs and which they claim was confiscated by the Myanmar authorities in the 1980s. While the mass trial of the farmers is still ongoing, he and three other farmers, known to be the leaders of the protest movement, were arrested and later sentenced to one year and four months' imprisonment for protesting without permission and for incitement under Section 505(b) of the Penal Code. The additional charges kept the four leaders in jail, thereby weakening the farmers protest movement.

Targeting leaders for arrest and imprisonment has proved to be a highly effective tactic in cracking down on peaceful criticism and dissent. By removing the driving force behind a protest movement, or an organization critical of the government, the Myanmar authorities are able to quickly and effectively disrupt the activities of those groups and those who participate in them. Without leaders, the ability to organize and mobilize is often significantly limited.

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<sup>44</sup> See Chapter 3, box p 19

As a member of MDCF said:

*“At the moment we are not doing many activities because our leader (Htin Kyaw) is in prison and because we spend all our time attending our members’ court hearings or visiting them in prison and supporting them.”<sup>45</sup>*

A member of the All Burma Federation of Students Unions (ABFSU), which has many members in detention or on bail facing politically motivated charges for student protests, also explained:

*“Having so many ABFSU members in prison has made us weaker and has made others afraid to join our organization... we know, if they [the authorities] want to arrest and charge us they will arrest the leaders... they target our leaders to weaken our movement.”<sup>46</sup>*

In addition, such actions foster a climate of fear among other activists, who may curtail their activities or otherwise modify their behaviours in order to reduce their own risk of arrest.

## TARGETING MOVEMENTS

Amnesty International believes that the authorities often target individuals for arrest solely as a result of their association, or perceived association, with particular activists, organizations or groups which are critical of the authorities; protesting against the government; or otherwise undertaking activities which the authorities do not like.

This is particularly the case for individuals believed to be connected to the student protests against the National Education Law, enacted in September 2014 which they say curtails academic freedoms.<sup>47</sup> Protests started in Myanmar towards the end of 2014, and continued despite a violent police crackdown in Letpadan, Bago Region on 10 March 2015. The police arrested over 100 students during the crackdown, charging 81 of them with a package of Penal Code offences.

In the days and weeks that followed, the authorities embarked on an apparently well-orchestrated campaign to punish all those perceived as connected with the protests. Scores of other student protesters, leaders and supporters were arrested, while human rights defenders and lawyers who expressed support for the student protests were subjected to surveillance, harassment and intimidation by intelligence agencies.<sup>48</sup> Many of the individuals arrested are currently in detention or on bail facing charges under the same package of Penal Code offences.

The fact that the students had protested at different times and in different locations, at times even on different issues, did not seem to affect the charges they faced; the authorities continued to apply the same sections of the Penal Code. In some cases these charges have been supplemented with additional charges under the Peaceful Assembly Act. Amnesty International is concerned that those arrested have been targeted as a result of their participation in, or perceived association with, the student protests, and that this approach amounts to a form of collective punishment.

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<sup>45</sup> Amnesty International interview with members of MDCF, Yangon, June 2015.

<sup>46</sup> Amnesty International interview with a member of the ABFSU, Yangon, June 2015.

<sup>47</sup> Among the students’ demands are for the law to recognize the right for students and teachers to establish and operate unions, and to ensure legal recognition for these unions; to allow for education in ethnic languages; ensuring inclusive education for all children, including children with disabilities, and allowing individuals expelled from academic institutions for previous political activities to resume their studies.

<sup>48</sup> Amnesty International, *End clampdown on student protesters and supporter* (Index: ASA 16/1511/2015), 23 April 2015.

Amnesty International is also concerned that almost a year after the crackdown on the student movement, authorities have continued to file charges against student leaders. In February 2016, at least three student leaders received additional charges for participating in unauthorized peaceful protests at the end of 2014 and at the beginning of 2015.<sup>49</sup>

Students who have continued to protest in 2016 have also been charged for their peaceful activities. Four students who led a peaceful demonstration in Mandalay Region in January 2016 marking the one year anniversary of the student protest marches have been charged under the Peaceful Assembly Act.<sup>50</sup>

## **CRACKDOWN ON THE STUDENT MOVEMENT**

**Student leaders, union members, and their supporters have been charged with a range of offences, all of them under the same Sections of the Penal Code – 143, 145, 147<sup>51</sup> and 505(b) – for protests which took place at different times, in different locations and about different issues. They include:**

**81 Letpadan student protesters** arrested on 10 March 2015 during a largely peaceful protest against the National Education Law in Letpadan, Bago Region, Central Myanmar. They had been marching since February towards Yangon and they were violently dispersed by police after talks between student leaders and the authorities to address their students' demands broke down. All were charged under Sections 143, 145, 147, 505(b) of the Penal Code and 45 of them remain in detention in Tharawaddy prison, Bago Region.<sup>52</sup>

**Six student protesters and student union members** charged for protesting peacefully on 10 March 2015 in Yangon. They had learned about the violent police crackdown in Letpadan earlier that day, and had gathered at Hledan junction in Yangon at 2:30pm to march downtown in protest. All were charged under Sections 143, 145, 147, and 505(b) of the Penal Code. Three of them are detained in Insein prison while on trial.

**Six student union members and their supporters** arrested in Myingyan, Mandalay Region between 27 and 30 March 2015 for organizing a peaceful protest on 27 March calling for the release of students arrested in Letpadan just weeks before. All six were sentenced on 28 January 2016 to nine months' imprisonment under Sections 143, 145 and 505(b) of the Penal Code by the Myingyan Township Court. Five were released on completion of their sentences<sup>53</sup> and one is on bail as he is facing additional charges for other protests.

**Four students in Mandalay** arrested in July 2015 after peacefully protesting on 29 June 2015. During the protest they had spray-painted a graffiti message over a sign at Yadanabon University, criticizing the military-dominated Parliament, calling for the release of all detained students and for the National Education Law to be amended. On 9 October 2015, they were each sentenced to a total of 12 months' imprisonment under Sections 143 and 505(b) of the Penal Code and Section 18 of the Peaceful Assembly Act. The judge ordered their sentences to be served concurrently meaning that their sentences were six months each, taking into account time served in pre-trial detention. Three were released on completion of their sentences on 22 December 2015; the fourth was released as part of a presidential prisoner amnesty on 22 January 2016.

<sup>49</sup> Naw Noreen, "Jailed students hit with fresh charges", *DVB*, 4 February 2016, available at: <http://www.dvb.no/news/jailed-students-hit-with-fresh-charges/60611>, accessed 17 February 2016.

<sup>50</sup> Zarni Mann, "Charges Filed Against Students Over Jan. 20 Protest March", *The Irrawaddy*, 11 February 2016, available at: <http://www.irrawaddy.com/burma/charges-filed-against-students-over-jan-20-protest-march.html>, accessed on 17 February 2016.

<sup>51</sup> Provisions relating to "unlawful assemblies", described and analysed in Chapter 4, p37

<sup>52</sup> 70 protesters are facing an additional charge under Section 332 of the Penal Code for "voluntarily causing hurt to deter public servant from his duty". Amnesty International is aware of reports that some of the protesters threw water bottles during the protest, although the main violence which took place on this occasion was that used by police against the student demonstrators. The organization is not aware of any evidence of individual criminal responsibility for acts of violence by any of the students, and at the time of writing, no evidence of violence by specific individuals had had been presented by the prosecution at the students' hearings before the Tharawaddy Township Court.

<sup>53</sup> Time spent in pre-trial detention counted as time served towards their sentence.

While members of some non-governmental organizations and communities have also been targeted for arrest,<sup>54</sup> Amnesty International's research indicates that journalists and other media workers are particularly at risk of being charged in ways which amount to collective punishment.<sup>55</sup>

### ***Bi-Midday Sun* media workers**

Five media workers from the *Bi-Midday Sun* newspaper were jailed in October 2014 after the paper published claims that opposition leader Aung San Suu Kyi and ethnic leaders had been elected as an interim government in July 2014. Reporter Kyaw Zaw Hein, Managing Editor Win Tin, Editor-in-chief Thura Aung, Officer-in-charge Yin Min Htun and Publisher Kyaw Min Khaing were all sentenced to two years' imprisonment for "incitement". Authorities also arrested and questioned two others, Executive Editor Ye Min Aung and owner Ei Ei San, however both were released without charge due to lack of evidence. They were all released in a presidential amnesty in July 2015.

### **The *Unity Weekly* media workers**

Five media workers from the *Unity Weekly* journal were arrested in January and February 2014 in connection with an article about an alleged chemical weapons factory. The authorities arrested and charged four reporters – Lu Maw Naing, Yarzar Oo, Paing Thet Kyaw and Sithu Soe – and the journal's Chief Executive Officer Tint San. The five media workers were each sentenced to 10 years in prison with hard labour, later reduced to seven years with hard labour on appeal. They are currently imprisoned in Pakkoku prison. The authorities also detained another *Unity Weekly* staff member and the wife of journalist Lu Maw Naing, however released both without charge after concluding that there was not enough evidence to charge them.

### **The *Daily Eleven* media workers**

In January 2014 five *Daily Eleven* media workers were charged with criminal defamation after the outlet published a story alleging misuse of public funds by Myanmar's Ministry of Information. Those charged were Chief Executive Officer Than Htut Aung, Managing Director Thein Myint, Chief Editor Wai Phyo, Deputy Chief Editor Myat Thit, and Nay Htun Naing, the Executive Editor and author of the article in question. Several months later, in June 2015, the Ministry filed contempt of court charges against 17 *Daily Eleven* staff members – including the five already on trial – after the newspaper reported on the trial of their colleagues. The Ministry claimed the article put undue pressure on the court hearing the case. On 24 December 2015, the 17 media workers were found guilty of contempt of court<sup>56</sup> and each sentenced to either one month in prison or a fine of 30,000 kyat (USD30 approx). They are appealing their conviction. The criminal defamation case was still ongoing at the time of publication.

In these cases, the authorities charged not only the author of a story deemed to be offensive, but numerous other staff members of the newspaper connected to the story. This tactic not only allows the authorities to target individual journalists, it also allows them to target media outlets as a whole. For small outlets where those detained comprise the majority of staff, the publications are no longer able to operate and may be forced to close down. For larger outlets such as *Daily Eleven*, the message is clear: "*When they are suing the biggest paper in the country, they [the authorities] clearly want to create fear by showing they can sue anyone.*"<sup>57</sup>

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<sup>54</sup> See Amnesty International, *More activists from same groups arrested* (Index: ASA 16/009/2014), 13 May 2014 and *Activist organization targeted again* (Index: ASA 16/029/2014), 6 November 2014.

<sup>55</sup> See Amnesty International, *Caught between state censorship and self-censorship: prosecution and intimidation of media workers in Myanmar* (Index: ASA 16/1743/2015), 17 June 2015 (Amnesty International, *Caught between state censorship and self-censorship*).

<sup>56</sup> Article 2(d) of the Contempt of Courts Law, The Pyidaungsu Hluttaw Law No. 17/2013, 29 July 2013.

<sup>57</sup> Amnesty International interview with the Chief Editor, *Daily Eleven*, Yangon, July 2015.



## PROLONGED TRIALS

A common complaint from human rights lawyers, victims of arbitrary arrest or detention and their families is the length of time it takes for a case to come to trial, and of the trial hearing itself. Many complained that court hearings are routinely adjourned,<sup>58</sup> often because state officials who are either complainants or witnesses to a case fail to appear for court hearings. Another factor leading to prolonged trials is the replacement of the presiding judge, often at short notice.

