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Country Policy and Information Note
Burma: Critics of the government

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Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the basis of claim section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment on whether, **in general:**

- A person is reasonably likely to face a real risk of persecution or serious harm
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- Claims are likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), Researching Country Origin Information – Training Manual, 2013. Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a terms of reference which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.

Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the bibliography.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

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 support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

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. The IAGCI may be contacted at:

Independent Advisory Group on Country Information

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the gov.uk website.

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Assessment

Updated: 22 January 2019

1. Introduction

1.1 Basis of claim

1.1.1 Fear of persecution and/or serious harm by state actors due to the person's actual or perceived criticism of the Burmese government.

1.2 Points to note

1.2.1 The government of Burma unilaterally changed the name of the country to Myanmar in 1989, following the violent suppression of a popular democratic uprising in 1988. Since the UK Government did not recognise the legitimacy of the Burmese military regime it did not acknowledge the military-led name change of the country from Burma to Myanmar, or of the main city of Rangoon to Yangon. The UK Government have always held that it should be for a democratically elected Government to make a final decision on the name of the country. Internationally, both names are recognised.

1.2.2 The assessment of risk in this note does not apply to claims based on the person being Rohingya. For such claims, see the Country Policy and Information Note on Burma: Rohingya.

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2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the Asylum Instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the 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 the Asylum Instruction on Language Analysis).

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2.2 Exclusion

2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.

2.2.2 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instruction on Exclusion: Article 1F of the Refugee Convention and the Asylum Instruction on Restricted Leave.

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2.3 Refugee convention reason

2.3.1 A person's actual or imputed political opinion.

2.3.2 Establishing a convention reason alone is not sufficient to be recognised as a refugee. The question to be addressed in each case is whether the particular person will face a real risk of persecution on account of their actual or imputed convention reason.

2.3.3 For further guidance on Convention reasons see the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.4 Risk

a) State treatment

2.4.1 In the Country Guidance case TS (Political opponents –risk) Burma/Myanmar CG [2013] UKUT 281 (IAC), heard on 11, 12 and 13 March 2013 and promulgated on 25 June 2013, the Upper Tribunal held:

'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.

'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(i)-(iv)).

2.4.2 Since 2011 there has been a more open environment for freedom of expression and assembly, improvements in freedom of the press and increased access to and freedom for internet users, including social media. However, despite some improvements, increasing restrictions on exercising these rights have seen the arrest and detention of journalists and members of civil society, and an increasing intimidation, monitoring and surveillance of human rights defenders, especially since 2015 and more so since early 2017 (see Political reform, Political affiliation, Freedom of association and assembly, and Freedom of speech and media).

2.4.3 Numerous laws with vague and repressive provisions are frequently used to arrest, prosecute and convict civil society actors, journalists, lawyers and human rights defenders, with a view to supress critical views of the government. Persons deemed to engage with international actors, including the United Nations, may be subject to intimidation and questioning from the authorities (see Freedom of speech and media, Internet freedom and Monitoring and surveillance).

2.4.4 Although hundreds of political prisoners have been released in presidential amnesties since 2015, politically motivated arrests, detentions, trials and imprisonment continue. Released political prisoners face monitoring and surveillance, and restrictions on, or lack of assistance in, accessing education, employment and obtaining travel documentation (see Political prisoners).

2.4.5 Whilst there have been some improvements in the political environment in Burma since TS was heard, there has been deterioration in political and civil rights since early 2017. The available evidence indicates that the situation has regressed and, at the time of writing, is similar to the assessment in TS, when the Upper Tribunal found '… the reforms and improvements to the human rights have not yet reached root and branch level such that those who voice opposition to the regime are free to do so confidently without risk of discriminatory interference by the state with potentially severe consequences for some at present' (paragraph 78).

2.4.6 Therefore, decision makers should follow the findings in TS, although each case must be considered on its facts, with the onus on the person to demonstrate that they face a particular risk.

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b) Sur place activities

2.4.7 The Country Guidance case TS held:

'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 [e.g. the situation in conflict areas].

'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)).

2.4.8 As with a person who voices political criticism inside Burma, persons at risk for political activity in the UK are likely to be those who have additional aggravating factors such as making defamatory remarks against the government or on politically sensitive issues. Each case must be considered on its facts and the onus is on the person to demonstrate that they would be at real risk of persecution and/or serious harm on return.

2.4.9 Thousands of names have been removed from the former military government's 'blacklist' of persons – both Burmese and foreign nationals – deemed political dissidents. Some civil society actors have had their names placed back on the "blacklist", which may restrict exit from, and entry to, Burma. The numbers of Burmese citizens on the 'blacklist' are small – under 200 (as of July 2017) out of a total population of approximately 57 million. The onus is on the person to show that their name appears on the list (see Blacklist).

2.4.10 If a person is on the 'blacklist' they might remain of interest to the Burmese authorities upon return on account of their political activities and/or criticism of the government. Each case must be considered on its facts, with the onus on the person to demonstrate that they face a particular risk.

2.4.11 A person who is politically active in the UK and in possession of a Burmese passport, or a certificate in lieu of a passport (issued by the Burmese Embassy), is unlikely – in terms of violating the immigration law – to face any risk of detention on return to Burma, i.e. because they hold the relevant travel documentation.

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c) Illegal exit from, and entry to, Burma

2.4.12 The Home Office considers there are very strong grounds supported by cogent evidence to depart from the findings in the Country Guidance HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012, heard on 29 November 2005 and promulgated on 23 January 2006, which relates

to illegal exit from Burma and subsequent risk on return. Therefore HM should no longer be followed by decision makers as this caselaw is not consistent with the situation at the time of writing.

2.4.13 'Exit visas' are no longer required to leave Burma. Under previous governments, Burmese citizens were required to hold a valid passport and a valid departure document known as a 'D-form' to legally exit Burma. However, the requirement to hold a valid D-form was rescinded in 2014. Thus, the assertion of having left Burma 'illegally' no longer applies. In terms of violating the immigration law, there is no general risk of imprisonment on return even if, at the time of departure, the person left Burma without a valid passport or D-form (see Entering and exiting Burma).

2.4.14 The Burma Immigration Act expressly prohibits Burmese citizens from entering Burma without a valid Burmese passport. However, a Certificate of Identity may be issued by a Burmese Embassy to persons not in possession of a valid or expired passport. A person returning to Burma on a Certificate of Identity, as opposed to a passport, is not at any enhanced risk of detention on return (see Entering and exiting Burma).

