Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**131**
Land:	Burma
Kilde:	UK Home Office
Titel:	Country Information and Guidance Burma: Opposition to the Government
Udgivet:	November 2015
Optaget på baggrundsmaterialet:	4. januar 2016

Home Office

Country Information and Guidance

Burma: Opposition to the Government

Version 1.0

November 2015

Preface

This document provides country of origin information (COI) and guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the European Asylum Support Office's research guidelines, Country of Origin Information report methodology, dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please e-mail us.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at http://icinspector.independent.gov.uk/country-information-reviews/

Contents

Guidance

Updated 17 November 2015

1. Introduction

1.1 Basis of Claim

1.1.1 Fear of persecution by the state authorities, due to the person's actual or perceived political opposition to the Burmese government.

2. Consideration of Issues

2.1 Is the person's account credible?

2.1.1 For guidance on assessing credibility, see sections 4 and 5 of the Asylum Instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision makers must also ensure that each asylum application has been checked to establish if there has been a previous UK visa or other application for leave. Asylum applications matched to visas should be investigated prior to the asylum interview. (See Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision makers should also consider the need to conduct language analysis testing. (See Asylum Instruction on Language Analysis).

Back to Contents

2.2 Are actual or perceived political opponents at risk of persecution or serious harm?

2.2.1 In the country guidance TS (Political opponents –risk) Burma CG [2013] UKUT 00281 (IAC), March 2013, the Upper Tribunal found that 'In order to decide whether a person would be at risk of persecution in Burma because of opposition to the current government, it is necessary to assess whether such activity is reasonably likely to lead to a risk of detention. Detention in Burma, even for a short period, carries with it a real risk of serious ill-treatment, contrary to Article 3 of the ECHR and amounting to persecution/serious harm within the meaning of the Qualification Directive. A person is at real risk of being detained in Burma where the authorities regard him or her to be a threat to the stability of the regime or of the Burmese Union' (paragraphs 83(i) and 83(ii)).

2.2.2 The Upper Tribunal in TS also found that 'The spectrum of those potentially at risk ranges from those who are (or are perceived to be) actively seeking to overthrow the government to those who are in outspoken and vexing opposition to it. Whether a person is in need of protection will depend upon past and future political behaviour. This assessment has to be made against the background of a recently reforming government that carries a legacy of repression and continues to closely monitor those in opposition. The evidence points to a continuing anxiety over the break up of the state and the loss of its power. The question of risk of ill-treatment will in general turn upon whether a returnee is detained by the authorities at any stage after return' (paragraphs 83 (iii) and 83(iv)).

For information on prison conditions, see the Country Information and Guidance Burma: Prison conditions.

2.2.3 Since March 2011 there have been improvements made in regard to assembly, expression and media freedoms, and opposition parties can now operate relatively freely compared with the situation prior to March 2011. Members of parliament have been allowed to voice their views on democratic rights and many legislators' speeches have been covered in domestic media. They have not suffered harassment for their observations although since 2014 the situation of freedom of expression has been deteriorating again. New regulations introduced in August 2015 prohibit political parties and candidates from criticizing the Burmese military and the constitution on state media.

2.2.4 National elections took place on 8 November 2015. The National League for Democracy (NLD) won 78 per cent of the seats, securing a majority in parliament. The current government – led by the Union Solidarity and Development Party (USDP) – remains in office until February 2016. Under the constitution the military will continue to hold 25 per cent of seats in parliament and retain control of the security ministries. (see Elections November 2015). It is too early to assess how in practice the forthcoming change in government will alter the treatment of those who might be regarded by the current authorities as a threat to the stability of the regime or of the Burmese Union.

2.2.5 Restrictions on democratic space remain severe and have worsened since 2014 and the reform process has experienced significant slowdowns and in some cases reversals of basic freedoms. Peaceful critics, including political activists, journalists, land protesters and human rights defenders continue to be arrested and detained under several laws, which provide broad and vague descriptions on the exercise of human rights. Ten journalists are in detention, all of whom were convicted in 2014 in connection with their peaceful journalistic activities. Other journalists reported direct threats, surveillance, restrictions on access to certain areas of the country and the use of defamation lawsuits to stifle independent reporting. In 2014 a journalist was killed by soldiers while held in military custody. Human rights organisations have expressed concern that many former political prisoners have been released conditionally and risk re-arrest for engaging in peaceful political activities.

2.2.6 Various laws and Penal Code provisions are used to suppress freedom of assembly, association and expression. In addition, a person can be held without charge, trial, or access to legal counsel for up to five years if deemed a threat to state security or sovereignty. It has been reported that at the end of May 2015, 163 political prisoners (including political and land rights activists) remained incarcerated, and 442 political activists were awaiting trial. Forced land confiscations are widespread, in many cases involving land taken by the army under the former military regime and given to private companies with ties to the military. (see Political affiliation, Freedom of association and assembly, and Freedom of speech and media).

2.2.7 Freedom of movement is restricted particularly for those without registration documents. Household inspections continue and are used to intimidate and harass certain segments of the population including people involved in civil society or political activities.

Back to Contents

2.3 Sur place activities

2.3.1 The country guidance case of TS found in regard to UK-based demonstrations that:

- A person who has a profile of voicing opposition to the government in the United Kingdom through participation in demonstrations or attendance at political meetings will not for this reason alone be of sufficient concern to the Burmese authorities to result in detention immediately upon arrival. This is irrespective of whether the UK activity has been driven by opportunistic or genuinely held views and is regardless of the prominence of the profile in this country.
- A person who has a profile of voicing opposition to the Burmese government in the United Kingdom can expect to be monitored upon return by the Burmese authorities. The intensity of that monitoring will in general depend upon the extent of opposition activity abroad.
- Whether there is a real risk that monitoring will lead to detention following return will in each case depend on the Burmese authorities' view of the information it already possesses coupled with what it receives as the result of any post-arrival monitoring. Their view will be shaped by (i) how active the person had been in the United Kingdom, for example by leading demonstrations or becoming a prominent voice in political meetings, (ii) what he/she did before leaving Burma, (iii) what that person does on return, (iv) the profile of the people he or she mixes with and (v) whether a person is of an ethnicity that is seen by the government to be de-stabilising the union, or if the person's activity is of a kind that has an ethnic, geo-political or economic regional component, which is regarded by the Burmese government as a sensitive issue.
- It is someone's profile in the eyes of the state that is the key to determining risk. The more the person concerned maintains an active political profile in Burma, post-return, the greater the risk of significant monitoring, carrying with it a real risk of detention.
- In general, none of the risks identified above is reasonably likely to arise if an individual's international prominence is very high. The evidence shows that the government is keen to avoid adverse publicity resulting from the detention of internationally well-known activists. (paragraphs 83 (v)–(ix)).

Back to Contents

2.4 Illegal departure

2.4.1 A further aggravating factor may be the person's illegal departure from Burma. Citizens of Burma travelling abroad require an electronic departure form (e-Dform), which must be presented at the immigration desk upon

departure at permitted international exit ports. Foreign travel is restricted for political activists, former political prisoners, and some local staff of foreign embassies. Around 4,000 names were thought to remain on the government's blacklist, which prevents people considered a threat to national security from entering or leaving the country. It is illegal to enter Burma without a valid passport or travel document and to do so carries a possible prison sentence. People returning to Burma from exile experienced delays in processing of documents and one returning political activist was sentenced to six months imprisonment upon return. (see Exiting and entering Burma).

2.4.2 The country guidance HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012, 23 January 2006, found that:

(1) A Burmese citizen who has left Burma illegally is in general at real risk on return to Burma of imprisonment in conditions which are reasonably likely to violate his rights under Article 3 of the ECHR. Exit will be illegal where it is done without authorisation from the Burmese authorities, however obtained, and will include travel to a country to which the person concerned was not permitted to go by the terms of an authorised exit. We consider it is proper to infer this conclusion from the effect in the Van Tha case of the employment of Article 5(j) of the Burma Emergency Act 1950, either on the basis of the application of that Article in that case or also as a consequence of a breach of the exit requirements we have set out in paragraph 83.

(2) A Burmese citizen is in general at real risk of such imprisonment if he is returned to Burma from the United Kingdom without being in possession of a valid Burmese passport.

(3) It is not reasonably likely that a Burmese citizen in the United Kingdom will be issued with a passport by the Burmese authorities in London, unless he is able to present to the Embassy an expired passport in his name.

(4) If it comes to the attention of the Burmese authorities that a person falling within (1) or (2) is a failed asylum seeker, that is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. To return such a person from the United Kingdom would accordingly be a breach of Article 33 of the Refugee Convention. Whether that fact would come to the attention of the authorities will need to be determined on the facts of the particular case, bearing in mind that the person is highly likely to be interrogated on return.