The routine postponement of court hearings means that proceedings frequently drag on for many months, in some cases for over a year. This not only allows the authorities to prolong the detention of political activists and human rights defenders, essentially keeping them out of action, it disrupts the work of those who are on bail but have to take time off from their work to attend multiple hearings. Many activists see this as yet another form of harassment by the authorities, designed to prevent or curtail their human rights activities.

For example, over a year and a half after his arrest on 25 August 2014, lawyer **Zaw Win** from Pyin Oo Lwin Township, Mandalay Region, remains in detention while on trial accused of “incitement” and protesting without permission. He was arrested and charged after he staged a peaceful solo protest against unfair judges calling for better administration of justice in May 2014. Prior to his detention, Zaw Win was well known for providing free legal representation to farmers protesting against land confiscations. He is currently detained in Mandalay’s Oh-Bo prison.

In another example, over a year after they were arrested and charged for largely peaceful protests in Letpadan, Bago Region, on 10 March 2015, 81 student leaders and protesters remain on trial charged with “unlawful assembly” and “incitement”, among other offences. At the time of writing 45 remain in detention at Tharawaddy prison, where they have been held since their arrest.

Under international human rights law, everyone charged with a criminal offence has the right to be tried without undue delay.<sup>59</sup> Individuals held in pre-trial detention have the right to have criminal proceedings against them conducted with particular speed and promptness, and if a person in detention is not brought to trial within a reasonable time, they have the right to be released from detention pending trial.<sup>60</sup> This right is based on the presumption of innocence and on the right to liberty, which requires that detention should be an exception and should last no longer than is necessary in a particular case.<sup>61</sup> Prolonged trials of political detainees are clearly in violation of these rights.

Amnesty International is concerned that extending trials through routine adjournments can also affect defendants’ access to legal counsel. In Myanmar, very few lawyers are willing to take on politically sensitive cases for fear of threats, harassment or other forms of reprisal,<sup>62</sup> resulting in a small pool of lawyers representing a large number of cases. While most of these lawyers represent “political cases” free of charge, travel to and from hearings and other associated costs can be very expensive, and can build up considerably over extended periods of time. The likelihood of adjournments, and a heavy caseload, means that in some cases, lawyers do not – or cannot – attend all court hearings.

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<sup>58</sup> Section 344 of the Code of Criminal Procedure grants judges the power to postpone or adjourn an inquiry or trial in the absence of a witness or for “any other reasonable cause”. There is no limit on the number of times a court hearing can be adjourned, although each adjournment cannot exceed 15 days at a time. However, Section 20(1) of the Courts Manual provides that, in criminal cases “when a case is tried locally every endeavour should be made to complete the trial without adjournment”. Section 24 further states that “When the hearing of evidence is begun, the hearing must be continued from day to day until all the witnesses in attendance have been examined, unless there are reasons, which must be recorded, for an adjournment.”

<sup>59</sup> ICCPR Article 14(3)(c). The right to be tried without undue delay is also guaranteed in Article 40(2)(b)(iii) of the CRC.

<sup>60</sup> See ICCPR Article 9(3).

<sup>61</sup> Amnesty International, *Fair Trial Manual* (Second Edition) (Index: POL 30/002/2014), April 2014, Chapter 7: Right of detainees to trial within a reasonable time or to release, pp70-73 and Chapter 19: Right to be tried without undue delay, pp143-6.

<sup>62</sup> Amnesty International interviews, June and July 2015. See also International Commission of Jurists (ICJ), *Right to Counsel: The Independence of Lawyers in Myanmar*, December 2013, Section V. Discipline and Harassment of Lawyers, pp22-26.

The wife of one detained activist told Amnesty International:

*“They keep changing the court appointment. The lawyer is absent for the Section 18 and 19 [Peaceful Assembly Act] charges because he says it’s a waste of time as they keep postponing the hearing – he has other important cases too and he says if he comes, they will only change the date again. He only comes for the Section 505(b) hearings.”<sup>63</sup>*

When trial hearings do take place, human rights lawyers have told Amnesty International that the delay between hearings often means that judges are not fully up to date with the case, delaying proceedings still further.<sup>64</sup>

Prolonged trials also have wider social and economic impacts on family members. Long trials can become very expensive, particularly if family members are required to travel long distances to get to the court. Often, families have to take time off work to attend hearings, thus affecting their income. The wife of one activist detained for peaceful protests told Amnesty International:

*“I have to take care of our children without help – we have no head of the household. I now have to manage everything by myself. I sew at home for a living. But I constantly have to take time off to go to court appointments and prison visits. I am worried I will lose my job if I keep taking time off.”<sup>65</sup>*

When men are detained it can often also have a particularly serious impact on their wives or other female relatives, as in Myanmar society men are usually the primary breadwinners and families are reliant on them to generate an income. The wife of one detained activist told Amnesty International: *“Usually we have two incomes, now we have only one... [as a result] I have had to take my two children to live with my 60 year old mother.”<sup>66</sup>* Another woman, whose husband has been imprisoned multiple times for his peaceful activism, told Amnesty International: *“Usually we go into debt when he is in prison – it is difficult to pay the household expenses, the kids’ school fees... The local community have a negative view of our family... People pressure me to leave him. They say he is no good, that he will keep protesting and be in and out of prison.”<sup>67</sup>*

This also exemplifies how family members can also face discrimination and stigmatization within their local community when their relatives are detained for politically motivated reasons.<sup>68</sup> A member of an organization which provides counselling and other support to former political prisoners told Amnesty International:

*“It’s usually very difficult for former political prisoners to get jobs. People don’t want to employ them and a lot of the time they don’t meet the criteria or have the right qualifications for the jobs because their education has been limited. If you have been in prison for political reasons employers are wary and don’t want to employ you. Family members of former political prisoners also face stigma and can have limited employment opportunities as a result of the relative’s detention. We had a case recently where the daughter of a former political prisoner was asked about her father’s political activities when she applied for a job. She didn’t get the job...”<sup>69</sup>*

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<sup>63</sup> Amnesty International interview, Yangon, July 2015.

<sup>64</sup> Amnesty International interviews in Yangon and Mandalay, June and July 2015.

<sup>65</sup> Amnesty International interview, Yangon, July 2015.

<sup>66</sup> Amnesty International interview, Yangon, July 2015.

<sup>67</sup> Amnesty International interview, Yangon, July 2015. See also Asia Justice and Rights (AJAR), *Opening the Box: Women’s Experiences of War, Peace, and Impunity in Myanmar*, September 2015, p14, 18 and pp70-71.

<sup>68</sup> Amnesty International interviews with organizations and individuals providing counselling and other services for former political prisoners in both Yangon and Mandalay, June and July 2015.

<sup>69</sup> Amnesty International interview, Mandalay, July 2015.

## 3.3 CREATING AND MAINTAINING A CLIMATE OF FEAR

The Myanmar authorities also use politically motivated charges and the fear of arrest in a way that creates and maintains a climate of fear among human rights defenders and activists. This includes charging activists months after a protest took place or creating uncertainty as to whether they have actually been charged at all. As a result, the threat of arrest constantly hangs over their heads, forcing human rights defenders and others to exercise caution when undertaking their activities.

### CHARGED MONTHS OR YEARS AFTER THE EVENT

**“I was surprised [by the charge] because it came six months after the protest. We have done protests like this in the past, I didn’t understand, why now? Why this case?”**

Journalist charged for participating in a peaceful protest six months after it took place.<sup>70</sup>

Amnesty International is concerned by several cases in which human rights defenders and other political activists have been charged many months, in some cases years, after the alleged offence took place.

- **Myat Nu Khaing**, a medical doctor and independent election candidate, was arrested in October 2015 for participating in a peaceful protest 10 months earlier. She had attended the peaceful demonstration outside the Chinese Embassy in Yangon on 29 December 2014. Although six other protesters, including leaders, were arrested, Myat Nu Khaing was not. Instead she continued her work before seeking election as a Parliamentary candidate for Phyu Township, Bago Region. She was arrested on 17 October 2015, just weeks ahead of the election. She has been charged with five different offences and is currently detained in Insein prison.<sup>71</sup>
- **Shwe Hmone**, a Yangon-based journalist organized a prayer protest calling for the release of imprisoned media workers on 2 November 2014. Shwe Hmone and some 50 others peacefully circled Yangon’s Sule pagoda and offered prayers for the detained journalists. One activist read a poem. Although police were present, no action was taken. It wasn’t until six months later on 16 May 2015 that she learned she had been charged under Section 19 of the Peaceful Assembly Act. On 18 December 2015, a Yangon court found her guilty and sentenced her to 15 days in prison or a 10,000 kyat (US\$10) fine. She chose to pay the fine.
- **Naw Ohn Hla**, a leading civil society activist was charged on 10 December 2013 for organizing a prayer ceremony calling for the release of Aung San Suu Kyi and all other prisoners of conscience six years earlier on 29 September 2007. She was charged with disturbing a religious ceremony under Section 296 of the Penal Code.<sup>72</sup> On 26 June 2015, the Dagon Township Court in Yangon sentenced her to six months’ imprisonment.<sup>73</sup>

The constant threat that they could be charged for activities which took place months or even years ago instils a climate of fear among activists and human rights defenders. As one human rights activist told Amnesty International:

*“It was so obvious when they charged Naw Ohn Hla for the Shwedagon Pagoda case. It showed – if they want to arrest and imprison us - they can.”<sup>74</sup>*

<sup>70</sup> Amnesty International interview, Yangon, 25 June 2015.

<sup>71</sup> See Chapter 3. Charging with multiple offences, p17

<sup>72</sup> Section 296 of the Penal Code states: “Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

<sup>73</sup> See Chapter 3, Multiple charges in multiple townships, p18

<sup>74</sup> Amnesty International interview with Moe Thway, former prisoner of conscience and President of Generation Wave, Yangon, June 2015.

## CHARGED OR NOT CHARGED?

**“Reporters informed me afterwards that I would be charged, but I didn’t hear anything about it myself from the police. There was no official announcement. I called the township police and asked if I had been charged. The officer said ‘We can’t tell you. I don’t know yet’... I am worried – I don’t know if I should go to the police station or wait for an arrest warrant.”**

A human rights defender and former prisoner of conscience, June 2015.<sup>75</sup>

**“Activists are never sure if they have been charged or not. They get no confirmation [from the authorities]... This makes them afraid... The authorities do this to stop them from doing their activities... to scare them... to prevent them from taking part in political activities.”**

A former prisoner of conscience and member of the Assistance Association for Political Prisoners (Burma).<sup>76</sup>

Amnesty International is concerned that human rights defenders and activists, in particular those who participate in peaceful protests, are sometimes not promptly and officially informed that they have been charged, or what those charges are. Several activists told Amnesty International that they had heard from media, friends or neighbours that they were facing charges, but not directly from the police or the courts.<sup>77</sup> In some cases, police themselves appear not to know whether activists are charged. Activists remain unsure of their situation in the absence of official notification. This uncertainty may lead human rights defenders to self-censor and be cautious when undertaking their activities. The lack of transparency also makes it difficult to assess the true scale of politically-motivated charges.

As highlighted above, under international human rights law all people charged with criminal offences have the right to be promptly informed in detail of the nature and cause of the charges against them.<sup>78</sup> The UN Human Rights Committee, the UN body charged with overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR), has stated that information about charges should be provided in writing, and if provided orally, should be confirmed in writing.<sup>79</sup>

By not informing human rights defenders and activists of criminal charges against them, the Myanmar authorities are not only denying them this right, they are also jeopardizing their right to adequate time and facilities to prepare a defence, which is also protected under international law and is a crucial safeguard against unfair trials.<sup>80</sup>

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<sup>75</sup> Amnesty International interview, Yangon, June 2015.