2.4.15 For further guidance on assessing risk, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.5 Protection

2.5.1 The military continues to head the Ministries of Home Affairs and Defence and Border Affairs, which oversees the security forces and operates autonomously of Burma's elected government. Security forces may act with impunity and there are no avenues of redress in such circumstances (see Post-March 2016 government).

2.5.2 As the person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities.

2.5.3 For further guidance on assessing the availability of state protection, see the instruction on Assessing Credibility and Refugee Status.

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2.6 Internal relocation

2.6.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to relocate to escape that risk.

2.6.2 For further guidance on internal relocation see the instruction on Assessing Credibility and Refugee Status.

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2.7 Certification

2.7.1 Where a claim is 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 Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

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Country information

To note: the UN Human Rights Council (UNHRC) regularly convenes to discuss, amongst others, the human rights situation in Myanmar/Burma. Relevant documents can be accessed here.

Section 3 updated: 22 January 2019

3. Political history

3.1 Background

3.1.1 Burma (also known as 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[1].

3.1.2 For an overview of Burma's recent history see the BBC's chronology of key events in its Myanmar profile – Timeline[2] and the Council on Foreign Relations Backgrounder – Understanding Myanmar[3].

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3.2 Elections of 2015

3.2.1 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[4].

3.2.2 For further information on Rohingyas, see the Country Policy and Information Note on Burma: Rohingya.

3.2.3 In a landslide victory, the National League for Democracy (NLD) won 390 seats (135 in the Upper House and 255 in the lower house), enough to secure a majority in parliament[5]. Under the constitution[6], the military (Tatmadaw) holds 25 per cent of seats, maintaining control over security ministries, and precludes NLD leader, Aung San Suu Kyi, from taking the presidency[7]. Freedom House reported that the NLD also won '496 of 659 seats across 14 state and regional legislatures. The government-backed USDP [Union Solidarity and Development Party] placed second with 30 seats in the lower house, 12 in the upper house, and 76 in the states and regions. The remaining seats were captured by ethnic minority and other parties as well as independents. While ethnic parties fared poorly overall, the Shan Nationalities League for Democracy (SNLD) and the Arakan National Party (ANP) performed well in their respective states.'[8]

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[1] BBC News, 'Myanmar Country Profile', 3 September 2018, url.
[2] BBC News, 'Myanmar Profile – Timeline', 3 September 2018, url.
[3] Council on Foreign Relations, 'Understanding Myanmar', 25 March 2016, url.
[4] BBC News, 'Myanmar MPs meet for first time since election', 16 November 2015, url.
[5] UNHRC, 'Report of the Special Rapporteur', (paragraph 5), 8 March 2016, url.
[6] Constitution of the Republic of the Union of Myanmar (2008), 29 May 2008, url.
[7] Bandow, D., 'New World Beckons In Burma', 16 November 2015, url.
[8] Freedom House, 'Freedom in the World 2016 – Myanmar', 7 March 2016, url.

4. Political reform

4.1 Changes to political climate

4.1.1 The Myanmar Times reported on 26 May 2016 that the 1975 State Protection Act, also known as the 'Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts', which allowed the government to declare a State of Emergency and to suspend citizen's basic rights, was revoked. Many opposition activists, including Aung San Suu Kyi, were imprisoned under the law[9].

4.1.2 The UN Secretary General observed in his report dated 5 August 2016 that:

'Over the past five years, Myanmar has undergone a major transformation. The country has seen significant progress made in the reform of its political and economic institutions, as well as in its opening up to the outside world. A large number of political prisoners has been released, a relatively vibrant and free press has emerged, there is increased freedom of association and political expression, notwithstanding some restrictions, with 91 political parties seeking to contest elections, and there has been an exponential growth in the number and capacity of civil society actors, both national and international.'[10]

4.1.3 In March 2017, the UN Human Rights Council established the Independent International Fact-Finding Mission on Myanmar, which focused on the situation in Kachin, Rakhine and Shan States since 2011. It also examined the infringement of fundamental freedoms, including the rights to freedom of expression, assembly and peaceful association, and the question of hate speech. Field missions were undertaken between September 2017 and July 2018. The UN Mission report, published in September 2018, noted 'Since 2011, there has been a remarkable opening up of democratic space in Myanmar compared with the preceding 50 years, including a more open environment for people to express themselves and to participate in protests, a freer media environment, and increased access to and freedom for Internet users, including through social media.'[11]

4.1.4 However, in her March 2018 report the UN Special Rapporteur on the situation of human rights in Myanmar, noted 'While the historic election of a civilian government for Myanmar promised a new era of openness, transparency and the expansion of democratic space, the Special Rapporteur has only seen that space shrink, with journalists, members of civil society and human rights defenders placed in an increasingly perilous position. The repressive practices of previous military governments are returning as the norm once more.'[12]

4.1.5 Like the Special Rapporteur in 2018, the UN Mission report found:

'[…] while Myanmar has made significant strides, challenges and negative trends have emerged too, especially since 2015. The democratic

[9] Myanmar Times, 'Hluttaws revoke oppressive state protection law', 26 May 2016, url.
[10] UN General Assembly, 'Situation of human rights in Myanmar', (paragraph 40), 5 August 2016, url.
[11] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1287), 17 September 2018, url.
[12] UNHRC, 'Report of the Special Rapporteur', (paragraph 12), 9 March 2018, url.

transformation of the country remains in its early stages. Indeed it has barely begun with the military maintaining a dominating role in politics. Observers reported increased restrictions on the rights to freedom of expression, association and peaceful assembly; continuing arrest and detention of individuals in relation to the exercise of these rights; and an increasing intimidation, monitoring and surveillance of human rights defenders.'[13]

See also Political affiliation, Freedom of association and assembly, and Freedom of speech and media.

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4.2 Post-March 2016 government

4.2.1 Parliament convened, with the newly-elected legislators, on 1 February 2016. In mid-March, Htin Kyaw of the NLD was elected president, though effectively serving as a proxy, with Aung San Suu Kyi as the key decision maker. Retired Lt.-General Myint Swe, of the former government, became vice president 1, and Henry Van Thio, an ethnic Chin legislator, became vice president 2. The new administration took power at a formal handover ceremony on 30 March 2016[14]. On 6 April 2016 a new State Counsellor role, akin to Prime Minister, was created and assumed by Aung San Suu Kyi[15]. In accordance with the Constitution, the military continued to head the Ministries of Home Affairs and Defence and Border Affairs[16]. The new Parliament included more than 100 former political prisoners[17]. (See also Political prisoners).