(5) It has not been shown that a person who does not fall within (1) or (2) above faces a real risk of persecution or Article 3 ill-treatment on return to Burma by reason of having claimed asylum in the United Kingdom, even if the Burmese authorities have reason to believe that he has made such a claim, unless the authorities have reason to regard him as a political opponent. (paragraph 93).

2.4.3 For information on prison conditions, see the Country Information and Guidance Burma: Prison conditions.

2.4.4 For further guidance on assessing risk, see section 6 of the Asylum Instruction on Assessing Credibility and Refugee Status and for information on prison conditions, see the Country Information and Guidance Burma: Prison conditions.

Back to Contents

2.5 Are those at risk able to seek effective protection?

2.5.1 As the person's fear is of ill treatment/persecution at the hands of the state, it is unreasonable to consider they would be able to avail themselves of the protection of the authorities.

2.5.2 For further guidance on assessing the availability or not of state protection, see section 8.1 of the Asylum Instruction on Assessing Credibility and Refugee Status.

2.6 Are those at risk able to internally relocate?

2.6.1 As the person's fear is of ill treatment/persecution at the hands of the state, it is neither reasonable nor realistic to expect them to relocate to escape that risk.

2.6.2 For further guidance on the factors to consider and considering internal relocation, see section 8.2 of the Asylum Instruction on Assessing Credibility and Refugee Status.

2.7 If refused, is the claim likely to be certifiable as 'clearly unfounded'?

2.7.1 Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.7.2 For further guidance on certification, see the Asylum Instruction on Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002.

Back to Contents

3. Policy summary

3.1.1 **Since the transition from military rule to a civilian democracy began in 2011, there have been improvements in regard to assembly, expression and media freedoms, and opposition parties can now operate relatively freely. In national elections held in November 2015, the opposition NLD party secured a landslide victory and will take power in February 2016.**

3.1.2 **There continues to be reports that peaceful critics, including political activists, journalists, land protesters and human rights defenders continue to be arrested and detained under various laws and Penal Code provisions to suppress freedom of assembly, association and expression.**

3.1.3 **If the person's fear is of ill treatment/persecution at the hands of the state, it is unreasonable to consider they would be able to avail themselves of the protection of the authorities. Neither is it reasonable nor realistic to expect them to relocate to escape that risk.**

3.1.4 **If the person has left Burma illegally, they are at real risk of imprisonment upon return.**

Back to Contents

Country Information

Updated 17 November 2015

4. Background

4.1.1 Burma (aka Myanmar) was ruled by a military junta from 1962 to 2011. The regime suppressed all dissent and was widely condemned internationally for gross human rights abuses, including the forcible relocation of civilians and the widespread use of forced labour. The first general election in 20 years was held in 2010. This was hailed by the junta as an important step in the transition from military rule to a civilian democracy, although was boycotted by the main opposition group, Aung San Suu Kyi's National League for Democracy (NLD), which had won a landslide victory in the previous multi-party election in 1990 but was not allowed to govern.[1]

4.1.2 The 2010 elections were deemed neither free nor fair, with allegations of 'rigged "advanced voting" and other irregularities'. Freedom House reported:

'The military-supported Union Solidarity and Development Party (USDP) captured 129 of the 168 elected seats in the upper house and 259 of 330 elected seats in the lower house. The USDP also secured 75 percent of the seats in the 14 state and regional assemblies. The Rakhine Nationalities Development Party (RNDP) and the Shan Nationalities Democracy Party (SNDP) earned the second-highest percentage of seats in the House of Nationalities and House of Representatives, respectively... The National Democratic Force (NDF), a breakaway faction of the NLD, won four seats in the upper house and eight in the lower.'[2]

4.1.3 The BBC profile on Burma noted:

'A nominally civilian government led by President Thein Sein – who served as a general and then prime minister under the junta – was installed in March 2011. However, a new constitution brought in by the junta in 2008 entrenched the primacy of the military. A quarter of seats in both parliamentary chambers are reserved for the military, and three key ministerial posts - interior, defence and border affairs - must be held by serving generals'.[3]

4.1.4 The new constitution ensured military dominance in parliament[4], providing the military 25 per cent of seats in parliament[5] and granting it an effective veto over constitutional amendments.

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[1] BBC, Myanmar profile, 27 August 2015, http://www.bbc.co.uk/news/world-asia-pacific-12990563, date accessed 2 October 2015.
[2] Freedom House, 'Freedom in the World 2015 – Myanmar', 27 February 2015, https://freedomhouse.org/report/freedom-world/2015/myanmar#.VV3so_mMPMp, date accessed 21 May 2015.
[3] BBC, Myanmar profile, 27 August 2015, http://www.bbc.co.uk/news/world-asia-pacific-12990563, date accessed 2 October 2015.
[4] BBC, Myanmar profile, 27 August 2015, http://www.bbc.co.uk/news/world-asia-pacific-12990563, date accessed 2 October 2015.

4.1.5 In its 2015 World Report, Human Rights Watch stated:

'The government's commitment to staging free and fair elections in 2015 came under question in 2014 as it cancelled planned bi-elections and made no commitment to amend the deeply flawed 2008 constitution. The opposition National League for Democracy party and donor governments pressed for constitutional reform, particularly article 59(f), which effectively disqualifies opposition leader Aung San Suu Kyi from the presidency. ...

'The Burmese Defense Services, or Tatmadaw, rejected constitutional amendments, and senior military leaders in numerous speeches vowed to safeguard the existing constitution as one of the military's core duties. Military leaders also maintained that they should retain their quota of reserved seats in parliament, control of key ministries, and emergency powers.'[6]

4.2 Democratic reform

4.2.1 At the beginning of his tenure President Thein Sein introduced a series of commitments towards democracy and reform, including a more accountable and open government.[7] Improvements have been made in regard to assembly, expression and media freedoms, and opposition parties can operate comparatively freely.[8]

4.2.2 However, as noted by the Special Rapporteur following her mission to Burma in January 2015, restrictions remained in a number of areas in the political sphere, and in some cases appeared to have worsened since her first visit in July 2014.[9]

4.2.3 In her end-of-mission statement in August 2015 the Special Rapporteur highlighted her 'concern by the possible disenfranchisement of thousands of individuals cutting across all sectors of Myanmar society.' These include migrant workers, internally displaced persons and refugees; individuals living in conflict-affected areas such as Kachin and northern Shan States, as well as other parts of Myanmar where elections may be cancelled for security reasons; and hundreds of thousands of individuals who previously held temporary registration cards ("white cards"). White card holders were

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[5] Constitution of the Republic of the Union of Myanmar (2008), September 2008, http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf, Article 436, date accessed 22 May 2015.

[6] HRW, 'World Report 2015 – Burma', 29 January 2015, http://www.hrw.org/world-report/2015/country-chapters/burma, date accessed 27 September 2015

[7] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 4, date accessed 21 May 2015.

[8] International Crisis Group (ICG), 'Myanmar's Electoral Landscape', 28 April 2015, http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/266-myanmar-s-electoral-landscape, page 7, date accessed 21 May 2015.

[9] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 4, date accessed 21 May 2015.

allowed to vote in the 2010 elections but lost this right in February 2015 following the decision of the Constitutional Tribunal.[10]

4.2.4 Human Rights Watch (HRW) reported 'The reform process in Burma experienced significant slowdowns and in some cases reversals of basic freedoms and democratic progress in 2014. The government continued to pass laws with significant human rights limitations, failed to address calls for constitutional reform ahead of the 2015 elections, and increased arrests of peaceful critics, including land protesters and journalists.'[11]

Back to Contents

4.3 Elections November 2015

4.3.1 General elections took place in Burma on 8 November 2015. The elections were largely seen as fair although hundreds of thousands of people were not able, or ineligible, to vote, including Rohingyas who are not recognised as citizens, and those affected by ongoing ethnic conflicts in seven areas of the country.[12]

4.3.2 In a landslide victory, the National League for Democracy (NLD) won 78 per cent of the seats (387 of the 498 non-military positions), enough to secure a majority in parliament. Under the constitution, the military holds 25 per cent of seats, maintaining control over security ministries, and precludes NLD leader, Aung San Suu Kyi, from taking the presidency.[13] The incumbent USDP secured 41 seats[14] and will remain in office until new members take their seats in February 2016.[15] Meanwhile, existing MPs can continue to pass laws.[16] Outgoing parliamentary speaker urged MPs who lost their seats to continue to "work in the interest of the country and people in good faith and fairness during the rest of our time as lawmakers".[17] A new president will assume power by the end of March.[18]

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[10] OHCHR - UN Office of the High Commissioner for Human Rights: Myanmar: "Critical and independent voices are vital partners not threats" – UN rights expert, 11 August 2015 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16309&LangID=E date accessed 27 September 2015

[11] HRW, 'World Report 2015 – Burma', 29 January 2015, http://www.hrw.org/world-report/2015/country-chapters/burma, date accessed 22 May 2015.