<sup>76</sup> Amnesty International interview, Yangon, June 2015.

<sup>77</sup> Amnesty International interviews, Yangon, June 2015.

<sup>78</sup> ICCPR Article 14(3)(a).

<sup>79</sup> UN Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. CCPR/C/GC/32 (2007).

<sup>80</sup> ICCPR Article 14(3)(b).

## A WIDER CLIMATE OF FEAR AND HARASSMENT

**“These days, the authorities don’t physically target you, but there is general surveillance. If we hold an event SB [Special Branch] will come to ask what we are doing, take photos and collect information. They will ask for names of participants, record who comes in and goes out of the meeting place, how long they stay for. Sometimes they tell the local people ‘Don’t go in there, you might be in trouble if you go’.”**

A human rights defender tells Amnesty International about his experience of surveillance when undertaking human rights activities and trainings.<sup>81</sup>

In the past two years, the authorities in Myanmar have used politically-motivated arrest, detention and imprisonment in a way that appears to be aimed at weakening protest movements, harassing human rights defenders and peaceful activists and instilling fear among them. The authorities compound the fear of arrest with other forms of intimidation and repression. Forty-six human rights defenders and activists interviewed for this report told Amnesty International that they had been subjected to some form of surveillance or intimidation by the authorities, often by members of Special Branch police. The interviews conducted expose a pervasive system of monitoring, which include being followed; having their photo taken when attending events and meetings; midnight inspections of their offices and homes; and harassment of family members, colleagues or friends.<sup>82</sup>

Many human rights defenders and activists also expressed concerns that the authorities were monitoring their online activities, in particular via social media sites like Facebook, which has become extremely popular in Myanmar, and is used by many activists as a tool to communicate and share information. One activist told Amnesty International: *“I posted my mobile number on the Facebook page of a workshop we were holding so people could contact me to register. Two days later an officer from SB called, asking me questions about the workshop, who was going and what it was about.”*<sup>83</sup>

## 3.4 INFLUENCE OF NATIONALIST GROUPS

A new disturbing trend under the Thein Sein government is the role of non-state actors, in particular Buddhist nationalist groups, in pushing for politically-motivated prosecutions.

In recent years, there has been an alarming rise in religious intolerance. Following large-scale sectarian violence between the Buddhist and mostly Rohingya Muslim communities in Rakhine state in June 2012, sparked by the alleged rape and murder of a Buddhist Rakhine woman by Muslim men, tensions between Buddhist and Muslim communities have grown throughout Myanmar. In recent years religiously motivated attacks, predominantly against Muslims, have taken place in several towns across the country.<sup>84</sup> During these episodes of violence, houses were burnt, madrasas destroyed and people beaten, in some cases to death. In March 2013, an attack on Muslim students, teachers and residents in Meiktila, a town in Mandalay Region by Buddhist mobs resulted in 43 deaths and led to some 13,000 persons being displaced.<sup>85</sup>

Religious intolerance has been fuelled by groups, such as the Ma Ba Tha (the Myanmar language acronym for The Association for the Protection of Race and Religion), which promote discriminatory ultranationalist agendas and have grown in power and influence. Sermons, leaflets, online social media messages and videos openly call for boycotts of Muslim-owned businesses, warn that Buddhist women need to be protected from

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<sup>81</sup> Amnesty International interview, Yangon, June 2015.

<sup>82</sup> See Amnesty International, *Going back to the old ways*, p12.

<sup>83</sup> Amnesty International interview, Yangon, June 2015.

<sup>84</sup> See International Crisis Group, *The dark side of transition: Violence against Muslims in Myanmar*, Asia Report N°2511, October 2013.

<sup>85</sup> See Report of the Special Rapporteur on the situation of human rights in Myanmar, 23 September 2013, UN Doc, A/68/397, para 59 and See Physicians for Human Rights (PHR), *Massacre in Central Burma: Muslim Students Terrorized and Killed in Meiktila* May 2013.

Muslim rapists, and describe Muslims as “dogs” and “snakes”.<sup>86</sup> At times their discourse amounts to advocacy of hatred constituting incitement to discrimination, hostility or violence which, under international human rights law should be prohibited.<sup>87</sup> However, the government has failed to speak out against such incitements. Instead, the authorities have filed charges against people who have supported interfaith harmony or spoken out against intolerance after being pressured by the *Ma Ba Tha* (see below). Such cases raise serious concerns about the authorities' lack of political will to stand up to pressure from such groups.

## THE CASE OF HTIN LIN OO

**Htin Lin Oo is a writer and former spokesperson for the NLD. He is currently serving two years in prison with hard labour for a speech criticizing the use of Buddhism to promote discrimination and prejudice.**

On 23 October 2014 Htin Lin Oo gave a speech at a literary event in Sagaing Region in central Myanmar. His speech, which lasted for around two hours and was addressed to a crowd of some 500 people, criticized groups that he said take advantage of religion to stoke discrimination. In the days and weeks that followed, a 10-minute edited version of the speech began to circulate on social media. Htin Lin Oo's comments in this short clip, which were presented out of context, caused outrage in particular among Buddhist nationalist groups. A complaint was filed against him at the Chaung-U Township police station, and on 2 June 2015, Htin Lin Oo was sentenced to two years in prison with hard labour for “insulting religion” under Article 295(a) of the Penal Code.

Htin Lin Oo's lawyer has criticised the sentence, claiming that the decision was influenced by the *Ma Ba Tha*, whose members had regularly attended court hearings and chanted slogans in an attempt to intimidate Htin Lin Oo's supporters and put pressure on the judge. He told Amnesty International: “*The Ma Ba Tha would assemble in front of the court, chanting ‘long live the Ma Ba Tha, long live U Wirathu’<sup>88</sup>... The first time we applied for bail, the court didn't dare release him. The Ma Ba Tha even tried to block me from coming to the court.*”<sup>89</sup>

Unfortunately, Htin Lin Oo's case is not an isolated one, and at least 12 other people have been either jailed or are on trial facing charges after members of the *Ma Ba Tha* pushed for criminal prosecutions. They are:

- Myanmar nationals **Tun Thurein** and **Htut Ko Ko Lwin**, and dual New Zealand/UK national **Philip Blackwood**, each sentenced to two and a half years in prison after an image of the Buddha wearing headphones was posted on social media to promote their Yangon bar. The image caused outrage among ultranationalist Buddhist groups, prompting complaints from monks aligned with the *Ma Ba Tha*. In response, an official from the Department of Religious Affairs filed a case against them and on 17 March 2015, Bahan Township Court in Yangon sentenced them to two years' imprisonment under Section 295 (a) and an additional six months for keeping the bar open beyond legal hours.<sup>90</sup> The three men were released on 22 January as part of a presidential amnesty.

<sup>86</sup> See for example, Kaplan, Sarah, “The serene-looking Buddhist monk accused of inciting Burma's sectarian violence”, *The Washington Post*, 27 May 2015, available at: <https://www.washingtonpost.com/news/morning-mix/wp/2015/05/27/the-burmese-bin-laden-fueling-the-rohingya-migrant-crisis-in-southeast-asia/>, accessed 22 February 2015; and Swe Win, “With official help, Myanmar's radical Buddhists target Muslim-owned businesses”, *Myanmar Now*, 17 September 2015, available at: <http://www.myanmar-now.org/news/i/?id=9ba61afc-285d-49bd-8f73-8b9efaf941c0>, accessed 22 February 2016.

<sup>87</sup> ICCPR, Article 20: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

<sup>88</sup> A Buddhist monk who is one of the leaders of the *Ma Ba Tha*.

<sup>89</sup> Amnesty International interview, Mandalay, July 2015.

<sup>90</sup> Amnesty International, “*Buddha bar*’ guilty verdict another blow to freedom of expression”, 17 March 2015, available at: <https://www.amnesty.org/en/latest/news/2015/03/myanmar-buddha-bar-verdict-a-blow-to-freedom-of-expression/> last accessed 23 February 2016.

- Muslim interfaith activists **Zaw Zaw Latt** and **Pwint Phyu Latt** and Hindu interfaith activist **Zaw Win Bo**, from Mandalay. Zaw Zaw Latt and Pwint Phyu Latt were arrested on 14 July 2015. Pwint Phyu Latt was released later that day but rearrested on 19 July. Zaw Win Bo was arrested on 22 July. All three were sentenced in February 2016 to two year imprisonment with hard labour for immigration-related offences under Section 13(1) of Myanmar’s 1947 Immigration (Emergency Provisions) Act, for allegedly crossing the Myanmar-India border during a humanitarian visit to Chin State in April 2014. In addition, Zaw Zaw Latt and Pwint Phyu Latt were also charged with violating Article 17/1 of the 1908 Unlawful Associations Act,<sup>91</sup> which carries up to three years’ imprisonment. At the time of writing their trial was still ongoing. The charge relates to a visit to conflict areas controlled by the Kachin Independence Army (KIA) in June 2013. Activists in Myanmar believe that the three were arrested for their interfaith awareness activities, which inflamed local *Ma Ba Tha* members. Family members also report that *Ma Ba Tha* members regularly attend their trial hearings, in an apparent attempt to intimidate them and pressure the judge.

- **Six men**, one Rohingya Muslim, three Bamar Muslims, one Bamar Buddhist and one ethnic Chinese, were charged with “incitement” for printing a 2016 calendar asserting that the Rohingya are an ethno-religious minority from Myanmar, and including information about the history of the Rohingya in the country. According to the First Information Report (FIR) filed by the police, the calendar contained material “offensive to race and religion”.<sup>92</sup> On 23 November, five of the men were sentenced under the Printing and Publishing Enterprise Law to pay approximately 800 US\$ fine. The next day, the five men were re-arrested by police and charged under Section 505(b) of the Penal Code. All five are detained in Insein prison while their trial is ongoing. The sixth man remains in hiding. Credible sources told Amnesty International that the case against the six men came after members of the *Ma Ba Tha* complained to local township authorities.<sup>93</sup>

These cases have had an inhibiting effect on freedom of expression in Myanmar, and foster an environment where any discussion around religion becomes increasingly inhibited. The cases against Htin Lin Oo and the Mandalay interfaith activists have also negatively impacted on activists working on religious freedom issues or otherwise attempting to challenge discrimination, who fear that they could also be arrested and imprisoned for their work. Human rights defenders, including journalists, lawyers and women’s rights activists, have told Amnesty International that they regularly face harassment and intimidation from the *Ma Ba Tha*.<sup>94</sup>

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<sup>91</sup> For more explanation and analysis of the 1908 Unlawful Associations Act see, Chapter 4, p42.

<sup>92</sup> Unofficial translation, on file with Amnesty International.

<sup>93</sup> Amnesty International interview, Yangon, December 2015.

<sup>94</sup> Journalists and women human rights defenders have reported receiving abusive text messages, phone calls and social media messages as well as threats of physical violence. See for example Amnesty International, *Caught between state censorship and self-censorship: Prosecution and intimidation of media workers in Myanmar* (Index ASA 16/1743/2015), 17 June 2015, pp15-16.

# 4. A REPRESSIVE LEGAL FRAMEWORK

**“The only reason we were not arrested in the recent past is because the authorities did not want to. Now if they want to arrest us they can, because the laws have not changed.”**

Student union member, July 2015<sup>95</sup>

The Myanmar authorities' use of vaguely worded and repressive laws to stifle dissent underpins and perpetuates politically motivated arrests, prosecutions and imprisonment. While some of these laws have been in place for decades, others have been enacted since 2011 under the Thein Sein administration. All of them can be, and are, used to arrest and imprison human rights defenders and other activists in the country. As long as these laws remain in place politically motivated arrests and imprisonment will continue.