4.2.2 Htin Kyaw resigned his presidency on 21 March 2018[18]. Win Myint was elected as president 28 March 2018[19]. For a list of ministers, see the President Office website List of the Union Minister and Deputy Minister.

4.2.3 As reported in TIME on 1 April 2016, 'The military operates autonomously of Burma's elected establishment... All defense-related decisions must pass through the National Defense and Security Council (NDSC), in which the army holds a majority. The Tatmadaw [Burmese army] also runs the crucial Border Affairs Ministry that manages Burma's war-torn ethnic regions.'[20]

4.2.4 In his inaugural speech to Parliament, President Kyaw 'committed his Government to the priorities outlined in the NLD manifesto of national reconciliation, internal peace, the pursuit of a constitutional evolution towards a federal union and of improving the living standards of the people.'[21] Aung San Suu Kyi reiterated these commitments on 18 April 2016, in her Burmese New Year speech to the nation, stating national reconciliation was the most important[22].

[13] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1288), 17 September 2018, url.
[14] International Crisis Group, 'Myanmar's New Government: Finding Its Feet?', 29 July 2016, url.
[15] AAPP, 'After release I had to restart my life from the beginning', (page 17), 25 May 2016, url.
[16] UN General Assembly, 'Situation of human rights in Myanmar', (paragraph 8), 5 August 2016, url.
[17] UNHRC, 'Report of the Special Rapporteur', (paragraph 7), 8 March 2016, url.
[18] BBC News, 'Myanmar president Htin Kyaw resigns', 21 March 2018, url.
[19] DW, 'Myanmar elects Win Myint as new president', 28 March 2018, url.
[20] TIME, 'Burma's Transition to Civilian Rule', 1 April 2016, url.
[21] UN General Assembly, 'Situation of human rights in Myanmar', (paragraph 9), 5 August 2016, url.
[22] International Crisis Group, 'Myanmar's New Government: Finding Its Feet?', 29 July 2016, url.

4.2.5 Following her visit to Myanmar in January 2017, the end of mission statement by the Special Rapporteur on the situation of human rights in Myanmar noted that:

'It pains me to see when talking to the ordinary people of Myanmar during this visit their feelings of optimism and hope slowly fading just after one year when the whole country was elated with the outcome of the last general elections. From my meetings and conversations with the State Counsellor and the various officials, I can see their genuine commitment and dedication in improving the lives of all in Myanmar. Somehow this commitment has yet to translate into real actions that are felt on the ground. I encourage the Government to appeal to all communities in the country to be more open and understanding of each other, to respect each other instead of scapegoating others for the sake of advancing their own self-interests. It would be particularly important for the security forces to always act within the parameters of the rule of law and in compliance with human rights. It would be crucial for the Government to combat the apparent climate of impunity that seem to have emboldened certain extreme elements by taking the law into their own hands and meting out their own justice. There must be accountability and justice must be done and seen to be done to reassure the ordinary people that no one is above the law.'[23]

4.2.6 Commenting in her March 2018 report, the Special Rapporteur noted:

'In the two years since the victory of the National League for Democracy (NLD) in national elections, the Government has yet to make any real progress on legal and judicial reform. The Special Rapporteur reiterates previous calls for the development of a comprehensive programme of legislative reform to bring Myanmar's domestic legal system into compliance with international human rights norms and standards, providing protection for the rights of the entire population. The Government must take steps to ensure full and inclusive participation from civil society and ethnic groups. The NLD's election promise of constitutional reform appears to have taken a backseat to the peace process, and the Special Rapporteur reminds the Government that legal reform, including constitutional reform, will serve only to further peace in the country. In this regard urgent action is needed by the Government to erase from the statute books all provisions which are used to unfairly target the people of Myanmar, including but not limited to: Section 66(d) of the 2013 Telecommunications Law, Section 17(1) of the 1908 Unlawful Associations Act, Section 19 of the 2011 Peaceful Assembly and Peaceful Procession Law, Sections 500, 505(b) and 505(c) of the Penal Code, Section 25 of the 2014 News Media Law, and Section 3 of the 1923 Official Secrets Act.'[24]

See also Political affiliation, Freedom of association and assembly, and Freedom of speech and media.

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[23] OHCHR, 'End of Mission Statement by Special Rapporteur', 20 January 2017, url.
[24] UNHRC, 'Report of the Special Rapporteur', (paragraph 12), 9 March 2018, url.

5. Political affiliation

5.1 Freedom of political expression

5.1.1 According to the Union Election Commission's official party list, 91 political parties were registered to contest the November 2015 elections[25]. 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[26] therefore preventing political participation by ethnic Rohingya who lack full citizenship documents after effectively being made stateless by the 1982 citizenship law[27]. (For more detail on the citizenship status of Rohingya see the Country Policy and Information Note on Burma: Rohingya).

5.1.2 Freedom House noted that during the 2015 elections, many of the registered parties, including the NLD, '... convened meetings and large rallies throughout the country.' The same source added 'The government has allowed members of the parliament to speak about democratic rights since 2011. While the legislators' time to speak has often been severely limited, many of their speeches receive coverage in the domestic media.'[28]

5.1.3 Burma's main opposition, the former ruling Union Solidarity and Development Party (USDP), reorganised in August 2016, ahead of by-elections in 2017, and national elections due to be held in 2020. Before stepping down from his post in the reshuffle, party chairman and ex-president of Burma, Thein Sein, called for party reform, interparty consolidation and the revival of democracy within the party[29].