[12] BBC News, Myanmar MPs meet for first time since election, 16 November 2015, http://www.bbc.co.uk/news/world-asia-34830284, date accessed 17 November 2015.

[13] Forbes, New World Beckons In Burma: Opposition Dominates Election But Will Military Yield Real Power?, 16 November 2015, http://www.forbes.com/sites/dougbandow/2015/11/16/new-world-beckons-in-burma-opposition-dominates-election-but-will-military-yield-real-power/, date accessed 17 November 2015.

[14] Radio Free Asia, Myanmar's Parliamentary Speaker Urges Pre-Election Lawmakers to 'Play Fair', 16 November 2015, http://www.rfa.org/english/news/myanmar/lawmakers-11162015194732.html, date accessed 17 November 2015.

[15] Reuters, World leaders laud Myanmar elections as Suu Kyi secures majority, 16 November 2015, http://www.reuters.com/article/2015/11/16/us-myanmar-election-idUSKCN0T20H520151116#SerfOzXFllhi7f21.97, date accessed 17 November 2015.

[16] BBC News, Myanmar MPs meet for first time since election, 16 November 2015, http://www.bbc.co.uk/news/world-asia-34830284, date accessed 17 November 2015.

[17] Radio Free Asia, Myanmar's Parliamentary Speaker Urges Pre-Election Lawmakers to 'Play Fair', 16 November 2015, http://www.rfa.org/english/news/myanmar/lawmakers-11162015194732.html,

5. Political affiliation

5.1 Freedom of political expression

5.1.1 As of April 2015, 71 political parties were legally registered in Burma. The International Crisis Group (ICG) reported that 'Two-thirds of the parties represent minority ethnic groups, both the seven major ones that have their own states[19], and smaller sub-minorities. At this early stage in the transition and given the long marginalisation of ethnic minority communities, identity politics still holds sway. This means parties tend to form around ethnic identities, not policies. The biggest issue they identify is securing sufficient financial resources, as well as their limited technical and organisational capacity. Most major ethnic groups are represented by (at least) two parties: those from 1990 that mostly boycotted the 2010 polls but have subsequently re-registered; and newer ones that registered in 2010, so are in the legislatures.' [20]

5.1.2 Despite winning a seat in the 2012 by-elections[21], iconic leader of the NLD, Aung San Suu Kyi, is effectively barred from running for presidency under Article 59 (f) of the constitution[22] for having foreign relatives.

5.1.3 In August 2015, Human Rights Watch expressed concern about:

'new regulations that prohibit political parties and candidates from criticizing the Burmese military and the constitution on state media... The Union Election Commission (UEC) announced on August 29, 2015, that policy statements by political parties ahead of the November 8 polls would be limited to 15 minutes on state-controlled radio and television and then republished in state-controlled newspapers, and could not criticize the Tatmadaw (armed forces) or the 2008 constitution. The constitution was passed in a rigged referendum controlled by the military. The UEC and Ministry of Information will vet all statements and ensure no language is included "that can split the Tatmadaw or that can disgrace and damage the dignity of the Tatmadaw."… The new order undermines the Code of Conduct for Political Parties and Candidates, which was drafted in consultation with several political parties and signed on June 26 by 67 parties (out of an estimated 90 fielding candidates). It states that all parties will respect the rights of others to "present their ideas, basic principles, and political agendas; to have free access to mass media for political canvassing; and to

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date accessed 17 November 2015.

[18] Reuters, World leaders laud Myanmar elections as Suu Kyi secures majority, 16 November 2015, http://www.reuters.com/article/2015/11/16/us-myanmar-election-idUSKCN0T20H520151116#SerfOzXFllhi7f21.97, date accessed 17 November 2015.

[19] The Chin, Kachin, Kayah, Kayin (Karen), Mon, Rakhine and Shan.

[20] ICG, 'Myanmar's Electoral Landscape', 28 April 2015, http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/266-myanmar-s-electoral-landscape, page 14, date accessed 21 May 2015.

[21] Freedom House, 'Freedom in the World 2015 – Myanmar', 27 February 2015, https://freedomhouse.org/report/freedom-world/2015/myanmar#.VV3so_mMPMp, date accessed 21 May 2015.

[22] Constitution of the Republic of the Union of Myanmar (2008), September 2008, http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf, date accessed 22 May 2015.

publish and distribute their electoral documents and materials without hindrance, intimidation or coercion, as set out in existing laws or regulations."…The UEC prohibition on criticism of the military in state media comes after members of parliament (MPs) and others have increasingly spoken out against the military's attempts to block proposed amendments to the constitution. In parliamentary debates in June, 61 percent of MPs in the national assembly voted to amend section 436(a) of the constitution, which requires that amendments to key provisions in the constitution be first supported by 75 percent of MPs, and then by over half of eligible voters in a nationwide referendum. Through the constitution, the military has guaranteed itself 25 percent of seats in the parliament, giving it an effective veto over amendments, including any that could dilute its power.'[23]

5.1.4 The Political Parties Registration Law, which came into effect in September 2014, allows only full citizens to form political parties, and full or naturalised citizens to be party members[24] therefore preventing political participation by ethnic Rohingya who lack full citizenship documents after effectively being made stateless by a 1982 law.[25]

See International Crisis Group's report 'Myanmar's Electoral Landscape' for a list of registered parties as of 23 April 2015.

5.1.5 Freedom House reported that, since 2011, members of the parliament have been allowed to voice their views on democratic rights and, whilst their time to speak has often been restricted, many legislators' speeches have been covered in domestic media and they have not suffered harassment for their observations.[26]

5.2 Political prisoners

5.2.1 Several mass prisoner amnesties, including political prisoners, have occurred since 2012. The Committee for Scrutinizing the Remaining Prisoners of Conscience was established in February 2013 with an aim to 'to scrutinize the remaining political prisoners serving their terms in prisons throughout the country so as to grant them liberty'.[27] In October 2014, the release of more than 3,000 prisoners was announced by the government. Although most of those released were considered to be petty criminals, a number of former military intelligence officers, said to be close to former

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[23] Human Rights Watch, Burma: Parties Ordered Not to Criticize Army, 31 August 2015, available at: http://www.refworld.org/docid/55e56cd24.html, date accessed 27 September 2015

[24] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 22, date accessed 21 May 2015.

[25] Freedom House, 'Freedom in the World 2015 – Myanmar', 27 February 2015, https://freedomhouse.org/report/freedom-world/2015/myanmar#.VV3so_mMPMp, date accessed 21 May 2015.

[26] Freedom House, 'Freedom in the World 2015 – Myanmar', 27 February 2015, https://freedomhouse.org/report/freedom-world/2015/myanmar#.VV3so_mMPMp, date accessed 21 May 2015.

[27] HRW and Amnesty International, 'Joint letter on the Establishment of the prisoners of conscience affairs Committee', 6 February 2015, http://www.hrw.org/news/2015/02/06/joint-letter-establishment-prisoners-conscience-affairs-committee, date accessed 29 May 2015.