## 4.1 INTERNATIONAL LEGAL FRAMEWORK: THE RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

The rights to freedom of expression, association and peaceful assembly are protected under international law. Although Myanmar has neither signed nor ratified key treaties which protect these rights,<sup>96</sup> they are enshrined in the Universal Declaration of Human Rights (UDHR) which articulates the most basic rights that all UN member states, including Myanmar, are legally bound to promote and protect under the UN Charter.

The right to freedom of expression is enshrined in Article 19 of the UDHR: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”* Such ideas can include political discourse, discussion on human rights, journalism, cultural and artistic expression, teaching and religious discourse.

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<sup>95</sup> Amnesty International interview with a student union member, July 2015.

<sup>96</sup> For example, Myanmar has not signed or ratified the ICCPR or the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).



The rights to freedom of association and peaceful assembly are enshrined in Article 20 of the UDHR: “Everyone has the right to freedom of peaceful assembly and association.”

Under international human rights law, restrictions on the rights to freedom of expression, association and peaceful assembly must be the exception rather than the rule. International human rights law also sets a three-part test that any restrictions on the rights to freedom of expression must meet in order to be lawful:

1. **Legality:** restrictions must be provided by clear, detailed and well-defined laws.
2. **Legitimacy:** restrictions can only be imposed to serve a legitimate aim explicitly specified in international human rights law, namely to protect the rights and reputation of others; national security, public order, public health or public morals. Human rights bodies provide strict interpretations of each of these.
3. **Necessity and proportionality:** measures must be both necessary to achieve the specific legitimate aim and proportionate, the state can only impose the least restrictive measure required to achieve any of the above protective aims and any restrictions must not be overbroad.

It should be noted that this is a cumulative test, all three requirements need to be met for a restriction to comply with international human rights law and standards.<sup>97</sup>

## 4.2 MYANMAR’S LEGAL FRAMEWORK

Myanmar’s legal framework is a combination of British colonial-era laws, such as the 1908 Unlawful Associations Act; post-independence laws such as the 1950 Emergency Provisions Act; laws enacted during the military era, such as the 1975 State Protection Act; and more recent legislation enacted during the 2011–2015 Thein Sein administration. From 1988 to 2010 in the absence of a Constitution or legislative body, the military government issued decrees and announcements. Many of these laws and decrees provide for arbitrary restrictions on the rights to freedom of expression, association and peaceful assembly.<sup>98</sup> In addition, the authorities also use criminal laws to fabricate or contrive criminal charges against individuals for politically motivated reasons, for example “trespass” related charges under Sections 447 and 448 of the Penal Code,<sup>99</sup> the “public servant clauses” mentioned in Chapter 3, and the 1947 Immigration (Emergency Provisions) Act.<sup>100</sup>

Amnesty International highlights below ten repressive laws and provisions which have been used to arrest, prosecute and imprison human rights defenders and activists since 2014. Many other laws and provisions remain on the books and could be used to arrest, prosecute and imprison human rights defenders and other activists. The specific laws discussed below must be repealed, or reviewed and amended to bring them in line with international human rights law and standards.

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<sup>97</sup> ICCPR Article 19(3); Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, paras. 21–36.

<sup>98</sup> Amnesty International, *Justice on trial* (Index: ASA 16/019/2003), 29 July 2003, p27.

<sup>99</sup> See for example the case of Zaw Pe and Win Myint Hlaing, Amnesty International, *Imprisoned for corruption investigation* (Index: ASA 16/006/2014), 2 May 2014.

<sup>100</sup> See the case of U Gambira, Amnesty International, *Former prisoner of conscience arrested: U Gambira* (ASA 16/3244/2016), 20 January 2016.

## THE 2008 CONSTITUTION

Myanmar's 2008 Constitution fails to sufficiently protect the rights to freedom of expression, association and peaceful assembly. Although Article 354 grants every citizen the liberty to exercise their rights to "express and publish freely their convictions and opinions"; to "assemble peacefully without arms and holding procession [sic]"; and to "form associations and organizations", these rights are only granted as long as they are not contrary to vague conditions such as "community peace and tranquillity".<sup>101</sup>

Moreover, the 2008 Constitution fails to protect the rights to freedom of expression, association and peaceful assembly for all people in Myanmar. Under Article 354 these rights are only granted to "citizens", thus denying protection to non-citizens on a discriminatory basis. In the context of Myanmar, where ethnic and religious minorities such as the Rohingya are denied access to citizenship based on discriminatory grounds, this lack of protection is particularly concerning. In general, human rights must be guaranteed to all persons within the state's territory and jurisdiction irrespective of citizenship status.<sup>102</sup>

## THE RIGHT TO PEACEFUL ASSEMBLY AND PEACEFUL PROCESSION ACT

After the Thein Sein government came to power in 2011, a number of measures were taken to relax restrictions on the rights to freedom of expression, association and peaceful assembly. A major step forward was the introduction of legislation which recognizes the right to peacefully assemble, a right which had been strictly curtailed under the military governments. On 2 December 2011, Parliament adopted the Right to Peaceful Assembly and Peaceful Procession Act (Peaceful Assembly Act), which came into force on 5 July 2012.

The adoption of the law was welcomed by many as ushering in a new era of freedoms for Myanmar's people. However, both the law and its implementing Decree<sup>103</sup> are deeply flawed, placing arbitrary restrictions on the rights to freedom of expression and peaceful assembly.<sup>104</sup> In June 2014, some amendments were made to the law following national and international outcry over its use against peaceful protesters. The Myanmar government has congratulated itself on the law and its amendments stating: "*The Law Relating to the Rights of Peaceful Assembly and Peaceful Procession, 2012 was promulgated. Since then, people have exercised their right to stage demonstrations and gatherings in accordance with the law. On 24 June 2014, the Pyidaungsu Hluttaw [Myanmar's Parliament] passed amendments to the Law [...] in order to provide more space for freedom of assembly.*"<sup>105</sup>

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<sup>101</sup> Article 354 of the 2008 Constitution: "Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality: (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; (c) to form associations and organizations; (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths."

<sup>102</sup> David Weissbrodt, *The rights of non-citizens: Final report of the Special Rapporteur, submitted in accordance with Sub-Commission decision 2000/103, Commission resolution 2000/104 and Economic and Social Council decision 2000/283*, UN Doc. E/CN.4/Sub.2/2003/23, 26 May 2003, para. 1.

<sup>103</sup> Decree on the Right to Peaceful Assembly and Peaceful Procession, 5 July 2012 ((Order No. 364/2012).

<sup>104</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the situation of human rights in Myanmar, *Joint allegation letter*, 18 March 2013, Ref.: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11 MMR 1/2013.

<sup>105</sup> Myanmar, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Human Rights Council Working Group on the Universal Periodic Review Twenty-third session 2–13 November 2015, UN Doc. A/HRC/WG.6/23/MMR/1, 5 August 2015, para. 40.

However, in reality these revisions were superficial and have done little to halt the pace of arrests. The law continues to place far-ranging and arbitrary restrictions on the rights to freedom of expression and peaceful assembly.<sup>106</sup>

Of particular concern is the requirement for organizers to apply for permission, at least five days in advance, to hold an assembly or procession. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that no authorization should be required to assemble peacefully and that related laws should only require organizers to notify the relevant authorities, not seek permission for assemblies.<sup>107</sup> He has suggested that notification to the authorities be given 48 hours ahead of any planned assembly, so as to allow the authorities to ensure an enabling environment, which is part of their international human rights obligations. However, in Myanmar, organizers not only have to apply for permission to hold an assembly, but also have to submit to the authorities information on the topic of the assembly, the chants that will be used, and the “name and complete address” of the leaders and speakers.

Amendments to the Peaceful Assembly Act have removed the authorities’ power to reject outright an application to demonstrate. However, consent which has been given for a peaceful assembly can be revoked and the assembly or procession dispersed on a range of overly broad and arbitrary grounds, for example by “say[ing] things or behav[ing] in a way that could affect the country or the Union, race, or religion, human dignity and moral principles” or spreading “[...] rumours or incorrect information,” and using loudspeakers or singing chants others than those approved in advance. The fact that people’s right to freedom of expression and peaceful assembly can be denied on such broad and vague grounds is of great concern and clearly violates international human rights law and standards. These laws and standards are clear that restrictions to the right to freedom of expression and peaceful assembly must be limited to those which are demonstrably necessary and proportionate for only the certain specified purposes recognized as legitimate in international human rights law.

Additionally, Amnesty International is concerned that the revisions to the Peaceful Assembly Act have made no difference to the fact that human rights defenders, political activists and other peaceful protesters continue to be at risk of arrest and imprisonment under the Act. Under Section 18, people can still be sentenced to up to six months’ imprisonment for conducting peaceful assemblies and processions without consent, and Section 19 provides for up to three months’ imprisonment for violating the terms under which the assembly or procession were agreed. In many of the cases documented by Amnesty International, Sections 18 and 19 of the Peaceful Assembly Act were used to charge human rights defenders and activists in conjunction with other laws – in particular Penal Code provisions.

## CHARGED FOR PEACEFULLY PROTESTING

**Since the revision of the Peaceful Assembly Act, the authorities have continued to frequently use the law to detain and imprison peaceful protesters and human rights activists including:**

**Myint Myint Aye, May Thet Oo and Khin May Si**, who led a candlelit prayer meeting to a local temple in Meiktila, central Myanmar, on 3 March 2015. During the event they carried candles, flowers and placards and prayed for the safety of protesting students. For this, the three women were sentenced to four months in prison on 10 July 2015 by the Meiktila Township Court under Section 18. All three have now been released after completing their sentences.

**Win Hlaing**, an activist from Pyay Township in Bago Region, who has been sentenced to terms of imprisonment under seven counts of protesting without permission under Section 18 and two counts of Section 19 for breaching the terms under which permission to a protest was granted.

<sup>106</sup> Amnesty International, *Myanmar: Stop Using Repressive Law Against Peaceful Protesters*, (Index: ASA/16/025/2014), 15 October 2014.

<sup>107</sup> Maina Kai UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/23/39, 24 April 2013, (Maina Kai Report to the UN Human Rights Council, 24 April 2013), para. 51.

The sentences related to a series of peaceful protests in 2014 and 2015 held mainly in and around Pyay Township, where Win Hlaing has been supporting farmers and local community members to protest against the government and submit complaints to the authorities. He is currently serving a total of three years and eight months in prison, and has at least three further cases under Section 18 pending. He is detained in Pyay prison.

**27 members of the Michaungkan community** who were jailed in 2015 under Section 18 for protesting without prior authorization. Members of the Michaungkan community claim that the military confiscated their land in the early 1990s, and are calling for its return and for adequate compensation. The community had been staging a peaceful sit-in protest next to Maha Bandoola Gardens in Yangon. They all have now been released, either on completion of their sentences or as a result of a presidential prisoner amnesty.<sup>108</sup>

**Naw Ohn Hla, San San Win** (also known as Lay Lay), **Sein Htwe, Nay Myo Zin, Tin Htut Paing** and **Than Swe**, human rights activists who were sentenced under multiple counts of protesting without permission under Section 18 after they participated in a peaceful protest on 29 December 2014. They were calling for an investigation into the death of a farmer who was killed when police opened fire on protesters at the Letpadaung copper mine project in Sagaing Region, central Myanmar. All six are serving their sentences in Insein prison in Yangon.<sup>109</sup>

**Myo Min Min** and **Naing Htay Lwin**, union leaders who were sentenced on 11 September 2015 to six months' imprisonment under Section 18 and Section 19 after organizing and providing support to the striking garment workers from factories in Yangon's Shwe Pyi Thar Industrial Zone. They were also convicted of "incitement" under 505(b) of the Penal Code, and are currently each serving a total of two and half years' imprisonment in Insein prison.