5.1.4 The Australian Department of Foreign Affairs and Trade (DFAT) Country Information Report for Burma, dated 10 January 2017, noted that:

'The NLD government generally accepts peaceful political dissent. Many media restrictions have been relaxed since 2011. Nonetheless, some laws restricting political activism remain, and protesters have continued to be arrested, including since the NLD came to power. For example, in May 2016 a group of workers protesting for labour rights attempted to march on parliament. More than 70 protesters were detained and 51 were charged by police under the Peaceful Assembly and Peaceful Procession Law (which requires permission from authorities to conduct a peaceful assembly or procession) and Sections 143, 145 and 147 of the Penal Code (which prohibit unlawful assembly and rioting). The parliament is currently considering amendments to the Peaceful Assembly Law. If passed, the amended law, inter alia, would only require protesters to advise authorities of their protest, rather than obtain official permission.'[30]

[25] Myanmar Times, 'Election parties', 2 September 2015, url.
[26] Political Parties Registration Law, (Articles 4(a) and 10(a)). 30 September 2014, url.
[27] Freedom House, 'Freedom in the World 2016 – Myanmar', 7 March 2016, url.
[28] Freedom House, 'Freedom in the World 2016 – Myanmar', 7 March 2016, url.
[29] Radio Free Asia, 'Myanmar opposition party changes leadership, strategy', 23 August 2016, url.
[30] DFAT, 'Country Information Report', (paragraph 3.47), 10 January 2017, url.

5.1.5 Proposed amendments to the Peaceful Assembly and Peaceful Procession Law in early 2018 threatened to tighten restrictions on peaceful assembly including a new criminal offence of funding a protest incurring a sentence of 3 years imprisonment[31]. The amendments were opposed by legislators in the Upper House in March 2018[32].

See also Freedom of association and assembly.

5.1.6 Amnesty International reported that:

'Aung Win Hlaing, a member of the National Democratic Force party in Myanmar, has been sentenced to nine months in prison for a Facebook post critical of the President' in September 2016, and was 'charged under article 66(d) of the 2013 Telecommunications Law for a Facebook post calling Myanmar's new President, Htin Kyaw, an "idiot" and "crazy" after his decision to abolish a township level committee which Aung Win Hlaing chaired. The complaint was brought by a local member of the President's party, the National League for Democracy (NLD)'.[33]

5.1.7 Human Rights Watch (HRW) reported in January 2017 that 'Burma's government should act to end the prosecution of peaceful critics in violation of their right to free speech', with Human Rights Watch's Asia Director, Brad Adams, commenting that '"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 […] Instead, during the government's first year there was an escalation in prosecutions of peaceful political speech".'[34] The report gave examples of defamation cases in 2016 and 2017 for alleged criticisms of NLD officials[35].

See also Journalists, writers and media workers.

5.1.8 Following her visit to Myanmar in January 2017, the end of mission statement by the Special Rapporteur on the situation of human rights in Myanmar noted that:

'There is one word that has hung heavily on my mind during this visit – reprisals. In every one of my visits and in every one of my meetings, I ask the Government of Myanmar to ensure that the people I speak to and even work with, do not suffer reprisals for speaking out on rights issues or expressing their opinions. Yet, distressingly several people I met during this visit would say to me, "I don't know what will happen to me after our meeting." In one case, an individual directly told me they thought they would be arrested following our conversation. In another village, where there were more than two communities living separately but side by side, I asked if that person was comfortable talking to me. The response: "I am afraid I will not give the right answer'…But the message is clear. Do not express yourself. Do not speak your mind if your opinion or position does not fit or support the narrative and agenda of those who have no qualms in how you live or die.

[31] Frontier, 'Surprise protest law amendment a return to dark past', 26 February 2018, url.
[32] Myanmar Times, 'Upper House lawmakers object to changes', 6 March 2018, url.
[33] Amnesty International, 'Urgent Action', 9 December 2016, url.
[34] HRW, 'Burma: Don't Prosecute Peaceful Speech', 24 January 2017, url.
[35] HRW, 'Burma: Don't Prosecute Peaceful Speech', 24 January 2017, url.

Sadly, this is not an isolated incident. Reportedly, there are at least four more cases of beheadings.'[36]

5.1.9 The Foreign and Commonwealth Office (FCO) noted in its Human Rights and Democracy report for 2017:

'Journalists and civil society continued to raise concerns about restrictions to freedom of expression in Burma. Activists and journalists, including those who have criticised the NLD government or the military, were arrested, imprisoned and fined under section 66(d) of the 2013 Telecommunications Act, which provides for up to 3 years in prison for "extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network." Free Expression Myanmar [FEM] released a report[37], which stated that there had been at least 95 criminal complaints made under the Act, most of them related to defamation online since the current government took office. In August, parliament amended the Act to permit judges to release people on bail, and reduce the maximum prison sentence to 2 years for a range of offences under section 66. Those who oppose the law say that the amendments did little to reduce the restrictions on free expression.'[38]

5.1.10 The UN Mission report, published in September 2018, noted that it '… observed at least three aspects of a broader trend to deliberately silence critical voices, negatively affecting democratic space: the continued use of a range of domestic laws criminalising the peaceful exercise of fundamental freedoms; the intimidation of and reprisals against individuals for their (perceived) engagement with the United Nations and other international actors; and the curtailment of peaceful protests.'[39]

5.1.11 The HRW World Report 2019, covering 2018 events, noted that 'Authorities began using section 8(f) of the Privacy Law, enacted in March 2017, to prosecute critics for criminal defamation. In January, a Mon State official sued a man in Thaton under the new law for social media posts deemed critical of the Mon State chief minister; he was sentenced to one year in prison in September.'[40]

See also Repression of free speech and Journalists, writers and media workers.

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5.2 Monitoring and surveillance

5.2.1 In her March 2016 report the UN Special Rapporteur expressed concern at continued reports of civil society actors being monitored by military intelligence and the Special Branch Police, including being followed and photographed at meetings whilst their families, friends and colleagues were questioned on their whereabouts[41].

[36] OHCHR, 'End of Mission Statement by Special Rapporteur', 20 January 2017, url.
[37] FEM, '66(d): No real change', December 2017, url.
[38] FCO, 'Human Rights and Democracy 2017', (Chapter 5: Burma), 16 July 2018, url.
[39] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1290), 17 September 2018, url.
[40] HRW, 'World Report 2019', (Freedom of speech), 17 January 2019, url.
[41] UNHRC, 'Report of the Special Rapporteur', (paragraph 25), 8 March 2016, url.