Prime Minister Khin Nyunt (freed in 2012 after being removed from office in 2004 and placed under house arrest), were also released.[28]

5.2.2 In its report on Human Rights Practices 2014, the US Department of State reported:

'While the government released one or two political prisoners during the year, it continued to arrest new ones. Groups assisting political prisoners estimated more than 80 political prisoners remained in detention at year's end. This number did not include detainees in Rakhine State, estimated to be in the hundreds. Many released political prisoners experienced significant restrictions following their release, including an inability to resume studies undertaken prior to incarceration, secure travel documents, or obtain other documents related to identity or ownership of land. Under section 401, released political prisoners faced the prospect of serving the remainder of their sentences if re-arrested for any reason.'[29]

5.2.3 A new Prisoners of Conscience Affairs Committee was created in January 2015 but, unlike the previous committee, did not include any former political prisoners. In their joint letter of 6 February 2015, Amnesty International and Human Rights Watch stated:

'Amnesty International and Human Rights Watch note that out of the 28 members of the new Committee, only one is a woman and only two are representatives of former prisoners of conscience associations. We also note with regret the exclusion from the new Committee of the Assistance Association for Political Prisoners – Burma (AAPP-B), whose representatives – also members of the Scrutinizing Committee – had been vocal in highlighting concerns about its operations.' [30]

5.2.4 The AI and HRW letter went on to highlight that despite the creation of such committees 'Prisoners of conscience remain behind bars and peaceful protesters, journalists, human rights defenders – particularly those involved in land disputes – and farmers continue to be arrested, charged and imprisoned simply as a result of their peaceful activities.'[31] (See also Farmers and land rights activists)

5.2.5 Although the Government of Burma insisted there were no remaining political prisoners, the Assistance Association for Political Prisoners – AAPP (Burma) recorded that, as at the end of May 2015, 163 political prisoners (including political and land rights activists) were incarcerated, and 442

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[28] BBC News, 'Myanmar Profile – Timeline', 18 May 2015, http://www.bbc.co.uk/news/world-asia-pacific-12992883, date accessed 5 June 2015.
[29] US Department of State: Country Report on Human Rights Practices 2014 - Burma, 25 June 2015, http://www.state.gov/j/drl/rls/hrrpt/2014/eap/236428.htm, date accessed 27 September 2015.
[30] HRW and Amnesty International, 'Joint letter on the Establishment of the prisoners of conscience affairs Committee', 6 February 2015, http://www.hrw.org/news/2015/02/06/joint-letter-establishment-prisoners-conscience-affairs-committee, date accessed 29 May 2015.
[31] HRW and Amnesty International, 'Joint letter on the Establishment of the prisoners of conscience affairs Committee', 6 February 2015, http://www.hrw.org/news/2015/02/06/joint-letter-establishment-prisoners-conscience-affairs-committee, date accessed 29 May 2015.

political activists were awaiting trial.[32] Freedom House noted 'Administrative detention laws allow individuals to be held without charge, trial, or access to legal counsel for up to five years if deemed a threat to state security or sovereignty.'[33] The Special Rapporteur reported in March 2015 that 'At the end of 2014, official figures indicated that twenty seven political prisoners remained in prison. However, the Special Rapporteur has received information that the actual number could be much higher. In addition, she was informed during her visit that over 78 farmers were serving prison sentences for trespassing after their land was confiscated and over 200 activists were awaiting trial outside prison. The numbers remain alarmingly high, and the Special Rapporteur is concerned that earlier commitments that there would be no more political prisoners held in Myanmar have not been met.'[34]

5.2.6 Human Rights Watch and Amnesty International expressed concern that many former political prisoners were released only conditionally and risked re-arrest for engaging in peaceful political activities.[35] The AAPP kept current data of political prisoners who were detained, awaiting trial, or released.[36]

5.2.7 In her end-of-mission statement in August 2015, the UN Special Rapporteur on the situation of human rights in Myanmar stated:

'Of concern is the sense among human rights defenders and civil society actors of increased monitoring and surveillance of their activities, and of increased intimidation and harassment by security personnel and state agents. Since my last visit in January 2015, I observed the continuing arrests and convictions of civil society actors – including students, political activists, workers, union leaders, farmers and community organisers – exercising their rights to freedom of expression, assembly and association. Many face multiple charges and trials in different townships in relation to a single protest. This practice should immediately come to an end.'[37]

(For information on conditions in prisons in general, see the Country Information and Guidance Burma: Prison conditions).

Back to Contents

[32] AAPP, 'Chronology May 2015', 5 June 2015, http://aappb.org/2015/06/chronology-may-2015/, date accessed 12 June 2015.
[33] Freedom House, 'Freedom in the World 2015 – Myanmar', 27 February 2015, https://freedomhouse.org/report/freedom-world/2015/myanmar#.VV3so_mMPMp, date accessed 21 May 2015.
[34] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 4, date accessed 29 September 2015.
[35] HRW and Amnesty International, 'Joint letter on the Establishment of the prisoners of conscience affairs Committee', 6 February 2015, http://www.hrw.org/news/2015/02/06/joint-letter-establishment-prisoners-conscience-affairs-committee, date accessed 29 May 2015.
[36] AAPP, 'Political prisoner data', last updated 13 May 2015, http://aappb.org/political-prisoner-data/, date accessed 29 May 2015.
[37] OHCHR - UN Office of the High Commissioner for Human Rights: Myanmar: "Critical and independent voices are vital partners not threats" – UN rights expert, 11 August 2015 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16309&LangID=E date accessed 27 September 2015

6. Freedom of association and assembly

6.1 Legal rights

6.1.1 Although progress has been made since 2011 with regards to rights of assembly and association[38], The Right to Peaceful Assembly and Peaceful Procession Act[39] (the Act), which was amended in June 2014, thus removing the power for the authorities to reject a request for permission to assemble, still fails to comply with international human rights standards.[40]

6.1.2 Human Rights Watch reported that:

'In June [2014], the parliament bowed to popular pressure and amended the Peaceful Procession and Assembly Law, but maintained controversial section 18, which grants broad latitude to local officials to deny permission for gatherings. The draft Association Law, which has attracted widespread civil society criticisms, was still being discussed at time of writing, with the military controlled Ministry of Home Affairs unwilling to remove provisions granting the authorities wide powers to restrict registration of national and international nongovernmental organizations.'[41]

6.1.3 The UN Special Rapporteur on the situation of human rights in Myanmar expressed concern at the harsh application of the Act against anti-Government protests, whilst those voicing support for government policies were not faced with similar restrictions. The Special Rapporteur reported that the Act:

'requires consent to be obtained from the authorities at least five days in advance of an assembly or procession. It allows restrictions to be placed on the assembly or procession, even though the law does not set out the precise rules governing the granting of consent, or the imposition of restrictions. Articles 10-12 impose detailed restrictions on the actual conduct of the event, including what can be said, chanted, carried and how participants can behave. Any breach of these rules revokes consent for the event.'[42]

6.1.4 The Special Rapporteur reported receiving information of 'ongoing arrests and prosecutions of people exercising their rights to peaceful assembly and association, including in relation to land confiscation, large scale

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[38] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 12, date accessed 21 May 2015.
[39] The Right to Peaceful Assembly and Peaceful Procession Act, 2 December 2011, http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf, date accessed 22 May 2015.
[40] ARTICLE 19, 'Myanmar: Amended Right to Peaceful Assembly and Peaceful Procession Law', August 2014, http://www.article19.org/data/files/medialibrary/37666/14-08-01-LA-myanmar-assembly.pdf, date accessed 22 May 2015.
[41] Human Rights Watch (HRW), 'World Report 2015 – Burma', 29 January 2015, http://www.hrw.org/world-report/2015/country-chapters/burma, date accessed 29 September 2015
[42] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 13, date accessed 21 May 2015.

development projects, environmental degradation and constitutional reform. Many protesters are charged under the Act on the Right to Peaceful Assembly and Peaceful Procession, as well as articles 188, 505(b), 295(a) and 333 of the Penal Code.'[43] In January 2015, HRW cited examples of dozens of people arrested for "unauthorised" assemblies in recent months.[44] Articles 17, 18 and 19 of the Act provide for prison sentences.[45]

6.1.5 In its report on Human Rights 2014, the US Department of State reported that 'Citizens and international civil society groups continued to criticize provisions of the peaceful protests law that make it a criminal offense to give speeches that "contain false information," say anything that can harm the state, or "do anything that causes fear, a disturbance or blocks roads, vehicles, or the public." Furthermore, the law mandates fines or prison sentences of up to six months for each unauthorized protest in every township through which the protesters travelled, which led to activists potentially facing years in prison. The government continued to require public venues to seek permission 20 days in advance to rent space to organizations seeking to hold political gatherings.'[46]

6.1.6 The Foreign and Commonwealth Office (FCO) reported that the amended Association Registration Law saw the 'removal of harsh penalties for non-registration of local and international non-governmental organisations (NGOs). But a provision remains for the Registration Committee to evaluate applications from NGOs based on "national security grounds", which introduces potentially arbitrary criteria for assessing applications.'[47]

6.2 Farmers and land rights activists

6.2.1 Radio Free Asia (RFA) stated that forced land confiscations by the government, military and private businesses were widespread in Burma and among the country's top rights violations.[48] In its 2015 Annual Report, Amnesty International stated that a reported 6,000 cases of land confiscations were received by the parliamentary committee, established in 2012, to investigate land disputes, but that 'failures to resolve or respond to