**Lin Htet Naing, Nandar Sitt Aung, Kyaw Ko Ko, Win Kyaw Muu, Htet Khaing Soe** and **Po Po**, student unionists who were charged with a series of offences including under Section 18 for peacefully protesting without permission in Yangon on 10 March 2015. They were protesting against the violent dispersal of a student march earlier that day. All six are currently on trial at the Kamayut Township Court. Three are currently detained in Insein prison, one is in hiding and another has been released on bail while the court case continues.

In addition to using the law to arrest and imprison peaceful protesters, the Myanmar authorities also misuse the law to charge solo protesters (that is, those who mount a one-person protest), in clear violation of its provisions. Section 2 of the law states that a peaceful assembly and a peaceful procession refers to the gathering of more than one person. As such, solo protests, and by extension solo protesters, are not covered by the Peaceful Assembly Act. However, Amnesty International has documented numerous instances where solo protesters have been charged under the law. For example:

- **Win Hlaing**, was sentenced to two years and one month in prison after staging a solo protest outside Tharawaddy Court calling for the release of detained students. He was charged with violating the terms under which permission to protest was granted under Section 19, and sentenced to one month in prison, and with incitement under Section 505(b) for which he received the maximum two years in prison.<sup>110</sup>

<sup>108</sup> Amnesty International, *Prisoner amnesty marred by outrageous jailing of activist for Facebook post*, 22 January 2016, available at: <https://www.amnesty.org/en/latest/news/2016/01/myanmar-prisoner-amnesty-marred-by-outrageous-jailing-of-activist-for-facebook-post/>, accessed 3 February 2016.

<sup>109</sup> See Chapter 3, p18

<sup>110</sup> For more detail on other charges against him, see box: Charged for peacefully protesting, p35

- **Zaw Win**, a lawyer from Pyin Oo Lwin Township, Mandalay Region, was charged under Section 18 for walking down the road from the Pyin Oo Lwin District Court to the Township Court and back in May 2014, shouting slogans through a megaphone demanding the removal of unfair judges and calling for better administration of justice. He walked down the road to the Township Court and back. He is currently detained in Oh-Bo prison while his trial is ongoing.<sup>111</sup>

- **Myat Ko Ko**, joint secretary of the NLD in Aunglan Township in Magway Region, was sentenced on 4 July 2014 to one month in prison for staging a solo protest calling for the resignation of a minister.

## **“INCITEMENT” UNDER SECTION 505(B) OF THE PENAL CODE**

Another common tool used to criminalize freedom of expression is Section 505(b) of Myanmar’s Penal Code, which provides up to two years’ imprisonment for anyone who *“makes, publishes or circulates any statement, rumour or report [...] with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity.”*

Such undefined provisions do not fall within the restrictions on the right to freedom of expression that are permitted under international human rights law and standards; in particular acts against “the public tranquillity” is a vague term that allows the authorities to use Section 505(b) without clear limits to charge individuals who criticize the government.

Section 505(b) has long been used by the Myanmar authorities to detain, prosecute and imprison peaceful political activists. However Amnesty International’s research indicates that in the last two years, use of this law to charge peaceful activists has become particularly common. The vast majority of individuals currently detained or imprisoned in Myanmar have been charged with 505(b) related offences. Section 505(b) is usually used alongside other criminal charges, in particular those that relate to peaceful protests.

As highlighted in Chapter 3, offences under Section 505(b) are non-bailable, and when included in the list of charges against activists allow the authorities to detain leaders of protests and other movements. Of the cases examined for the report, in which charges had been brought under Section 505(b) and in which a verdict had been given, most individuals were sentenced to between one and two years’ imprisonment.

## **UNLAWFUL ASSEMBLIES UNDER SECTIONS 141-149 OF THE PENAL CODE**

Until the start of 2015, the Myanmar authorities relied heavily on the Peaceful Assembly Act to arrest and imprison peaceful protesters. However, since the start of 2015, peaceful protesters have increasingly been charged under Penal Code provisions criminalizing “unlawful assemblies”. These provisions allow for longer terms of imprisonment than the Peaceful Assembly Act.

Section 141 of the Penal Code outlines what is considered an “unlawful assembly”. According to the Penal Code, these are assemblies of five or more people whose “common object” can range from “resist[ing] the execution of any law, or of any legal process”; “commit[ing] any mischief or criminal trespass, or other offence”, using criminal force to deprive a person the enjoyment of a right of way; and other vaguely worded

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<sup>111</sup> See Chapter 3, Prolonged trials, p25.

purposes.<sup>112</sup> Being a member of an unlawful assembly<sup>113</sup> can be punished with a maximum of six months imprisonment under Section 143.

According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, only “certain restrictions may be applied [to the right to peaceful assembly], which clearly means that freedom is to be considered the rule and its restriction the exception.”<sup>114</sup> As long as an assembly is peaceful it is protected by international human rights law which permits restrictions only for the purpose of protecting certain specified public interests, such as public safety or public order, or the rights and freedoms of others (see section 4.1).<sup>115</sup> The UN Special Rapporteur has underlined that any restrictions which are imposed must, in order to comply with international human rights law and standards, be proportionate to the aim pursued, and the authorities should provide organizers with reasonable alternatives to hold their peaceful assemblies.<sup>116</sup> Prohibition should be a measure of last resort.

Rendering an assembly “unlawful” solely because an individual, or individuals “resist the execution of any law, or of any legal process” clearly violates the international law requirement that restrictions on the right to peaceful assembly be only allowed when necessary for specific purposes. The vagueness of Section 141 of the Penal Code allows the Myanmar authorities to use this section of the law against people who merely joined an assembly which the authorities did not like or approve of, including peaceful ones.

In most recent cases of arbitrary detention documented by Amnesty International, individuals who have been charged under Section 143 for being a member of an unlawful assembly have also been charged with joining or continuing an assembly knowing it has been ordered to disperse (Section 145), which carries up to two years’ imprisonment, and for “rioting” (the use of force or violence by an unlawful assembly) under Section 146, which can be punished by two years’ imprisonment under Section 147.<sup>117</sup>

Sections 146 and 147 are highly problematic. Under these provisions any person who took part in an assembly in which some or even only one person engaged in violence (“rioting”) can be held criminally responsible irrespective of whether or not they themselves actually took part in the violence. In Myanmar, they have been used to arrest peaceful activists where there is no evidence that they incited or engaged in acts of violence. Finally, under Section 149<sup>118</sup> if an “offence” is committed by any member of an unlawful assembly (in pursuit of the aims and objective of the assembly), all other members of the same assembly are also considered to be guilty of committing that same offence. This provision is used to legitimise collective punishment, in violation of international law.<sup>119</sup>

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<sup>112</sup> Section 141 of the Penal Code: “An assembly of five or more persons is designated an “unlawful assembly,” if the common object of the person composing the assembly is: to overawe by criminal force, or show of criminal force, the Union Parliament or the Government, or any public servant in the exercise of the lawful power of such public servant; to resist the execution of any law, or of any legal process; to commit any mischief or criminal trespass, or other offence; by means of criminal force, or shown of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.”

<sup>113</sup> Section 142 of the Penal Code: “Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.”

<sup>114</sup> See also Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council Twentieth session, 21 May 2012, A/HRC/20/27 (Maina Kiai Report to the UN Human Rights Council, 21 May 2012), para. 16.

<sup>115</sup> UN Human Rights Council, Resolution on the rights to freedom of peaceful assembly and association, Fifteenth session, 6 October 2010, A/HRC/RES/15/21, para.4.

<sup>116</sup> Maina Kiai Report to the UN Human Rights Council, 21 May 2012, para. 84(e); Maina Kiai Report to the UN Human Rights Council, 24 April 2013, para. 83(c).

<sup>117</sup> Section 146 of the Penal Code: “Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence Of rioting”; and Section 147: “Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.”

<sup>118</sup> Section 149 of the Penal Code: “If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly is guilty of that offence.”

<sup>119</sup> Human Rights Committee, *General Comment No. 29 States of Emergency (article 4)*, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para 11: “States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.”

## INSULTING RELIGION UNDER SECTION 295(A) OF THE PENAL CODE

Article 295(a) of Myanmar's Penal Code criminalizes “outraging religious feelings” or “insult[ing] or attempt[ing] to insult religion or religious belief” and provides for up to two years' imprisonment.<sup>120</sup> Amnesty International is aware of at least two politically-motivated prosecutions, both initiated in 2014, brought under this law against four individuals: Htin Lin Oo, charged after giving a speech critical of the use of Buddhism to promote discrimination, and three Yangon nightclub workers charged after an image of the Buddha wearing headphones was used to promote their bar online.<sup>121</sup>

The right to freedom of expression applies to information and ideas of all kinds, including those deemed offensive.<sup>122</sup> The UN Human Rights Committee has underlined that prohibitions pertaining to displays of lack of respect for a religion or other belief system, including blasphemy laws, are not compatible with international human rights law unless they fall within the scope of the permissible restrictions on the right to freedom of expression. The Committee has stressed that it is not permissible for such laws to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>123</sup>

Moreover, Section 295(a) of the Penal Code allows for an excessively broad and subjective interpretation of what could outrage or offend religious feelings, and therefore does not meet the “legality” test, under which restrictions on the right to freedom of expression must be provided by clear, detailed and well-defined laws.

## DEFAMATION UNDER SECTIONS 499-500 OF THE PENAL CODE

Defamation is criminalized in Section 499 of the Penal Code,<sup>124</sup> and carries a maximum sentence of two years' imprisonment under Section 500. Amnesty International opposes laws criminalizing defamation, whether of public figures or private individuals, and considers that defamation should be treated as a matter for civil litigation.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has called for the decriminalization of acts considered to be acts of defamation and for civil liability proceedings to be the sole form of redress for complaints of damage to reputation.<sup>125</sup> The UN Human Rights Committee similarly recommends that States should consider decriminalizing defamation and in any event has stated that imprisonment is never an appropriate penalty.<sup>126</sup>

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<sup>120</sup> Section 295 (a) of the Penal Code: “Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [persons resident in the Union], by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

<sup>121</sup> See Chapter 3, Section 3.4, p29

<sup>122</sup> Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 11.

<sup>123</sup> Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 48.

<sup>124</sup> Section 499 of the Penal Code: “Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person”.

<sup>125</sup> Frank La Rue, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Report to the UN Human Rights Council*, 20 April 2010, UN Doc. A/HRC/14/23, para. 83.

<sup>126</sup> Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 47.

Since the start of 2014, Amnesty International is aware of at least three cases where criminal defamation charges have been brought against individuals who have simply exercised their right to freedom of expression:

- **Two media workers** from the *Myanmar Post Weekly*, sentenced to two months' imprisonment on 18 March 2015 for criminal defamation after publishing an interview with a member of the Myanmar Army who was also a Member of Parliament for Mon State. The MP had filed a complaint against Editor-in-chief **Than Htike Thu** and Deputy-chief reporter **San Moe Tun**, claiming they had misrepresented him in the headline they chose for the article in January 2014. Both men were released in May 2015.
- **Five media workers** from the *Daily Eleven* newspaper, charged with criminal defamation after the paper published an article about misuse of funds by the Ministry of Information. At the time of writing, the court case was still ongoing.<sup>127</sup>
- Activist **Chaw Sandi Tun**, charged in October 2015 with defamation under the Penal Code and the 2013 Telecommunications Law after posting an image on social media with the comment that opposition leader Aung San Suu Kyi was wearing clothes of a colour similar to those of the army, in particular Commander-in-Chief Senior General Min Aung Hlaing. The Penal Code charge was dropped by the Maubin Township Court on 15 December but she was sentenced to six months in prison under the 2013 Telecommunications Law two weeks later. She is currently imprisoned in Maubin prison, Ayeyarwady Region.