5.2.2 Similarly, the UN Secretary General's report, dated 29 August 2016, noted that the Special Rapporteur, following a visit to Burma in June/July 2016, had continued to hear reports of '... monitoring and surveillance of civil society actors and human rights defenders. During her visit, interlocutors were photographed and questioned by security personnel. During a private meeting with a village community in Rakhine State, she discovered a recording device placed by a Government official.'[42]

5.2.3 Freedom House noted in its Freedom in the World report for 2018, covering 2017 events, that 'Surveillance of journalists by the military-controlled Home Affairs Ministry remains a common practice.'[43] Following her visit to Burma in July 2017, the UN Special Rapporteur stated 'Activists and journalists in Myanmar continue to be followed and questioned by state surveillance agents…' The Special Rapporteur added that '…people meeting her were watched and even followed by agents she suspected to be from the police Special Branch …'[44]

5.2.4 The UN Mission noted in its September 2018 report that it had received many allegations of intimidation or reprisals by the security forces against persons for their actual or perceived engagement with the United Nations or other international actors[45].

5.2.5 The Freedom House report 'Freedom on the Net 2018', covering the period 1 June 2017 to 31 May 2018, noted, regarding monitoring internet usage, that 'The newly established Social Media Monitoring Team (SMMT) is expected to increase the state's surveillance capabilities, while the government has moved to enforce regulations mandating the registration of SIM cards.'[46]

See also Internet freedom.

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5.3 Political prisoners

5.3.1 There is no single international standard for defining political prisoners[47]. The Assistance Association for Political Prisoners (AAPP – Burma) defined a political prisoner as '… anyone who is arrested because of his or her perceived or real active involvement or supporting role in political movements with peaceful or resistant means.'[48] Amnesty International uses the term 'prisoner of conscience', defined as 'someone has not used or advocated violence but is imprisoned because of who they are (sexual orientation, ethnic, national or social origin, language, birth, colour, sex or economic status) or what they believe (religious, political or other conscientiously held beliefs).'[49]

[42] UN General Assembly, 'Situation of human rights in Myanmar', (para 39), 29 August 2016, url.
[43] Freedom House, 'Freedom in the World 2018', (Section D1), 1 August 2018, url.
[44] Al Jazeera, 'UN envoy complains of state surveillance in Myanmar', 22 July 2017, url.
[45] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1298), 17 September 2018, url.
[46] Freedom House, 'Freedom on the Net 2018', (Surveillance, Privacy,), 1 November 2018, url.
[47] CRS, 'Burma's Political Prisoners and U.S. Policy: In Brief', (page 7), 24 September 2018, url.
[48] AAPP, 'Political prisoner definition', n.d., url.
[49] Amnesty International, 'Detention and imprisonment', n.d., url.

5.3.2 In its response to the Special Rapporteur's report of March 2016, the Government of Burma insisted that no one faced arrest on political grounds[50]. However, on 7 April 2016, Aung San Suu Kyi declared: '"I am going to try… for the immediate release of political prisoners, political activists and students facing trial related to politics".'[51]

5.3.3 The Special Rapporteur reported that, of the 6,966 and 102 prisoners released in presidential amnesties in July 2015 and January 2016 respectively, 55 human rights defenders and political prisoners were among them[52]. In April 2016 President Htin Kyaw pardoned up to 200 political prisoners[53] [54]. The FCO cited the release of 235 political prisoners in April 2016 and a further 77 in May, though added that 'Activists remain at risk..., because the legal and institutional loopholes under which politically motivated arrests are made remain in place.'[55] In April 2018, 36 political prisoners were released[56].

5.3.4 According to the AAPP, as of 30 November 2018, 36 political prisoners were serving prison sentences and a further 269 were awaiting trial, 53 of whom were on remand[57].

5.3.5 The US Department of State Country Report on Human Rights Practices for 2017 (USSD HR Report 2017) noted that 'Many released political prisoners experienced significant surveillance and 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 the code of criminal procedure, released political prisoners faced the prospect of serving the remainder of their sentences if rearrested for any reason.'[58]

5.3.6 A joint report by the AAPP (Burma) and the Former Political Prisoners Society, published in May 2016, observed that ex-political prisoners have been subject to close monitoring upon release' and were 'often harassed by the authorities...'. Political prisoners granted amnesty were often on conditional release under Article 401 of the Code of Criminal Procedure, which states that if a person violates the terms of their release they may be 'arrested ... without warrant and remanded to complete the un-expired portion of the sentence.'[59]

5.3.7 Amnesty International, in its written statement to the UN Human Rights Council in February 2017, noted that 'Scores of prisoners of conscience have been released since Myanmar was last reviewed by the Council, but prisoners of conscience continue to be jailed.'[60] In its monthly chronologies

[50] UNHRC, 'Observations by Myanmar', (paragraph 6), 9 March 2016, url.
[51] AAPP, '"After release I had to restart my life from the beginning"', (page 17), 25 May 2016, url.
[52] UNHRC, 'Report of the Special Rapporteur', (paragraph 28), 8 March 2016, url.
[53] VOA News, 'Myanmar Eyes Nationwide Clemency for Political Activists', 20 April 2016, url.
[54] Radio Free Asia, 'Rights Groups Respond to Myanmar's Release', 12 April 2016, url.
[55] FCO, 'Human Rights Priority Country update report: January to June 2016', 21 July 2016, url.
[56] CRS, 'Burma's Political Prisoners and U.S. Policy: In Brief', (Summary), 24 September 2018, url.
[57] AAPP, 'Monthly chronology of November 2018', 17 December 2018, url.
[58] USSD, 'HR Report 2017', (Section 1e), 20 April 2018, url.
[59] AAPP, '"After release I had to restart my life from the beginning"', (page 51), 25 May 2016, url.
[60] Amnesty International, 'Myanmar: Urgent action', 13 February 2017, url.

for 2018, the AAPP continued to record politically motivated arrests[61]. The Congressional Research Service (CRS) noted in September 2018, 'While presidential pardons have been granted for some political prisoners, people continue to be arrested, detained, tried, and imprisoned for alleged violations of Burmese laws…'[62].

5.3.8 Amnesty International noted in its annual report, covering 2017 events, 'The government failed to provide restitution to former prisoners of conscience and their families, such as compensation, assistance in gaining access to education and employment opportunities, and other forms of reparation.'[63]

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Section 6 updated: 22 January 2019

6. Freedom of association and assembly

6.1 Legal rights

6.1.1 The UN Special Rapporteur expressed concern in her report of March 2016 of the '... continuing application of problematic legal provisions (both historic and recently-enacted) to arrest, prosecute, and convict civil society actors, journalists, and human rights defenders,' particularly, in regards to freedom of association and assembly, section 18 of the Peaceful Assembly and Peaceful Procession Law 2011 (as amended in 2014) (Peaceful Assembly Law); sections 143, 145, 146, 147 of the Penal Code, and section 17(1) of the Unlawful Associations Act[64].