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[43] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 12, date accessed 21 May 2015.
[44] HRW, Burma: "Peaceful Assembly Law" Fails to End Repression, 26 January 2015, http://www.hrw.org/news/2015/01/26/burma-peaceful-assembly-law-fails-end-repression, date accessed 22 May 2015.
[45] The Right to Peaceful Assembly and Peaceful Procession Act, 2 December 2011, http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf, date accessed 22 May 2015.
[46] US Department of State, 'Country Report on Human Rights Practices 2014, Burma', 26 June 2015, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236428, Section 2d, date accessed 26 June 2015
[47] Foreign and Commonwealth Office, 'Burma – Country of Concern', 12 March 2015, https://www.gov.uk/government/publications/burma-country-of-concern--2/burma-country-of-concern#freedom-of-expression-and-assembly, date accessed 21 July 2015.
[48] Radio Free Asia (RFA), 'Myanmar authorities arrest 14 villagers, charge them with 'illegal' land protest', 26 February 2015, http://www.rfa.org/english/news/myanmar/villagers-02262015165655.html, date accessed 22 May 2015.

land disputes led farmers and other affected people increasingly to resort to so-called “plough protests”, with farmers ploughing the disputed land. Some protests were met with unnecessary or excessive use of force by security forces. Many farmers and human rights defenders supporting them were arrested and charged, often under provisions in the Penal Code relating to trespass and criminal damage.’[49]

6.2.2 The Irrawaddy newsletter reported on 12 November 2014 that: ‘The Myanmar National Human Rights Commission (MNHRC) has said that nearly 45 percent of the total complaints it has received this year [2014] stem from land disputes, the highest proportion of such complaints since the commission was founded three years ago.’[50]

6.2.5 The Irawaddy newspaper reported that in December 2014, a woman was shot dead by police as she joined villagers protesting against land confiscation near the Letpadaung copper mining project. [51] The Democratic Voice of Burma reported that a further 20 people were reportedly injured as police opened fire against the protesters trying to block police from entering their land plots. The villagers had refused to accept compensation offered by the Burma-Chinese-backed mining company, Myanmar Wanbao. In November 2012, 80 demonstrators were injured, reportedly by white phosphorus bombs, when riot police broke up a protest at the mine.[52]

6.2.6 HRW reported ‘Protests over land rights intensified in 2014 as farmers faced evictions, at times receiving inadequate compensation or relocation terms. Soldiers committed violence against farmers who had returned to symbolically work their land and call for its return. Military members of the national parliament shut down parliamentary debates on the extent of land-taking over previous decades by the armed forces.’ [53] In its 2014 Country Report on Human Rights, the US State Department stated:

‘Farmers and social activists held protests over land rights and land confiscation throughout the country, and human rights groups reported hundreds of cases in which groups of farmers and those supporting them were arrested for protesting the confiscation of their lands. Many reported cases involved land taken by the army under the former military regime and given to private companies or individuals with ties to the military. Common

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[49] Amnesty International, ‘Annual Report 2014/15, Myanmar’, 25 February 2015, https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/, date accessed 29 May 2015.
[50] The Irrawaddy, ‘Land Disputes Leading Cause of Human Rights Complaints’, 12 November 2014, http://www.irrawaddy.org/burma/land-disputes-leading-cause-human-rights-complaints.html, date accessed 29 May 2015.
[51] The Irrawaddy, ‘Police Kill Villager in Copper Mine Standoff’, 22 December 2014, http://www.irrawaddy.org/burma/police-kill-villager-copper-mine-standoff.html, date accessed 28 May 2015.
[52] Democratic Voice of Burma (DVB), ‘Riot police open fire on Latpadaung protestors’, 22 December 2014, https://www.dvb.no/news/riot-police-open-fire-latpadaung-protestors/46803, date accessed 28 May 2015.
[53] Human Rights Watch, ‘World Report 2015 – Burma’, 29 January 2015, http://www.hrw.org/world-report/2015/country-chapters/burma, date accessed 22 May 2015.

charges used to convict the peaceful protesters included criminal trespass, violation of the Peaceful Assembly and Processions Act, and violation of section 505(b) of the penal code, which criminalizes actions that are deemed likely to cause "an offence against the State or against the public tranquility." The Assistance Association for Political Prisoners (Burma) reported hundreds of arrests and indictments during the year, with more than 1,000 farmers facing legal action in connection with peaceful protests against land confiscation. For example, as of September 10, six township courts sentenced land rights activist Sein Than, who led peaceful demonstrations against land confiscation in Minchaugkan starting in November 2013, to a combined two years and two months of hard labor for violating the Peaceful Assembly Act.'[54]

6.2.7 The Special Rapporteur heard during her visit to Burma that 'over 78 farmers were serving prison sentences for trespassing after their land was confiscated and over 200 activists were awaiting trial outside prison'. [55] In February 2015, RFA reported that a protest camp, run by villagers demanding the return of land they claimed was confiscated by the former military regime, was destroyed by the authorities. It was reported by lawyers representing the villagers that 14 people were arrested and charged with holding an illegal demonstration. The RFA report continued: 'In a separate development, 14 people are facing charges after farmers clashed with authorities Thursday over land confiscated by developers for a palm oil plantation project in southern Myanmar's Tanintharyi region.'[56]

6.2.8 In August 2015 HRW reported that Burmese authorities were using laws on association and expression to halt the activities of land rights activists and stated that 'land activists are increasingly becoming Burma's new political prisoners'. HRW stated:

'The recent arbitrary arrest of a prominent land rights advocate in Karen State exemplifies the government's persecution of vocal opponents of land grabs by officials and their business associates. At about midnight on August 7, 2015, police arrested U Saw Maung Gyi, a leader of the 88 Karen Generation Student Organization. The authorities charged him under section 17(1) of the Unlawful Associations Act for allegedly providing assistance to a man that police claim is a Karen insurgent. U Saw Maung Gyi faces a two-to-three-year prison sentence if convicted. To further harass the 88 Karen Generation Student Organization, on that same night the police arrested nine farmers and activists who were sleeping at the organization's office and

[54] US Department of State, 'Country Report on Human Rights Practices 2014, Burma', 26 June 2015, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236428, Section 2d, date accessed 27 September 2015

[55] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 15, date accessed 21 May 2015.

[56] Radio Free Asia (RFA), 'Myanmar authorities arrest 14 villagers, charge them with 'illegal' land protest', 26 February 2015, http://www.rfa.org/english/news/myanmar/villagers-02262015165655.html, date accessed 22 May 2015.

fined them for staying overnight outside their home district without government permission.' [57]

6.2.9 HRW continued:

'The arrests of these activists follows the arrests of 27 people in June in Karen State for allegedly violating section 43(a) of the Forest Law after they erected huts on land they claimed to own. They face up to seven years in prison. In addition, another 13 people from Karen State are facing charges under section 18 of the Peaceful Assembly and Peaceful Procession Law after a protest in Hpa-an in March. ... Most recently, on July 23, police in Pegu Region arrested and charged the prominent former political prisoner and current head of the Myanmar Farmers Association, Su Su Nway, with trespass for her investigations into farmland seized by the Burmese military several years ago. Her trial began on July 29 and she could face three months in prison.

'The number of political prisoners in Burma has surged in the past year, with approximately 170 people in prison and over 400 facing various charges. These include large numbers of farmers and land rights activists charged with either trespass or unlawful assembly.'[58]

Back to Contents

6.3 Student demonstrations

6.3.1 On 10 March 2015, police dispersed an estimated 200 student demonstrators near Letpadan, north of Rangoon (Yangon), and arrested a number of students and their perceived supporters. The protests arose after months of escalating tensions between student unions across the country and the Ministry of Education over a draft national education bill.[59] Radio Free Asia reported that the protestors saw that the bill would 'break up student unions and allow the government to take decisions on issues such as curriculum out of the hands of universities'.[60] Violence broke out between police and demonstrators as the students attempted to reach Rangoon.[61]

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[57] Human Rights Watch, Burma: Land Rights Activists Are Newest Political Prisoners, 15 August 2015, https://www.hrw.org/news/2015/08/15/burma-land-rights-activists-are-newest-political-prisonershttp://www.refworld.org/docid/55d190c34.html, date accessed 27 September 2015

[58] Human Rights Watch, Burma: Land Rights Activists Are Newest Political Prisoners, 15 August 2015, https://www.hrw.org/news/2015/08/15/burma-land-rights-activists-are-newest-political-prisonershttp://www.refworld.org/docid/55d190c34.html, date accessed 27 September 2015

[59] Human Rights Watch (HRW), 'Burma: Police Baton-Charge Student Protesters', 11 March 2015, http://www.hrw.org/news/2015/03/10/burma-police-baton-charge-student-protesters, accessed 17 March 2015.

[60] RFA, 'Opposition, Rights Group Urge Myanmar to Probe Crackdown on Student Protesters', 11 March 2015, http://www.rfa.org/english/news/myanmar/probe-03112015160013.html, date accessed 22 May 2015.