The UN Special Rapporteur on the rights to freedom of opinion and expression has emphasized that the only purpose of laws covering defamation, libel, slander and insult must be to protect reputations and not to prevent criticism of the government. He has stated further that defamation laws should reflect the importance of open debate about matters of public interest. He has also highlighted the principle that public figures are required to tolerate a greater degree of criticism than private citizens. The UN Human Rights Committee has also underscored these points,<sup>128</sup> and stated that defamation laws "must be crafted with care to ensure that they comply with [the right to freedom of expression] and that they do not serve, in practice, to stifle freedom of expression."<sup>129</sup>

Amnesty International is particularly concerned about the use of criminal defamation provisions against journalists and other media workers. Such charges can seriously impede the ability to seek and receive information, a key component of the right to freedom of expression, which may create an environment in which journalists and other media workers apply self-censorship to avoid the threat of arrest and imprisonment.<sup>130</sup>

## DEFAMATION UNDER THE 2013 TELECOMMUNICATIONS LAW

In 2013 Myanmar enacted the Telecommunications Law as part of a programme aimed at liberalizing the country's telecommunications sector. At the time human rights organizations raised concerns about various provisions in the draft law which did not sufficiently protect the right to freedom of expression and could potentially be used to silence online activists and bloggers.<sup>131</sup>

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<sup>127</sup> See Chapter 3, Targeting movements p24

<sup>128</sup> Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 38.

<sup>129</sup> Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 47.

<sup>130</sup> Amnesty International, *Caught between state censorship and self-censorship: prosecution and intimidation of media workers in Myanmar* (Index: ASA 16/1743/2015), 17 June 2015.

<sup>131</sup> See for example Human Rights Watch, *Reforming Telecommunications in Burma: Human Rights and Responsible Investment in Mobile and the Internet*, May 2013, pp11-13.



In October 2015 these fears became a reality when the authorities began charging individuals with “online defamation”. To date, at least six individuals have been charged with online defamation under Section 66(d) of the 2013 Telecommunications Law. Five of these cases are for social media posts considered as mocking the military, in particular the Army Commander-in-Chief. The charge carries up to three years in prison for anyone found guilty of “*extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network*”.

Amnesty International notes that under international human rights law, the right to freedom of expression extends to “all forms of audio-visual as well as electronic and internet-based modes of expression”.<sup>132</sup> Online defamation should therefore be treated in the same manner as defamation using other forms of communication. It should be a matter for civil litigation, not treated as a criminal matter, and should not be punished by terms of imprisonment.

Moreover, Section 66(d) does not adequately define what actions would be considered “disturbing”, “causing undue influence” and “threatening”. Such imprecision carries the risk of its abusive and discriminatory application.

### **PEACE ACTIVIST DETAINED FOR FACEBOOK POST MOCKING THE ARMY**

**Patrick Kum Jaa Lee is a 43-year-old ethnic Kachin peace activist serving six months in prison after being found guilty of online defamation for a social media post mocking the head of the military.**

Patrick Kum Jaa Lee was arrested without a warrant at his home in Yangon on 14 October 2015 at around 7:30pm. Police told him that his arrest was in connection with an image he allegedly shared on Facebook showing an unidentified person stepping on a photograph of army Commander-in-Chief Senior General Min Aung Hlaing. They claimed that he had commented above that post “*Don't share this post – if you do you will be arrested*”. On 22 January 2016 he was sentenced to six months' imprisonment under Section 66(d) of the 2013 Telecommunications Act. He is currently in Yangon's Insein prison.

Patrick Kum Jaa Lee has suffered from multiple serious health problems in prison, including high blood pressure, gastroenteritis and chronic asthma. In October he was transferred to the intensive care unit in the prison hospital. The Hlaing Township Court has refused numerous requests from his lawyers for bail to be granted on the grounds of ill-health.

The UN Human Rights Committee has stated that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties. Indeed, any public figure in any country, including those exercising the highest political authority such as heads of state, government and other high ranking officials, is legitimately subject to criticism and political opposition.<sup>133</sup> Cases, such as that of Patrick Kum Jaa Lee, are a stark reminder that despite the reforms of recent years, peacefully criticizing, or even simply harmlessly mocking, the military is still very much off limits in Myanmar.

The prosecution and imprisonment of activists under recently adopted laws like the 2013 Telecommunications Law illustrates how new laws in Myanmar, as well as longer-existing laws, can be used to stifle freedom of expression. Human rights defenders and political activists regularly rely on Facebook and other social media to share information and communicate. The threat of imprisonment for doing so can inhibit their online activities, and raises concerns that the authorities may, as the use of the digital sphere develops, be likewise moving the focus of their repression.

<sup>132</sup> Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 12.

<sup>133</sup> Human Rights Committee, *General comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 85.

## THE 1908 UNLAWFUL ASSOCIATIONS ACT

Under the 1908 Unlawful Associations Act, the President has the power to unilaterally declare any association or organization unlawful without having to demonstrate that the association has committed acts of violence or represents a threat.<sup>134</sup> Under international human rights law, any interference with the rights to freedom of expression and association must be limited to what is necessary for the achievement of a specific legitimate purpose and proportionate to the threat posed. The 1908 law is also unclear regarding which organizations have been declared unlawful or not. This is in contravention with the principle of legality, including legal certainty and predictability, which demands the law to have a certain level of precision so that people know what is prohibited and can regulate their conduct accordingly. This is particularly important when non-compliance with the law could lead to being deprived of liberty.

Such broad discretionary powers in the hands of the authorities have led in the past to associations such as trade unions, political parties, student associations or religious organizations being declared unlawful and their members sentenced to terms of imprisonment under this Act.

Furthermore, according to the 1908 Unlawful Associations Act, a member or leader of an organization declared unlawful or denied permission to register, as well as someone simply deemed to be associated with the organization, can be sentenced to between two and five years' imprisonment under Section 17.<sup>135</sup> The fact that anyone in any way associated with an unlawful organization is at risk of imprisonment allows the authorities to use Section 17 for political ends, as it means that someone who attended only one meeting of an organization can potentially be criminalized.<sup>136</sup>

For example, interfaith activists **Zaw Zaw Latt** and **Pwint Phyu Latt** from Mandalay, were arrested in July 2015 about a well-publicized interfaith peace visit to a conflict zone in Kachin State in June 2013. Zaw Zaw Latt was questioned about a photo – posted on social media in 2013 – in which he was holding a rifle, apparently during the visit. Both were charged with violating the 1908 Unlawful Associations Act, with no further proof that they either belonged to an armed group or took part in their activities. Activists operating in Myanmar believe that Zaw Zaw Latt and Pwint Phyu Latt were arrested for their interfaith awareness activities. Both have also been charged with immigration related offences.<sup>137</sup>

**Saw Maung Gyi**, a land rights activist and founder of the 88 Karen Generation Student Organization, and former member of the armed wing of the Karen National Union (KNU) and of the Democratic Karen Benevolent Army (DKBA), was arrested on 8 July 2015 at his office with eight other members of his organization. Saw Maung Gyi was sentenced in November 2015 under Section 17(1) of the 1908 Unlawful Associations Act for contacting an alleged member of the DKBA. Many believe he was targeted because of his land rights work.<sup>138</sup> He was released as part of a presidential amnesty in January 2016.

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<sup>134</sup> The Unlawful Associations Act, Section 15 (2)(b): “*unlawful association*’ means an association (b) which has been declared to be unlawful by the President of the Union under the powers hereby conferred.”

<sup>135</sup> The 1908 Unlawful Associations Act, Section 17 (1): “*Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of such an association, shall be punished with imprisonment for a term (which shall not be less than two years and more than three years and shall also be liable to a fine).*” Section 17 (2): “*Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term (which shall not be less than three years and more than five years and shall also be liable to a fine).*”

<sup>136</sup> Amnesty International, *Justice on Trial*, (Index: ASA 16/019/2003), 29 July 2003, p32.

<sup>137</sup> See Chapter 3, Section 3.4 p29.

<sup>138</sup> See for example Yanghee Lee, UN Special Rapporteur on the situation of human rights in Myanmar, *Situation of human rights in Myanmar*, UNGA, Seventieth session, 6 October 2015, A/70/412, para. 66 and Human Rights Watch, *Burma: Land Rights Activists Are Newest Political Prisoners*, 15 August 2015.

The new Association Registration Law entered into force in July 2014, with a view to easing restrictions on the right to freedom of association. The new law removes some significant barriers to the formation and registration of associations for example, it is now not compulsory for an association to register, and non-registration is not subject to criminal penalties. However, the Ministry of Home Affairs has yet to issue implementing regulations and rules, so the extent to which the law improves respect for the right to freedom of association is unclear. One crucial shortcoming of the new law is that it fails to repeal the 1908 Unlawful Associations Act, and it is unclear which of the laws would take precedence in cases where they contradict one another.

## THE 1923 OFFICIAL SECRETS ACT

The Official Secrets Act of 1923 dates back to the British colonial era. Under this Act it is an offence to possess, control, receive or communicate any document or information which, if disclosed, could be “prejudicial to the safety or interests of the state”. The law is broadly worded, and therefore grants wide powers to the government to determine what is classified as a “secret”. For instance, it allows for individuals to be imprisoned for “obtaining” information which is not necessarily a threat to the security of the state but that is simply deemed “not in the interest” of the state. The Act goes beyond the restrictions on freedom of expression which are permitted under international human rights law on the grounds of national security. Moreover, it contains no provisions which allow for the disclosure of classified information on public interest grounds.

The law provides for various criminal penalties for breaches of its provisions. For example, Section 3(1) provides between three and 14 years’ imprisonment for anyone who approaches or enters any prohibited place or anyone who obtains, records or communicates documents or information for any purpose “prejudicial to the safety or interests of the state”.

In the past, the military authorities used the 1923 Official Secrets Act to imprison political and human rights activists who shared information about human rights with media, diplomats or international organizations. Since the reform process of 2011, the 1923 Official Secrets Act has been used against five media workers from the *Unity Weekly* newspaper. Reporters **Lu Maw Naing**, **Yarzar Oo**, **Paing Thet Kyaw**, **Sithu Soe** and the newspaper’s chief executive officer, **Tint San**, are currently in Pakkoku prison after being sentenced to 10 years’ imprisonment with hard labour on 10 July 2014 under Section 3(1)(a) of the Act. The sentence was later reduced to seven years’ imprisonment with hard labour by the Magway Regional Court. They were arrested after the paper published an article about an alleged secret chemical weapons factory. Following their arrest, state media confirmed that they had been charged with “disclosing State secrets, trespassing on the restricted area of the factory, taking photographs and the act of abetting.”<sup>139</sup>

Amnesty International is aware of one case in which the 1923 Official Secrets Act has been used in the past two years, however, its impact has been much more widely felt. Many journalists and media workers interviewed for a June 2015 report on restrictions on media workers in Myanmar told Amnesty International that the case is seen by the profession as a “warning” to all media workers, and expressed fears that the same could happen to them if they were not “careful” in reporting on stories that the authorities dislike.<sup>140</sup>

The case illustrates how the authorities can use old repressive laws if they remain on the books. Laws that were commonly used to jail prisoners of conscience under the previous regime, but which remain part of Myanmar’s legal framework are a constant reminder to human rights defenders and activists that the authorities can easily arrest and imprison them.

