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Burma: Don't Prosecute Peaceful Speech - Government Failing to Protect Critics from Arrest, Jail

(Rangoon) – [Burma](#)'s government should act to end the prosecution of peaceful critics in violation of their right to free speech, Human Rights Watch said today. The National League for Democracy (NLD)-led government should seek to amend or repeal laws that criminalize nonviolent speech.

Burma's donors should press the government to end prosecutions for peaceful expression and to release all those detained in violation of their basic rights.

"Though Burma's new government includes more than 100 former political prisoners, it has done little to eliminate the laws used to prosecute peaceful expression," said [Brad Adams](#), Asia director. "Instead, during the government's first year there was an escalation in prosecutions of peaceful political speech."

Wai Phyo, the editor-in-chief of *Eleven Media*, and Than Htut Aung, its chief executive officer, are [facing a criminal defamation trial](#) on January 27, 2017, for a report alleging corruption by Rangoon's chief minister, an NLD official, even though they issued a [retraction of the article and an apology](#). The two had been in pretrial detention for nearly three months before being [released on bail](#) on January 6. Three previous requests for bail were denied.

Myo Yan Naung Thein, an NLD official, is facing up to three years in prison on defamation charges brought by an army colonel for a Facebook post that criticized the military's handling of the [October 9 attacks](#) on border guard posts and [subsequent violence](#) in northern Rakhine State. Myo Yan Naung Thein, who has been jailed since his arrest on November 3, announced on January 18 that he was [giving up seeking bail](#) after it was denied for the third time.

Other recent defamation prosecutions include a case filed by a member of the Arakan National Party for alleged insults to the party chair, cases filed by two NLD members of parliament against a woman who criticized them for [interfering in a dispute with her housemaid](#), and a case filed by a former MP in the army-backed Union Solidarity and Development Party against an individual who advised him to "[do good deeds](#)." A woman who allegedly [insulted State Counsellor Aung San Suu Kyi](#) and an NLD member who alleged that a [local administrator was stealing flood relief](#) are among the many others facing prosecution.

Over the past year, Burmese authorities have been [particularly aggressive](#) in the use of section 66(d) of the 2013 Telecommunications Act. The law criminalizes defamation on the internet with a penalty of up to three years in prison. Those facing charges under the law are not entitled to bail, and many are detained for months pending trial.

According to a [civil society group](#) headed by [Maung Saungkha](#) – who served six months in prison for [allegedly defaming](#) former President Thein Sein in a poem – at least [40 cases have been filed](#) under section 66(d) during the first eight months the new government has been in office, compared with seven during the more than two-year period between the law's enactment and when the new government took over at the beginning of April 2016.

Those convicted under the law in recent months have received relatively long prison sentences. One man was sentenced to [nine months in prison](#) in a case filed by an NLD official for calling President Htin Kyaw an “idiot” and “crazy.” Another man was sentenced to [two years in prison](#) in a case filed by an army colonel for posting digitally altered images of the commander-in-chief on social media.

“Democratic governments don’t imprison those who criticize or somehow ‘insult’ government officials or the military,” Adams said. “The Burmese people expected the NLD government to bring an end to this kind of repression, not add to the ranks of political prisoners.”

Burma’s [colonial-era penal code](#) also continues to be used to prosecute peaceful expression. Authorities have charged activist Khine Myo Htun with “incitement” and making statements that could “alarm” the public for allegedly accusing the military of committing war crimes in Rakhine State. Khine Myo Htun, who has been [denied bail](#) since his arrest in July, faces up to two years in prison on each charge. Veteran activist [Htin Kyaw](#) has been charged with making a statement “that may impede a member of the Tatmadaw [army] in the execution of their duty,” for statements criticizing the military.

The use of criminal defamation laws runs counter to increasing international recognition that imposing criminal penalties for defamation is not a justifiable restriction on freedom of speech. All criminal defamation laws should be abolished and, where necessary, replaced with civil defamation laws.

“The NLD should be using its majority in parliament to amend or repeal abusive laws, not filing criminal charges against people expressing their opinions,” Adams said. “Until that’s done, President Htin Kyaw should discourage future prosecutions by announcing that he will use his pardon power in all cases involving peaceful expression, and avoid heading down the path of previous military governments which the NLD rightly criticized.”