6.1.2 The table below has been recreated from the Human Rights Watch (HRW) report dated June 2016, which identified the laws used to criminalise peaceful expression that, according to HRW, have proven to be most prone to misuse[65]:

Laws penalising assemblies	Definition of offence	Maximum penalty
Peaceful Assembly and Peaceful Processions Act 2012 (amended 2014)	Article 18: conducting a peaceful assembly or peaceful procession without government consent Article 19: deviating from the permitted location or route, or violating any of the broad restrictions on the conduct of an assembly contained in article 12 of the law	6 months in prison and fine 3 months in prison and fine
Peaceful Assembly and Peaceful Processions Act 2016	Article 17: conducting a peaceful assembly or peaceful procession without giving notice	3 months in prison and fine for first offence, increased penalties for repeat offence

[61] AAPP, 'Chronology', 2018, url.
[62] CRS, 'Burma's Political Prisoners and U.S. Policy: In Brief', (Summary), 24 September 2018, url.
[63] Amnesty International, 'Myanmar 2017/2018', (Prisoners of conscience), 22 February 2018, url.
[64] UNHRC, 'Report of the Special Rapporteur', (paragraph 19), 8 March 2016, url.
[65] Human Rights Watch, '"They Can Arrest You at Any Time"', (page 30), June 2016, url.

	Article 18: deviating from the location or route specified in the notice, or violating any of the broad restrictions on the conduct of an assembly contained in article 9 of the law	3 months in prison and fine
Unlawful Assembly Sections 141, 143 and 145 of the Penal Code	Section 141 defines "unlawful assembly" to include any group of five or more people as any group who have as their common object "to overawe by criminal force, or show of criminal force, the Union Parliament or the Government, or any public servant in the exercise of the lawful power of such public servant," "to resist the execution of any law, or of any legal process," or "to commit any mischief or criminal trespass, or other offence" Section 143 makes it unlawful to participate in an unlawful assembly Section 145 makes is unlawful to join or continue in an unlawful assembly that has been ordered to disperse	 6 months in prison and fine (Section 143) 2 years in prison and fine (Section 145)
Rioting Sections 146 and 147 of the Penal Code	Section 147 makes it unlawful to participate in a riot Section 146 deems every participant in an assembly guilty of rioting if any participant in the assembly uses force or violence	2 years in prison and fine

6.1.3 The UN Secretary General noted in his report of August 2016 that the Right of Peaceful Assembly and Peaceful Procession law, amended in 2014, was examined and approved by the bill committee in the Upper House 'with the aim of relaxing and scaling back penalties for and restrictions on public protests and processions that required prior permission. Such demonstrations will now require only prior notification.'[66] However, Human Rights Watch noted in its report dated June 2016, that the new law retained many of the flaws of the previous law[67], whilst Article 19, which works to defend the right to freedom of expression, stated in May 2016 that the law continued to include criminalisation and prison sentences for peaceful protest, and vague provisions that could be used arbitrarily to restrict freedom of expression[68].

[66] UN General Assembly, 'Situation of human rights in Myanmar', (paragraph 10), 5 August 2016, url.
[67] Human Rights Watch, '"They Can Arrest You at Any Time"', (page 3), June 2016, url.
[68] Article 19, 'Myanmar: Peaceful Assembly and Peaceful Procession Bill', (page 3), May 2016, url.

6.1.4 Human Rights Watch stated that, during 2016:

'The authorities have also increased possible prison terms by charging those under arrest with new offenses based on protests that took place a year or more earlier.

'Arrests and prosecutions for participation in peaceful assemblies have continued under the new administration. For example, on May 15, the leaders of an interfaith "peace walk" in downtown Rangoon were arrested and charged under the act, while on May 23 a solo protester who was marching from Rangoon to the site of the controversial Letpadaung mine was arrested and charged.'[69]

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6.2 Farmers and land rights activists

6.2.1 The UN Special Rapporteur expressed concern in her March 2016 report on 'Forced evictions, land-grabbing and land confiscations for development projects, mining and other natural resource extraction...' Whilst welcoming the new National Land Use Policy, adopted in January 2016, which addressed some of these concerns, the Special Rapporteur added:

'In an attempt to protect their rights, people have increasingly resorted to public protests against land confiscations. Unfortunately some of those exercising their right to peaceful assembly, including farmers and land-rights activists, continue to face harassment, intimidation and criminal prosecution. Such prosecutions should immediately cease and those detained for peaceful protests should be released.'[70]

6.2.2 In her March 2018 report, the UN Special Rapporteur noted 'Land confiscation continues to be a significant issue, with the Central Committee for Re-scrutinizing Confiscated Farmlands and Other Lands having settled only 543 out of 5,735 complaints by November 2017.'[71] She expressed concern at the draft Land Acquisition Law, noting that:

'It would replace the 1894 Land Acquisition Act, and would remove protections contained in the colonial-era law. The new draft law provides for urgent acquisitions for a broadly defined public purpose to occur with only 48 hours' notice with no compensation payable in advance of acquisition. There are also concerns that the law does not comply with existing laws, including Myanmar's Constitution, and the National Land Use Policy.'[72]

6.2.3 Human Rights Watch (HRW) stated in its report dated 3 November 2016, that land confiscation and reprisals against protesters was particularly acute in Karen State. According to the report, the research of which was conducted between January and August 2015, '... farmers who protest land-taking and try to stake a claim to their land face retaliation by police and government officials, and prosecution under peaceful assembly and criminal trespass laws.'[73]

[69] Human Rights Watch, '"They Can Arrest You at Any Time"', (pages 4-5), June 2016, url.
[70] UNHRC, 'Report of the Special Rapporteur', (paragraphs 63, 64 ,66), 8 March 2016, url.
[71] UNHRC, 'Report of the Special Rapporteur', (paragraph 29), 9 March 2018, url.
[72] UNHRC, 'Report of the Special Rapporteur', (paragraph 30), 9 March 2018, url.
[73] HRW, '"The Farmer Becomes the Criminal"', (Summary), 3 November 2016, url.

6.2.4 With regards to the Monywa project consisting of the Letpadaung, and the Sabetaung and Kyisintaung (S&K) copper mines, as well as the Moe Gyo sulphuric acid factory, Amnesty International reported in February 2017 that apart from serious human rights concerns such as forced evictions, ongoing environmental management failures, there were incidents of repression of peaceful protests[74].