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<sup>139</sup> *The New Light of Myanmar*, “Alleged offenders in connection with *Unity Journal’s* report of Secret Chemical Weapon Factory brought to court”, 16 February 2014, p.16

<sup>140</sup> Amnesty International, *Caught between state censorship and self-censorship*, p7.

# 5. ENDING THE CYCLE OF POLITICAL ARREST AND IMPRISONMENT

**“Now we have to move carefully, think carefully about what we should do and not do. The fact that we can be arrested makes us think twice...It’s not that we are afraid, it’s that we don’t want to waste our time behind bars...there is so much to do to improve the situation in our country.”**

A woman rights activist.<sup>141</sup>

## CONCLUSIONS AND RECOMMENDATIONS TO MYANMAR’S NEW GOVERNMENT

The release of prisoners of conscience and other political prisoners is often cited by the authorities as a key example of the increased respect for the rights to freedom of expression, peaceful assembly, and association in Myanmar. Since March 2011, over 1,100 political prisoners<sup>142</sup> have been released as part of 20 prisoner amnesties and pardons.<sup>143</sup> According to the Myanmar authorities “... *amnesties were granted on various occasions enabling prisoners to join others in nation-building tasks*”.<sup>144</sup> In his last speech to Parliament on the

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<sup>141</sup> Amnesty International interview, Yangon, June 2015.

<sup>142</sup> Tomás Ojea Quintana, UN Special Rapporteur on the situation of human rights in Myanmar, *Situation of human rights in Myanmar, report to the UN Human Rights Council*, 2 April 2014, A/HRC/25/64, para.4

<sup>143</sup> There were two amnesties in 2011 (16 May and 12 October); six in 2012 (4 January, 13 January, 3 July, 17 September, 15 November and 19 November), seven in 2013 (23 April, 17 May, 23 July, 8 October, 15 November, 11 December and 31 December), two in 2014 (3 January and 7 October) and two in 2015 (19 January and 30 July) and one in 2016 at the time of writing (22 January).

<sup>144</sup> Myanmar, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, Human Rights Council Working Group on the Universal Periodic Review Twenty-third session 2–13 November 2015, 5 August 2015, A/HRC/WG.6/23/MMR/1, para.8

State of the Union President Thein Sein explained: *“our government released prisoners of conscience so that all citizens can participate in the political process.”*<sup>145</sup>

While these amnesties and pardons are welcome, they have been ad hoc and opaque, often announced to coincide with high profile events and apparently for maximum political leverage.<sup>146</sup> There is no clear stated rationale on when and why an amnesty is announced, or on the criteria used to decide which political prisoners will be released. In the early years of the reforms that began in 2011, amnesties for political prisoners applied to large numbers; however, as public international pressure has waned, such amnesties have become less frequent.

The positive impact of these amnesties is undermined by ongoing arrests and imprisonment of human rights defenders and other activists simply for exercising their rights. Moreover, these limited releases do little to address the long term and structural issues which underpin and perpetuate politically motivated arrests and imprisonment in Myanmar. Many human rights defenders and organizations have noted Myanmar’s “revolving door of releases and convictions” of political prisoners.

The change in administration after the NLD-led government takes power at the end of March 2016 offers a crucial opportunity to go beyond periodic prisoner releases and stop the cycle of arbitrary arrests and imprisonment. By tackling the structural issues which allow political arrests and imprisonment to continue in Myanmar, the new government could ensure that the rights to freedom of expression, association and peaceful assembly are respected and upheld. Human rights defenders and other activists have a vital role to play in shaping Myanmar’s future, but they cannot do this if they are behind bars, or at constant risk of arrest, prosecution and imprisonment.

There are several changes in law, policy and practice that the new administration will need to take towards this end. A first step would be to ensure that all future releases are unconditional. A new or reconstituted prisoner of conscience committee should be established with the mandate and the means to secure the release of all prisoners of conscience and address the wider structural issues discussed in this report. Finally, problems faced by former prisoners of conscience and political prisoners do not end at the prison doors, as many face unemployment and a lack of educational opportunities when they return to their homes and families. The new government should ensure that they have access to restitution, compensation and rehabilitation programmes and that their right to a remedy is respected.

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<sup>145</sup> *The Global New Light of Myanmar*, “President U Thein Sein State of the Union address to the Pyidaungsu Hluttaw”, 30 January 2016, p8.

<sup>146</sup> For instance: on 17 March 2013, 23 prisoners were released as President Thein Sein prepared for his landmark visit to the United States, the first time a president from Myanmar has made an official visit to the US since 1966. The release of 93 prisoners on 23 April 2013 coincided with the decision of the European Union to lift all remaining sanctions on Myanmar, except the embargo on arms. On 23 July 2013, the government issued an amnesty for 73 prisoners, days after President Thein Sein’s trip to Europe and in the lead up of the lifting of European sanctions.

## 5.1 UNCONDITIONAL RELEASES

Many former prisoners of conscience and political prisoners were only released conditionally, meaning that even after their release through pardons or amnesties, they are liable to re-arrest for engaging in peaceful political activities and could be made to serve the remainder of their sentence. Most of those released as a result of prisoner amnesties or pardons had to sign a statement under Section 401 of the Code of Criminal Procedure, which provides that:

*“When any person has been sentenced to punishment for an offence, the President of the Union may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been punished.”*

Under Section 401(3), if the condition on which a sentence has been suspended or remitted, is, “in the opinion of the President of the Union, not fulfilled”, the President may cancel the suspension or remission, and the released individual can be re-arrested by a police officer without a warrant and made to complete the unexpired portion of his or her sentence. This provision gives the President arbitrary power to reinstate prison sentences and revoke remissions. Any such power should instead lie solely with the judiciary; should be subject to clear safeguards against abusive or discriminatory application; and should have open and transparent appeal mechanisms.

While Amnesty International is not aware of individuals who have been re-arrested and forced to serve the remainder of their sentence, the threat remains and the possibility of being taken back into custody can make activists fearful. One human rights defender in Yangon told Amnesty International:

*“They need to stop conditional releases – activists should be released without any conditions and without the threat of re-arrest. Otherwise, they can do anything to us. We could end up back in jail for 50 or 60 years.”<sup>147</sup>*

One of the necessary steps towards closing the “revolving door” of releases and arrests is to unconditionally release prisoners of conscience and to clear their criminal record. They should not be subject to any conditions which would restrict them from fully exercising their rights or which would penalize them for doing so.

## 5.2 A FUNCTIONING PRISONERS OF CONSCIENCE COMMITTEE

On 7 February 2013, President Thein Sein announced the establishment of the Committee for Scrutinizing the Remaining Prisoners of Conscience (Scrutinizing Committee), “to scrutinize the remaining political prisoners serving their terms in prisons throughout the country so as to grant them liberty”.<sup>148</sup> According to state media, the Committee would “define the meaning of prisoners of conscience and coordinate for a set of frameworks for releasing and scrutinizing the remaining political prisoners and report the findings to the President.”<sup>149</sup>

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<sup>147</sup> Amnesty International interview, Yangon, June 2015.

<sup>148</sup> *The New Light of Myanmar*, “Committee to be formed to grant liberty to remaining political prisoners,” 7 February 2013, p16.

<sup>149</sup> *Ibid.*

The establishment of the Scrutinizing Committee was cautiously welcomed by former prisoners of conscience, their representatives and international actors. The release of a large number of prisoners of conscience later that year and the inclusion of prominent representatives of former political prisoners on the Committee provided some reassurances to those who questioned the Scrutinizing Committee's independence and transparency.

However, it quickly became clear that the Scrutinizing Committee was deeply flawed and had serious shortcomings. No terms of reference, mandate or any information about the Committee's procedures and activities was ever made publicly available, and no reports on its activities were ever published. Amnesty International's interviews with former Committee members confirm that the Committee was not consulted prior to Presidential amnesties, and it was not able to provide input on whom to release. Indeed, despite repeated requests, some members of the former Committee were unable to obtain access to prisoners and other places of detention or review prison records, severely hindering their efforts to identify individuals imprisoned on politically motivated grounds who should be released. By the end of 2014 it was unclear whether the Scrutinizing Committee was even operational, leading to increasing national and international criticism.<sup>150</sup>

On 5 January 2015, President Thein Sein announced the reconstitution of a new Prisoners of Conscience Affairs Committee (the Committee), which was to comprise 28 members and which would "*promptly [carry] out prisoners of conscience affairs at the grassroots level.*"<sup>151</sup> Human rights groups, including Amnesty International, expressed hopes that the new Committee would embark on genuine efforts to resolve the remaining cases of prisoners of conscience and other political prisoners.<sup>152</sup>

However, as far as Amnesty International is aware, the Committee did not meet in 2015 and there has been no information made publicly available regarding its mandate, procedures or activities. Amnesty International wrote twice to the Chairman of the Committee asking for information, but received no reply. Indeed, in a meeting with the Myanmar National Human Rights Commission in December 2015, the Chairperson, when questioned on the new Committee and its activities, stated: "*it does not work*".<sup>153</sup> The lack of information and action appears to justify earlier concerns that the Committee had been reconstituted merely to deflect growing national and international criticism, rather than to resolve the issue of remaining political prisoners.<sup>154</sup>

Despite these flaws, Amnesty International believes that a properly resourced Committee, whether a reconstitution of the Prisoners of Conscience Affairs Committee or a newly formed Committee, with a clear mandate and procedures, and able to operate independently and effectively, could be an important mechanism to address both short and long-term issues relating to political imprisonment.

Amnesty International believes that any new or reconstituted Committee should not only review all cases where individuals have been deprived of their liberty solely for the peaceful exercise of their human rights, with a view to securing the release of the individuals concerned, but also all the cases of those currently on trial who may be arbitrarily imprisoned in the future, in order to ensure no new prisoners of conscience are imprisoned. It should also review the cases of all those who may have been subjected to politically motivated prosecutions and/or unfair trials, and determine whether the individual should be released or given a prompt and fair retrial which complies with international fair trial standards.

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<sup>150</sup> See for example, Statement by Ms. Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar, 69<sup>th</sup> session of the General Assembly Third Committee Item 68 (c), 28 October 2014; and *Radio Free Asia (RFA)* "Myanmar Political Prisoners Panel Moving Slowly Amid Ongoing Arrests", 10 June 2014, available at: <http://www.rfa.org/english/news/myanmar/political-prisoners-06102014165749.html>, accessed 22 February 2015.

<sup>151</sup> *The Global New Light of Myanmar*, "Prisoners of conscience affairs committee reconstituted", President Office Notification No. (18/2015), 6 January 2015.

<sup>152</sup> Amnesty International and Human Rights Watch *Joint Open letter on the establishment of the Prisoners of Conscience Affairs Committee*, (Index: ASA 16/0007/2015), 6 February 2015 and *Burma/Myanmar's Prisoners of Conscience Affairs Committee needs urgent reform* by 23 organizations, 20 April 2015, available at: <http://burmacampaign.org.uk/burmacampaigns-prisoners-of-conscience-affairs-committee-needs-urgent-reform-22-organisations/>, accessed 30 January 2016.

<sup>153</sup> Amnesty International interview, Yangon, December 2015.

<sup>154</sup> See Amnesty International and Human Rights Watch Press Release, *Myanmar: Prisoner committee should not be a smokescreen*, 6 February 2015.