[61] Amnesty International, 'Myanmar: Violent police crackdown against protestors must end', 10 March 2015, https://www.amnesty.org/en/articles/news/2015/03/myanmar-violent-crackdown-on-protesters/, accessed 17 March 2015; HRW, 'Burma: Police Baton-Charge Student Protesters', 11 March 2015, http://www.hrw.org/news/2015/03/10/burma-police-baton-charge-student-protesters, accessed 17 March 2015.

Over 100 people were arrested.[62] In a statement, the International Federation for Human Rights reported that police had used excessive force against the peaceful protesters.[63] Human Rights Watch reported that 'The manner in which the police cracked down on student demonstrators, and use of local police auxiliaries to search for and apprehend students suggests a disturbing return to past unlawful tactics of Burma's military governments.'[64] RFA reported that on 12 May over 70 of the student activists arrested in March went on trial to face unlawful assembly and rioting charges. The RFA stated that: 'Thirteen university students and one underage student named Aung Min Khant, a high school student who lives in Schwebo, applied for bail, but only the 16-year-old was released on Tuesday by the Tharrawaddy township court.'[65]

6.3.2 In her end-of-mission statement the UN Special Rapporteur said, of the 'violent police crackdown against students and their supporters on 10 March 2015 in Letpadan (Bago region)... I was given access to the protest site, met with the authorities, and interviewed five individuals detained in Tharawaddy prison. I received allegations of excessive use of force by the police and call on the authorities to conduct a prompt, impartial and independent investigation into these allegations. In my view, these people have been arbitrarily arrested. I therefore call for their immediate and unconditional release and I urge that all charges be dropped against all those arrested in connection with the Letpadan incident.'[66]

Back to Contents

7. Freedom of speech and media

7.1 Legal rights

7.1.1 As reported by the Special Rapporteur 'The Printing and Publishing Enterprise Law last year [2014] replaced the Press (Emergency Powers) Act and the Printers and Publishers Registration Law. The new law requires all

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[62] RFA, 'Opposition, Rights Group Urge Myanmar to Probe Crackdown on Student Protesters', 11 March 2015, http://www.rfa.org/english/news/myanmar/probe-03112015160013.html, date accessed 28 May 2015;.

[63] International Federation for Human Rights, 'Burma: Release student demonstrators and hold police accountable for the violent crackdown', 10 April 2015, available at: http://www.refworld.org/docid/555da76524.html, date accessed 9 June 2015; RFA, 'Protestors Across Myanmar Call for Release of Detained Students', 27 March 2015, http://www.rfa.org/english/news/myanmar/students-hold-protests-across-myanmar-03272015163719.html/, date accessed 9 June 2015.

[64] Human Rights Watch (HRW), 'Burma: Police Baton-Charge Student Protesters', 11 March 2015, http://www.hrw.org/news/2015/03/10/burma-police-baton-charge-student-protesters, date accessed 29 September 2015.

[65] RFA, 'Trial begins for Myanmar student activists involved in Letpadan protest', 12 May 2015, http://www.rfa.org/english/news/myanmar/trial-begins-for-student-activists-involved-in-letpadan-protest-05122015173208.html/, date accessed 28 May 2015.

[66] OHCHR - UN Office of the High Commissioner for Human Rights: Myanmar: "Critical and independent voices are vital partners not threats" – UN rights expert, 11 August 2015 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16309&LangID=E date accessed 27 September 2015

publications to be registered by the Ministry of Information, with five-year licences granted. While this improves on the one-year licenses provided previously, the new law lacks safeguards to prevent the politicization of decisions on the granting of such registrations.'[67] The Committee to Protect Journalists stated that: 'The Law bans news that could be considered insulting to religion, disturbing to the rule of law, or harmful to ethnic unity. Publications must be registered under the law, and those found in violation of its vague provisions risk de-registration.'[68]

7.1.2 The 2014 News Media Law introduced some guarantees for media freedom, and violations of the law did not impose prison sentences. However, in its commentary on the News Media Law, Article 19 reported that the law placed vague restrictions on freedom of expression with undefined rules and regulations. All media, including print, broadcast and internet-based, remained under the control of the Media Council, which was not independent of the government.[69]

7.1.3 The UN Special Rapporteur stated that 'the law places vague restrictions on freedom of expression, with media workers permitted to investigate, publish and broadcast information in accordance with undefined "rules and regulations" that may lead to unforeseen restrictions, with other "entitlements" qualified by reference to the constitution or other unspecified laws.'[70]

7.1.4 In a June 2015 report, Amnesty International stated: 'The arrest and imprisonment of journalists occurs in a wider context of restrictions on freedom of expression. The authorities continue to use old laws that excessively restrict the right to freedom of expression – such as Section 505(b) of the Penal Code and the Official Secrets Act.'[71]

7.1.5 As reported by the Committee to Protect Journalists (CPJ), national security laws, including the 1923 Official Secrets Act, were used to threaten and imprison journalists reporting on sensitive military matters.[72]

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[67] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 15, date accessed 21 May 2015.
[68] Committee to Protect Journalists (CPJ), 'Attacks on the Press 2015: 10 Most Censored Countries - 9. Myanmar', 27 April 2015, available at: http://www.refworld.org/docid/553f527249.html, date accessed 2 June 2015
[69] ARTICLE 19, 'Myanmar: News Media Law', 18 July 2014, http://www.article19.org/data/files/medialibrary/37623/News-Media-Law-Myanmar-EN.pdf, date accessed 2 June 2015.
[70] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 7, date accessed 21 May 2015.
[71] Amnesty International, 'Caught between state censorship and self-censorship: Prosecution and intimidation of media workers in Myanmar', 16 June 2015, ASA 16/1743/2015, available at: http://www.refworld.org/docid/558a5ae84.html, page 5 date accessed 20 September 2015.
[72] Committee to Protect Journalists (CPJ), 'Attacks on the Press 2015: 10 Most Censored Countries - 9. Myanmar', 27 April 2015, available at: http://www.refworld.org/docid/553f527249.html, date accessed 2 June 2015

7.1.6 Sections of the Penal Code were also used to restrict freedom of expression, including the offence of sedition, obscenity, insulting religion or religious feelings, and criminal defamation. In its March 2015 joint submission to the UN Working Group for the Universal Periodic Review of Myanmar, Article 19, Myanmar Journalists' Association (MJA), Myanmar Journalists' Network (MJN), and Myanmar Journalists' Union (MJU) stated: ''The offence of sedition, defined as defaming or bringing disaffection against or contempt of the government, does not comply with international standards on freedom of expression. ... In October 2014, five media workers at Bi Mon Te Nay Journal, Kyaw Zaw Hein, Kyaw Min Khaing, Aung Thant, Win Tin, and Yin Min Tun, were sentenced to two years imprisonment for sedition and had all their equipment confiscated. They reported a political activist's claims that an interim government was being formed. Prosecutors refused to bring the case under the News Media Law.' [73]

7.1.7 Freedom House reported that penalties under the amended Electronic Transactions Law (ETL), 'reduced to fines or prison terms of 3 to 7 years (down from 7 to 15 years) for "any act detrimental to" state security, law and order, community peace and tranquility, national solidarity, the national economy, or national culture – including "receiving or sending" related information.'[74]

Back to Contents

7.2 Journalists and human rights defenders

7.2.1 Amnesty International reported in June 2015 that:

'Despite the media reforms, journalists and other media workers in Myanmar face ongoing restrictions in carrying out their work. As these critics become more vocal and the authorities feel more threatened, they have increasingly resorted to tried and tested tactics to stifle dissent. In particular, those deemed critical of the government and the Myanmar Army or who report on subjects which the government or army consider sensitive can face intimidation, harassment and at times arrest, detention, prosecution and even imprisonment. Since 2014, the situation of freedom of expression has been deteriorating again. During 2014 at least 11 media workers were imprisoned in connection with their peaceful journalistic activities, while others reported direct threats, surveillance, restrictions on access to certain areas of the country, and the use of defamation lawsuits to stifle critical or independent reporting.'[75]

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[73] ARTICLE 19, 'Joint submission to the Universal Periodic Review of Myanmar by ARTICLE 19, Myanmar Journalists' Association (MJA), Myanmar Journalists' Network (MJN), and Myanmar Journalists' Union (MJU) For consideration at the 23rd session of the Working Group in October/November 2015', 23 March 2015, available at: http://www.refworld.org/docid/552b820a4.html, date accessed 27 September 2015.
[74] Freedom House, 'Freedom in the World 2015 – Myanmar', 27 February 2015, https://freedomhouse.org/report/freedom-world/2015/myanmar#.VV3so_mMPMp, date accessed 21 May 2015.
[75] Amnesty International, 'Caught between state censorship and self-censorship: Prosecution and intimidation of media workers in Myanmar', 16 June 2015, ASA 16/1743/2015, available at:

7.2.2 The Special Rapporteur also heard 'reports that journalists, human rights defenders and those expressing critical opinions continued to be harassed, intimidated and imprisoned under defamation, trespassing and national security laws that are not consistent with international human rights standards. In December 2014, the Committee to Protect Journalists released its annual census of media professionals imprisoned worldwide. Myanmar appeared on the list for the first time since 2011, ranking as the 8th worst jailer of journalists.' [76]

7.2.3 Freedom House reported 'Journalists and others face regular cyberattacks and attempts to infiltrate their e-mail accounts by both state and nonstate actors.'[77] In 2014, five journalists of the independent weekly news journal, Unity, were sentenced to ten years in prison under the Official Secrets Act[78], subsequently reduced to seven years on appeal. The CPJ reported that: 'Journalists are regularly barred from reporting from the military side of conflict with ethnic groups. Aung Kyaw Naing, a local freelance reporter who had embedded with rebel forces, was shot dead while in military custody in October 2014 after being apprehended by government troops in a restive area near the Thailand-Myanmar border... Three journalists and two publishers of the independent newspaper Bi Mon Te Nay were sentenced to two years in prison on charges of defaming the state.'[79]

7.2.4 Amnesty International stated that some journalists received threats from the Myanmar Army, particularly in militarised areas such as Kayin and Kachin states, where security concerns were also raised for journalists' sources. There were also reports of threats from Buddhist nationalist groups after journalists reported on violent clashes between Muslims and Buddhists or on the situation of the Rohingya. The Amnesty International report also stated that: 'Journalists have had their equipment destroyed, received abusive letters and phone calls and been threatened with physical violence. Some have received insulting messages on social media. Newspapers have reported being threatened with demonstrations outside their offices or that "actions" will be taken against them.'[80]

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http://www.refworld.org/docid/558a5ae84.html, pages 1-2, date accessed 30 June 2015.

[76] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72,para.8 available at: http://www.refworld.org/docid/55082e974.html,, date accessed 21 May 2015.

[77] Freedom House, 'Freedom in the World 2015 – Myanmar', 27 February 2015, https://freedomhouse.org/report/freedom-world/2015/myanmar#.VV3so_mMPMp, date accessed 21 May 2015.

[78] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 8, date accessed 21 May 2015.

[79] Committee to Protect Journalists (CPJ), 'Attacks on the Press 2015: 10 Most Censored Countries - 9. Myanmar', 27 April 2015, available at: http://www.refworld.org/docid/553f527249.html, date accessed 2 June 2015

[80] Amnesty International, 'Caught between state censorship and self-censorship: Prosecution and intimidation of media workers in Myanmar', 16 June 2015, ASA 16/1743/2015, available at: http://www.refworld.org/docid/558a5ae84.html, pages 14-16, date accessed 30 June 2015.

7.2.5 World Press Freedom Day, held on 3 May 2015, was jointly commemorated by Burma's Ministry for Information and UNESCO. The Minister for Information, U Ye Htut, acknowledged in his remarks that ' "There is not only a physical threat but also a psychological threat to journalists that impedes them from performing their duties freely and in accordance with their code of conduct, and everyone must play his part in ensuring safety of journalists".' The Minister reiterated the Ministry's commitment to 'building an inclusive media environment, where the voices of women, children, ethnic minorities and people with disabilities are also heard.'[81] However, on the same day, the Burmese military announced a "total ban" and threats of legal action against journalists publishing or broadcasting statements made by the blacklisted Kokang ethnic rebel group, the Myanmar National Democratic Alliance Army (MNDAA).[82]

7.2.6 Whilst the working environment had generally improved for human rights defenders in recent years, the FCO noted that it still remained difficult particularly in areas outside main cities and in conflict areas, and for those speaking out on religious issues.[83] The Special Rapporteur was informed by human rights defenders that they faced 'regular surveillance through phone calls, monitoring and inquiries of their movements and activities.'[84] The International Federation for Human Rights (FIDH) reported in May 2015 that six human rights defenders were sentenced to four years in prison after attending a demonstration against the death of Khin Win, killed by police whilst protesting at the Letpadaung copper mining project in December 2014[85] (see Farmers and land rights activists). Writer and former NLD official, Htil Lin Oo, was sentenced to two years imprisonment with hard labour on 2 June 2015 for criticising the use of Buddhism to promote discrimination and prejudice.[86]

7.2.7 According to information gathered by the Special Rapporteur it was 'not uncommon for persons to be subject to criminal proceedings for defamation or providing false information when making allegations against the military.'[87]

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[81] UNESCO (Bangkok Office), 'Myanmar Celebrates Historic World Press Freedom Day 2015', 4 May 2015, http://www.unescobkk.org/news/article/myanmar-celebrates-historic-world-press-freedom-day-2015, date accessed 9 June 2015.
[82] The Irrawaddy, 'Burma Army Issues Media Gag Order on Kokang Rebel Statements', 4 May 2015, http://www.irrawaddy.org/burma/burma-army-issues-media-gag-order-on-kokang-rebel-statements.html, date accessed 9 June 2015.
[83] Foreign and Commonwealth Office, 'Burma – Country of Concern', 12 March 2015, https://www.gov.uk/government/publications/burma-country-of-concern--2/burma-country-of-concern#freedom-of-expression-and-assembly, date accessed 21 July 2015.
[84] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, paragraph 9, date accessed 21 May 2015.
[85] FIDH, 'Burma/Myanmar: Arbitrary detention and sentencing of six human rights defenders', 19 May 2015, https://www.fidh.org/International-Federation-for-Human-Rights/asia/burma/burma-myanmar-arbitrary-detention-and-sentencing-of-six-human-rights, date accessed 4 June 2015.
[86] Burma Campaign UK, 'Htin Lin Oo jailed for criticising religious extremism', 2 June 2015, http://burmacampaign.org.uk/jailed-for-criticising-religious-extremism/, date accessed 5 June 2015.
[87] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html,

7.2.8 In July 2015, Radio Free Asia reported 'A court in Myanmar's capital Naypyidaw has fined two journalists one million kyat (U.S. $855) each after finding the duo guilty of defaming President Thein Sein… According to the information ministry, the Myanmar Herald ran an interview last August in which political scientist Myo Yan Naung Thein described the president's words as "gibberish, irrational, cheap, and inconsistent ... completely nonsensical, absurd, and insane".'[88]

7.2.9 Radio Free Asia continued:

'The government has abolished prepublication censorship and granted licenses to a number private publishing outlets. But rights groups say that the intimidation and arrest of journalists appeared to be worsening in the former military state and new freedoms appear to be backsliding… In addition to the 10 journalists in prison, more than a dozen others are currently facing trial, including a group of 17 editorial staffers from the Daily Eleven on contempt of court charges. The Daily Eleven has recently published a series of articles on alleged corruption and abuse of power in Myanmar's judicial system. Eleven Media Group's CEO, Than Htut Aung, was attacked last week by unknown assailants who fired steel bolts at his car with slingshots, damaging the vehicle, but leaving him unhurt.'[89]

7.2.10 In August 2015, the UN Special Rapporteur on the situation of human rights in Myanmar reported in her end-of-mission statement that she 'remain[s] concerned by the arrests of journalists and media professionals under defamation, harassment, trespassing and national security laws that are not consistent with international human rights standards. The killing of Ko Par Gyi (aka Aung Kyaw Naing) and the attack on the Eleven Media CEO, for which the perpetrators have yet to be brought to justice, create a climate of fear and uncertainty within the media.'[90]

Back to Contents

8. Freedom of movement

8.1 Legal rights and restrictions

8.1.1 Residents of Burma are legally required to register their name and address with the administrator in their ward or village.[91] In 2012, the Ward or Village

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paragraph 59, date accessed 21 May 2015.

[88] Radio Free Asia, Myanmar court finds two journalists guilty of defamation, 21 July 2015, http://www.rfa.org/english/news/myanmar/defamation-07212015155822.html date accessed: 27 September 2015

[89] Radio Free Asia, Myanmar court finds two journalists guilty of defamation, 21 July 2015, http://www.rfa.org/english/news/myanmar/defamation-07212015155822.html date accessed: 27 September 2015

[90] OHCHR - UN Office of the High Commissioner for Human Rights: Myanmar: "Critical and independent voices are vital partners not threats" – UN rights expert, 11 August 2015 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16309&LangID=E date accessed 27 September 2015

[91] Residents of Myanmar Registration Rules, 1951, http://www.burmalibrary.org/docs12/Residents_of_Burma_Registration_Rules-1951.pdf, date accessed 26 June 2015.