6.2.5 The report specifically found that:

'Many people in the communities surrounding the Monywa project remain deeply unhappy with how the mines are managed. The loss of their lands has placed their agricultural livelihoods, and their futures, at risk. They are fearful of the damage that they believe is being done to the environment and the health of their families. The government has promised to resolve differences between the communities and the mining companies. Yet villagers and activists who are opposed to the Monywa project continue to face arrest and harassment. Myanmar Wanbao and the authorities continue to use Section 144 of the Code of Criminal Procedure. This provision allows magistrates to restrict access to particular designated areas. Research for Amnesty International's 2015 report found that the authorities used it to block access to areas around the two mines and charge villagers who protest against the companies. In 2016, Amnesty International found similar misuse. For example three villagers were convicted of trespass after taking part in a protest outside the main gate of the S&K mine.'[75]

6.2.6 In a July 2018 report, HRW noted 'Over the last several years land protests have increased and hundreds of farmers across Myanmar have been arrested and charged for staging them. […] Cases against farmers are often filed for trespassing or vandalism.' The report cited several cases in 2017 in which farmers faced charges after protesting land grabs[76].

6.2.7 In May 2018, 33 farmers were convicted for trespass on their land which was seized for the Thilawa Special Economic Zone. The farmers were first charged in July 2014 and had continued to farm their land although it was seized over 20 years ago[77] [78].

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6.3 Demonstrations

6.3.1 Protesters continued to face arrest for contravening assembly laws in 2018. The freedom of expression activist organisation, Athan, noted in its October 2018 report, covering the past two and half years, that, according to its data, 39 cases had been prosecuted under the Peaceful Assembly and Peaceful Procession Law and 142 activists were facing charges[79]. The report cited numerous cases in which protests were banned and/or persons were

[74] Amnesty International, 'Mountain of Trouble' (page 4), 10 February 2017, url.
[75] Amnesty International, 'Mountain of Trouble' (page 5), 10 February 2017, url.
[76] HRW, '"Nothing for our land"', (page 26), July 2018, url.
[77] Frontier Myanmar, 'Yangon court finds 33 farmers guilty', 8 May 2018, url.
[78] Earth Rights International, 'Thilawa: The 33 Farmers', n.d., url.
[79] Athan, 'Mid-Term Report on Freedom of Expression', (page 99), 28 October 2018, url.

arrested, charged and convicted under assembly laws during 2017 and 2018[80].

6.3.2 The UN Special Rapporteur noted in her March 2018 report that:

'The Special Rapporteur was deeply saddened to learn that seven demonstrators were shot dead by police at a demonstration in Mrauk U, Rakhine State in January 2018. Other injured protestors were reportedly arrested in hospital and handcuffed to their beds. Two Rakhine men, parliamentarian Aye Maung and nationalist writer Wai Hin Aung, were accused of organizing the demonstration and consequently have been arrested and charged with high treason, an offence that carries the death penalty. Shortly after the demonstration, the former township administrator of Mrauk U, Bobo Min Theik was stabbed to death as he traveled to Sittwe…

'January 2018 saw a spate of demonstrations by students calling for an increase to the education budget. Given Myanmar's history of student activism, the Special Rapporteur was disturbed to receive reports that 56 students from a number of universities around Myanmar were expelled. She calls for the students to be reinstated and for the rights of all students to freedom of expression be upheld. The Special Rapporteur is further troubled by the directive issued by the Yangon Region Security and Border Affairs Minister that instructs police to refuse permission for peaceful assemblies in 11 townships reportedly to "avoid public annoyance and anxiety" and traffic disturbance, contrary to the Peaceful Assembly and Peaceful Procession Law. This broad and arbitrary measure contradicts the right to freedom of peaceful assembly. The Special Rapporteur is still further concerned by reported proposed amendments to the Peaceful Assembly and Peaceful Procession Law that provide additional broad grounds for authorities to stop a demonstration, and include a new vaguely worded criminal offence.'[81]

6.3.3 The UN Mission reported that it '… corroborated cases of excessive use of force in the management of protests and demonstrations, and prosecution of participants in protests and demonstrations, curtailing the right to peaceful assembly.'[82] Fortify Rights reported on the arrest of 9 human rights defenders, on 12 May 2018, who organised peaceful protests regarding the conflict in Kachin State[83]. Reuters reported that police were seeking to charge 17 activists for "disturbing the public" and "holding a protest without permission"[84]

6.3.4 As well as citing the January 2018 shootings in Mrauk U, the UN Mission report added '… individuals holding peace protests in late April and May 2018, in several cities including Myitkyina, Bago, Mandalay and Yangon, in solidarity with internally displaced persons trapped in Kachin State, have been charged under the Peaceful Assembly and Peaceful Procession Act. In Yangon, protestors were also beaten.'[85]

[80] Athan, 'Mid-Term Report on Freedom of Expression', (pages 99-104), 28 October 2018, url.
[81] UNHRC, 'Report of the Special Rapporteur', (paragraphs 18-19), 9 March 2018, url.
[82] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1300), 17 September 2018, url.
[83] Fortify Rights, 'Myanmar: Drop Criminal Charges Against Peaceful Anti-War', 12 May 2018, url.
[84] Reuters, 'Myanmar police to charge 17 anti-war protesters over demonstration', 14 May 2018, url.
[85] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1300), 17 September 2018, url.

See also Human rights defenders and Freedom of association and assembly.

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Section 7 updated: 22 January 2019

7. Freedom of speech and media

7.1 Legal rights

7.1.1 The following laws are used to restrict freedom of expression in Burma:

- Penal Code 1861 – Section 124 'high treason'; Sections 499-502 – 'defamation'; Section 505(b) – any statement 'with intent to cause, or which is likely to cause, "fear or alarm to the public"'; Sections 503-510 – 'Insult, intimidation or annoyance';
- The Official Secrets Act 1923;
- The Unlawful Associations Act 1908 – Section 17 'High treason' and 'defaming the state';
- The Electronic Transaction Law 2004;
- The Import-Export Law 2012;
- The Aircraft Act 1934;
- The Law Protecting the Privacy and Security of Citizens 2017;
- The Printing and Publishing Law 2014;
- Telecommunications Act 2013 – Article 66(d) 'criminalising defamation using a telecommunication network.'