The Committee should also address the root causes, which allow for prisoners of conscience and political prisoners to be detained and imprisoned. As such its mandate should include the review of all laws used to arrest prisoners of conscience; and to make recommendations to the Parliament with a view to repealing or amending these laws to bring them into line with international human rights law and standards. In addition, the Committee should formulate and present recommendations to the relevant authorities aimed at ending the abuse of the criminal law through the fabrication of criminal charges against individuals for politically motivated reasons. Committee members should also be given access to prisons and be able to interview prisoners privately, and be granted the authority to question relevant state officials.

The former Scrutinizing Committee and Prisoners of Conscience Affairs Committee were marked by a lack of information and transparency regarding their mandates and procedures. If a Committee is to conduct meaningful work, it needs to have a clearly defined mandate, which is made public, and operate transparently, including by publishing regular activity reports.

It should also comprise members selected on the basis of relevant criteria, including their expertise in the issues of political arrest and imprisonment, and should include representatives of civil society, former prisoners of conscience and political prisoners. Additionally, acknowledging many former prisoners of conscience and political prisoners are women, and that amongst those affected by political arrest and imprisonment are family members, the Committee's composition should also ensure specific expertise regarding gender issues and children's rights.

Such a Committee could identify and implement further solutions to end the cycle of political arrest and imprisonment in Myanmar. However, it represents a viable solution only if the government, including the Ministry of Home Affairs, has the political will to tackle these issues and their root causes.

## **5.3 SUPPORT TO FORMER PRISONERS OF CONSCIENCE AND POLITICAL PRISONERS**

Even after their release, many former prisoners of conscience and other political prisoners continue to face a range of problems relating to their imprisonment and their status as former prisoners. Some people suffer stigmatization, in particular within their local communities, and also face various administrative obstacles, for example in enrolling in education courses and seeking employment. Former prisoners of conscience and political prisoners also reported difficulties obtaining passports or, in the case of those who fled abroad following their releases, obtaining visas to return to Myanmar.

Lack of access to livelihood opportunities, including employment, keeps many in a situation of poverty. And importantly, as highlighted in Chapter 2, many former prisoners of conscience and political prisoners were subjected to torture and other forms of ill-treatment, including long periods in solitary confinement, and now suffer from physical and psychological health problems as a consequence. Former prisoners of conscience, political prisoners, and their families have consistently told Amnesty International that they face health concerns linked to the torture and ill-treatment they suffered while in detention.



A member of an organization providing counselling and financial assistance to support victims of torture with their medical costs told Amnesty International:

*“Many former political prisoners face health problems [because of how they were treated in prison]. People who were beaten usually experience ongoing back pain, whereas some people have stomach problems caused by years of eating poor food. Others suffer from eye problems, which comes from straining their eyes trying to read in their dark cells.”<sup>155</sup>*

However, there are no official government programmes providing medical and psychological health services or treatment. There is also no government support for the rehabilitation and reintegration of former prisoners of conscience and other political prisoners while they require material support and assistance in gaining access to education and employment opportunities.

Furthermore, acts of torture and other ill-treatment are crimes under international law, and the Myanmar authorities have an obligation to investigate allegations of such acts and prosecute those reasonably suspected of being responsible. These include those with command responsibility who ordered such treatment or who knew, or should have known, that those under their command were committing acts of torture or other ill-treatment and did not take all measures in their power to prevent, suppress or report it. Victims of torture and other ill-treatment, and their families, should be granted adequate access to rehabilitation schemes and reparations.

## THE RIGHT TO AN EFFECTIVE REMEDY

Under international human rights law, States are required to ensure that any person whose rights or freedoms are violated has access to redress and an effective remedy.<sup>156</sup> This includes any individual whose rights or freedoms are violated by persons acting in an official capacity. The right to a remedy also includes effective reparations for those whose rights have been violated. Such reparations are to be determined by a competent judicial, administrative or legislative authority, and where they are granted should be enforced by the competent authorities. The right to reparations includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>157</sup>

**Restitution:** for example release of detainees and prisoners, restoration of legal rights and the return of property and other status;

**Compensation:** including for physical or mental harm, lost opportunities, harm to an individual’s reputation or dignity and legal and medical costs;

**Rehabilitation:** including medical and psychological care, legal and social services, and social reintegration;

**Satisfaction:** including cessation of continued violations, public disclosure of the truth - without causing further harm, an apology for the harm done, and commemoration and memorialization activities; and

**Guarantees of non-repetition:** including ensuring effective civilian control of military and security forces, ensuring trials meet international standards of due process, fairness and impartiality, and strengthening the independence of the judiciary.

<sup>155</sup> Amnesty International interview, Yangon, June 2015.

<sup>156</sup> UDHR Article 8. See also ICCPR Article 2(3).

<sup>157</sup> See, for example, UN Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005.

Accordingly, Amnesty International considers that it is essential that the new government ensures that former prisoners of conscience and other political prisoners have access to restitution and to compensation and rehabilitation programmes, and that their right to a remedy is respected.

## 5.4 OTHER RECOMMENDATIONS

The following are Amnesty International's detailed recommendations to the Myanmar authorities and international donors which include changes in law, policy and practice to end the cycle of politically motivated arrests and imprisonment.

### RECOMMENDATIONS TO THE MYANMAR AUTHORITIES

- Immediately and unconditionally release all those detained simply for the peaceful exercise of their human rights, and drop charges pending against those who are facing imprisonment simply for the peaceful exercise of these rights. Expunge the criminal records of all those convicted simply for the peaceful exercise of their rights.
- Review the cases of all those outside the above category, who have been subjected to politically motivated prosecutions and unfair trials, and determine whether the individual should be released or given a prompt and fair retrial which complies with international fair trial standards.
- Repeal or review and amend all laws that violate the rights to freedom of expression, peaceful assembly and association, including but not limited to provisions of the Penal Code, the Peaceful Assembly and Peaceful Procession Act, the 1908 Unlawful Associations Act, the 2013 Telecommunications Act, and the 1923 Official Secrets Act, to ensure these and other laws comply with international human rights standards. Ensure that, pending the amendment of these laws in line with international standards, no one is arrested or detained under these provisions.
- Ensure that human rights defenders and peaceful activists are free from harassment, discrimination, and the threat of criminalization through the application of repressive laws; and that they are able to conduct their important and legitimate work in a safe environment.
- Take immediate steps to provide rehabilitation and relevant medical, psychological, and mental health services and treatment as well as economic and educational support to former prisoners of conscience and other political prisoners and their families. Ensure that such programmes are designed in full consultation with former prisoners of conscience and political prisoners, their representatives and family members.
- Initiate prompt, independent, and impartial investigations into all allegations of torture or other ill-treatment which are made by current or former detainees or prisoners. Ensure that all detainees and prisoners, including those sentenced to death, are treated in accordance with the Nelson Mandela Rules for the Treatment of Prisoners.
- Take all the necessary legislative, administrative and other measures, including extensive human rights training for judges, prosecutors and other officials, to ensure that all future trials accord fully with international standards of fairness.
- Become a party without reservation to the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and their optional protocol, at the earliest opportunity.

- Extend an invitation to the UN Special Rapporteur on the rights to freedom of opinion and expression, and to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, to carry out a fact-finding visit to Myanmar. They should be granted free and unimpeded access to all parts of the country, and freedom to meet with a wide range of stakeholders, including political detainees and prisoners, their families and representatives, in addition to government officials, law enforcement officers and judicial officials.
- Facilitate the establishment of an Office of the High Commissioner for Human Rights (OHCHR) country office in Myanmar, able to operate throughout the country with a full promotion and protection mandate.

## **RECOMMENDATIONS RELATING TO A PRISONERS OF CONSCIENCE COMMITTEE**

To address the long term, systemic changes necessary to end the cycle of arbitrary arrests and imprisonment on politically motivated grounds, the Government of Myanmar should re-establish the Prisoner of Conscience Affairs Committee or establish a new Committee, ensuring it has a mandate to:

- Review the cases of all those charged or deprived of their liberty simply for the peaceful exercise of their human rights, with a view to securing their release and the charges against them being dropped.
- Review the cases of all those outside the above category, who have been subjected to politically motivated prosecutions and unfair trials, and determine whether the individual should be released or given a prompt and fair retrial which complies with international fair trial standards.
- Review all laws used to charge and detain prisoners of conscience, and recommend to Parliament the repeal of such laws or their amendment to bring them in line with international human rights law and standards.
- Formulate and present recommendations to the relevant authorities aimed at ending the abuse of the criminal law to fabricate criminal charges against individuals for politically motivated reasons.
- Ensure that all conditions attached to the release of prisoners of conscience are lifted.

To ensure the Committee operates independently, effectively and transparently the Government of Myanmar should:

- Ensure the Committee broadly shares with the public its mandate, its terms of reference, and operational procedures, and publishes regular activity reports.
- Ensure the Committee is properly resourced, receives appropriate support and co-operation from government offices, and is given access to prisons, prison records, and prisoners, and the authority to question relevant state officials.
- Invite a sufficient number of members to join the Committee, who are selected according to objective and relevant criteria, including their independence and expertise in human rights issues, so as to ensure that the Committee overall has adequate gender and ethnic representation, as well as expertise on gender issues and children's rights. The Committee should comprise a wide range of members, including former prisoners of conscience, political prisoners and their representatives.
- Ensure resources are provided to build the human rights capacity of Committee members and seek technical assistance and advice from external experts in this regard.
- Ensure the Committee's programme of work is developed in consultation with former prisoners of conscience, political prisoners their families and representatives, and takes in to account the different experiences of women and men.


## **RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY, IN PARTICULAR THE GOVERNMENTS OF THE USA AND EU AND ASEAN MEMBER STATES**


- Publicly call on the Myanmar authorities to immediately and unconditionally release all those detained simply for the peaceful exercise of their human rights, and drop charges pending against those who are facing imprisonment for the peaceful exercise of their rights.
- Call on the Myanmar government to repeal or review and amend all laws that violate the rights to freedom of expression, peaceful assembly and association, including but not limited to provisions of the Penal Code, the Peaceful Assembly and Peaceful Procession Act, the 1908 Unlawful Associations Act, the 2013 Telecommunications Act, and the 1923 Official Secrets Act, to ensure these and other laws comply with international human rights standards.
- Urge the Myanmar government to re-establish the Prisoner of Conscience Affairs Committee or establish a new Committee as per the recommendations above.
- Give positive consideration to requests by the Myanmar authorities for support and technical assistance in these endeavours.



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# NEW EXPRESSION MEETS OLD REPRESSION

## ENDING THE CYCLE OF POLITICAL ARRESTS AND IMPRISONMENT IN MYANMAR

Since it came to power in March 2011, the government in Myanmar has embarked on a major transition from five decades of authoritarian military rule towards a more open political system. A series of economic, political and social reforms have included a welcome relaxation of restrictions to freedoms of expression, association and peaceful assembly and the release of hundreds of prisoners of conscience.

However, despite these reforms, activists continue to face arrest, prosecution and imprisonment for their peaceful activities. As people have become more assertive of their rights, the authorities have used a range of tactics to keep human rights defenders and activists behind bars. A worrying resurgence in the use of repressive laws has fostered an environment in which they are at constant risk of arrest for their work.

The landslide victory won by the opposition National League for Democracy in the November 2015 elections offers a fresh opportunity for further reforms. This report – *New expression meets old repression: Ending the cycle of political arrests and imprisonment in Myanmar* – highlights the pattern of politically motivated arrest and imprisonment since the start of 2014. It offers concrete recommendations to the new government to respect the rights to freedom of expression, association and peaceful assembly, and to put an end to the repressive practices which fuel arbitrary arrests and imprisonment.

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