Tract Administration Law (the Law) replaced The Village Act and The Towns Act of 1907. As with the 1907 Acts, the new Law requires residents of Burma to register overnight household guests (from outside their ward or village) with their ward or village tract administrator (the administrator). Unlike the 1907 Acts, the Law does not prescribe penalties for non-compliance with guest registration though, according to the NGO Fortify Rights, in practice residents have been issued fines ranging from 500 to 20,000 Kyat (US$0.50 to $20) and subject to periods in detention. The March 2015 report by Fortify Rights stated: 'Section 13(n) of the Ward or Village Tract Administration Law grants vague and sweeping discretionary authority to ward and village tract administrators ... [and] gives administrators almost boundless authority over the physical premises of their wards and village tracts.'[92]

8.1.2 The same report gave details about how the application and enforcement of the Law varied from area to area and gave administrators a broad mandate to inspect properties. The report stated that: 'Public holidays or events tend to prompt widespread household inspections when government authorities are typically more sensitive to the prospect of potential protests or civil unrest.'[93] Inspections, often consisting of ten or more individuals including the administrator and police officers, generally take place around midnight but frequency ranged from "at least once a month" to periods of up to two years without an inspection; in some cases, inspections had reportedly stopped completely.[94]

8.1.3 The Law impeded the ability for people to move freely within the country, particularly if they were without household registration documents or national registration cards. Household inspections were also reported to be used to 'intimidate and harass particular individuals or segments of the population, including individuals engaged in civil society or political activities' and to 'unlawfully confiscate private property or extort money from residents'. [95] Strict restrictions on the free movement of Rohingya residing in Rakhine state remain in place.[96]

Back to Contents

[92] Fortify Rights, 'Midnight Intrusions', March 2015, http://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf, page 12 and 18, date accessed 5 June 2015.
[93] Fortify Rights, 'Midnight Intrusions', March 2015, http://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf, page 12 and 18, date accessed 5 June 2015.
[94] Fortify Rights, 'Midnight Intrusions', March 2015, http://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf, page 18-19, date accessed 5 June 2015.
[95] Fortify Rights, 'Midnight Intrusions', March 2015, http://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf, page 23-27, date accessed 5 June 2015.
[96] Fortify Rights, 'Policies of Persecution', February 2014, http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf, pages 33-35, date accessed 9 June 2015.

8.2 Exit and return

8.2.1 According to the Ministry of Immigration, as of 28 August 2013, Burmese citizens are permitted to enter/depart from any international entrance/exit of Burma, including: Nay Pyi Taw International Airport; Yangon International Airport; Mandalay International Airport; and at the Thai border gates of Tachilek, Myawaddy, Htee Kee and Kawthoung.[97] Citizens of Burma who wish to travel abroad require an electronic departure form (e-Dform)[98], which must be presented at the immigration desk upon departure.[99]

8.2.2 In January 2014 The Irrawaddy reported that there were 15 passport offices located around Burma where Burmese citizens, holding National Identity Cards and original household registration cards, were able to apply for and receive passports. Former prisoners, including political, were required to present additional (unspecified) documentation and could be subject to waiting periods longer than the prescribed ten days – some former political prisoners' passport applications were still outstanding after two months. Passports were valid for five years.[100] The US Department of State (USSD) reported that in 2014 'Stateless persons, particularly the Rohingya, were unable to obtain documentation necessary for foreign travel.'[101]

8.2.3 Foreign travel was restricted for political activists, former political prisoners, and some local staff of foreign embassies. [102] In August 2012 the Burmese government announced the removal of 2,082 names from its blacklist, which prevents people considered a threat to national security from entering or leaving the country. Around 4,000 names were thought to remain on the list.[103] However, Radio Free Asia reported that citizens accused of treason, or those granted asylum in a foreign country, would not be allowed to return to Burma. One self-imposed exile, Saw Kyaw Kyaw Min, a political activist and lawyer, was sentenced to six months imprisonment for contempt of court when he returned home following President Thein Sein's invitation asking exiles to return.[104] The Burma Immigration (Emergency Provisions) Act,

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[97] Ministry of Immigration, 'Permission of Entry into and Departure from Myanmar – Thai Border Gates', undated, http://www.mip.gov.mm/portfolio/permission-of-entry-into-and-departure-from-myanmar-thai-border-gates/, date accessed 9 June 2015.
[98] Myanmar Visa, 'e-Dform', undated, https://www.myanmarvisa.com/edform.htm, date accessed 2 July 2015.
[99] Myanmar Times, 'Departure forms could soon be a thing of the past', 8 March 2013, http://www.mmtimes.com/index.php/lifestyle/travel/4531-myanmar-signals-end-of-departure-forms.html, date accessed 2 July 2015.
[100] The Irrawaddy, 'Burma Opens New Passport Offices Around the Country', 10 January 2014, http://www.irrawaddy.org/burma/burma-opens-new-passport-offices-around-country.html, date accessed 5 June 2015.
[101] US Department of State, 'Country Report on Human Rights Practices 2014, Burma', 26 June 2015, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236428, Section 2d, date accessed 26 June 2015.
[102] US Department of State, 'Country Report on Human Rights Practices 2014, Burma', 26 June 2015, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236428, Section 2d, date accessed 26 June 2015.
[103] BBC News, 'Burma reveals names of people removed from blacklist', 30 August 2012, http://www.bbc.co.uk/news/world-asia-19424091, date accessed 5 June 2014.
[104] Radio Free Asia (RFA), 'Blacklist Names Released', 30 August 2012,

1947 states 'No citizen of the Union of Burma shall enter the Union without a valid Union of Burma passport, or a certificate in lieu thereof, issued by a competent authority...'[105] The Act, amended in 1990, extended the punishment for those entering or attempting to enter Burma, or remaining in Burma in contravention of the Act's provisions, from "not exceeding two years or with fine or with both" to "a minimum of six months to a maximum of five years or with fine of a minimum of K. 1500 or with both".[106]

8.2.4 According to The Irrawaddy, even since the President's announcement in 2011 welcoming exiles back to Burma, many remained reluctant to return. As Burma's Citizenship Law does not allow dual citizenship, those holding foreign passports required a visa to return to Burma and approval from three separate ministries – Home Affairs, Foreign Affairs and Immigration. Prominent exiles claimed there were frequent delays in visa processing, and that some requests were denied.[107] The USSD Report 2014 noted that during that year 'the government encouraged exiles to help rebuild their country, and many returned home. The absence of a formal policy or procedure to affirm a right of return resulted in indefinite delays for some exiles wishing to return. Authorities harassed at least one returning activist and prominent former political prisoner by delaying the issuance of replacement citizenship documents, thereby placing his right to stay in the country into question.'[108]

Back to Contents

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http://www.rfa.org/english/news/myanmar/blacklist-08302012184840.html, date accessed 5 June 2015.

[105] The Burma Immigration (Emergency Provisions) Act, 1947, http://www.baliprocess.net/files/myanmar/myanmar%20immigration%20act-1947-eng.pdf, Article 3(2), date accessed 2 July 2015.

[106] Law No. 2/90 of 1990, Amending the Myanmar Immigration (Emergency Provisions) Act, 1947 [Myanmar], 22 January 1990, available at: http://www.refworld.org/docid/3edbb3a94.html, date accessed 2 July 2015.

[107] The Irrawaddy, 'Burma's Exiles Want Clear Rules for Return', 2 December 2014, http://www.irrawaddy.org/burma/burmas-exiles-want-clear-rules-return.html, date accessed 5 June 2015; AAPPB, Equality Burma, et al., 'Statement on Government Policy on Return and Resettlement of Exiled Activists and Political Forces', 18 December 2014, http://aappb.org/wp-content/uploads/2014/12/Press-Release-on-Return-of-Exiled-Eng-FINAL.pdf, date accessed 5 June 2015.

[108] US Department of State, 'Country Report on Human Rights Practices 2014, Burma', 26 June 2015, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236428, Section 2d, date accessed 26 June 2015.

Version Control and Contacts

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Country Policy and Information Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance, Rules and Forms Team.

Clearance

Below is information on when this version of the guidance was cleared:

- version **1.0**
- valid from **30 November 2015**
- this version approved by **Sally Weston, Head of Legal Strategy Team, International and Immigration Policy Directorate**
- approved on: **29 November 2015**

Changes from last version of this guidance

First version in new template.

Back to Contents