7.1.2 As reported by the Special Rapporteur in March 2015 '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 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.'[86]

7.1.3 The UN Special Rapporteur noted in her March 2016 report '... the Government's efforts to update media-related legislation, including the adoption of the 2014 News Media Law, the 2014 Printing and Publishing Enterprise Law and the 2015 Law Concerning Television and Radio Broadcasting. Whilst many of these laws improve on the previous framework, they also contain problematic provisions. In addition, the enactment of these laws without repeal of earlier provisions has created a complicated media law framework. Concern about harassment, a lack of clarity regarding the operation of regulatory laws, and physical attacks on journalists, has resulted in fear and self-censorship amongst the media, which hampers the functioning of an independent press in Myanmar.'[87]

[86] UNHRC, 'Report of the Special Rapporteur', (paragraph 6), 23 March 2015, url.
[87] UNHRC, 'Report of the Special Rapporteur', (paragraph 24), 8 March 2016, url.

7.1.4 Whilst the News Media Law 2014 introduced some improvements for media freedom, and violations of the law did not impose prison sentences, 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.'[88]

7.1.5 The Emergency Provisions Act 1950, which imposed penalties of up to seven years' imprisonment 'for "anything" that is done with various broad categories of intent, including anything done to affect the "loyalty" of civil servants or to "spread false news"'[89], was repealed on 4 October 2016. U Aung Kyi Nyunt, the chairman of a panel in Parliament's upper house that helped draft the legislation abolishing the law said "the law does not fit with the current situation of democratization in the country". The law had not been enforced since the new government came to power in March 2016[90]. However, the repeal of the law was not retroactive so those currently imprisoned under the Act were not being reviewed[91].

7.1.6 Human Rights Watch noted that a '… variety of laws have been enacted to regulate the [internet], many of which have been aimed at censoring online content.'[92] In summary, the Telecommunications Law 2013 'Imposes penalties of up to three years' imprisonment for a range of broadly worded acts carried out through the telecommunications network, including defamation (section 66d); Allows government bodies unlimited power to enter and inspect any telecommunications service, or require them to submit documents, if it is in the public interest or in the interests of national security (section 76); Allows the Ministry of Information and Communications Technology broad powers to suspend or take control of any telecommunications service in an emergency situation (section 77).'[93]

7.1.7 The UN Special Rapporteur and the Report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in March and September 2018 respectively, noted the increased use of Section 17(1) of the 1908 Unlawful Associations Act against journalists, particularly in curbing reporting in conflict areas[94] [95].

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7.2 Repression of free speech

7.2.1 In her March 2018 report, the UN Special Rapporteur on the situation of human rights in Myanmar noted:

'The Special Rapporteur is aware that an increasing number of people are being targeted by the authorities for speaking out about human rights violations and abuses and is troubled that people are being prosecuted

[88] UNHRC, 'Report of the Special Rapporteur', (paragraph 7), 23 March 2015, url.
[89] UNHRC, 'Report of the Special Rapporteur', (page 24), 8 March 2016, url.
[90] New York Times, 'Myanmar Repeals 1950 Law', 5 October 2016, url.
[91] Reuters, 'Myanmar asked to review disputed terrorism case after law reform', 5 October 2016, url.
[92] Human Rights Watch, '"They Can Arrest You at Any Time"', (page 61), June 2016, url.
[93] UNHRC, 'Report of the Special Rapporteur', (page 22), 8 March 2016, url.
[94] UNHRC, 'Report of the Special Rapporteur', (paragraph 16), 9 March 2018, url.
[95] OHCHR, 'The Invisible Boundary', (pages 7-9), 11 September 2018, url.

under laws with repressive provisions, some of which were enacted recently during the period of democratic transition while others belong to the legacy of the colonial era. Although Section 66(d) of the Telecommunications Law was amended in August 2017, the very existence of a criminal offence of defamation is problematic, and other provisions that may affect freedom of expression remain, including provisions for the arbitrary blocking or filtering of online content and arbitrary disruption to internet access. Over 100 cases have been brought under the Telecommunications Law since it was enacted. The vast majority of them under the NLD Government, with 100 per cent of verdicts resulting in convictions. The Special Rapporteur remains concerned about high levels of hate speech and incitement to hostility, discrimination and violence, particularly on social media and how this has a stifling impact on assertion of sensitive and unpopular views.'[96]

7.2.2 The UN Mission report, published September 2018, noted '[p]roblematic laws […] are frequently used to arrest, prosecute and convict civil society actors, journalists, lawyers and human rights defenders, with a view to intimidate and silence them.'[97] Athan, a freedom of expression activist organisation, documented violations of freedom of expression between 1 April 2016 and 30 September 2018 under the NLD-led government, and found '… the right to freedom of expression in Myanmar under the first two years of government led by the National League for Democracy (NLD) is worsening despite initial hopes of improvement.'[98]

7.2.3 On 2 May 2018, PEN Myanmar, a branch of PEN International, an NGO championing freedom of expression, noted a significant deterioration in free expression in Burma since 2017 and gave the country 2 out of a possible 60 points on its 2018 freedom of expression scorecard[99]; a 6-point drop from the previous year[100].

7.2.4 In reference to the laws that limited freedom of expression, association and peaceful assembly, the UN Mission report noted:

'The use of these laws to silence critical voices has been a regular, and increasing, occurrence throughout the period under review. Individuals who are critical of the government or security forces, and who expose or speak out against human rights violations, are particularly vulnerable. Persons targeted include those who have taken a public stance in relation to land confiscation, largescale development projects, environmental degradation, constitutional reform, and on military and security operations across the country. The use of such laws has curbed the democratic space in Myanmar.'[101]

[96] UNHRC, 'Report of the Special Rapporteur', (paragraph 14), 9 March 2018, url.
[97] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1294), 17 September 2018, url.
[98] Athan, 'Mid-Term Report on Freedom of Expression', (page 105), 28 October 2018, url.
[99] The scorecard approach developed by PEN Myanmar and its partners uses six key indicators of a robust free expression environment, and takes into account government commitments, reforms, setbacks, failures, and inactivity. The range for each of the six indicators is 0-10, with 0 being the lowest score(regression) and 10 the highest (outstanding progress). The range of the potential cumulative score is 0-60, with 60 being the highest score, and 0 the lowest. The final tally reflects the cumulative scores submitted by the expert groups.
[100] PEN Myanmar, 'Scorecard assessing freedom of expression in Myanmar', 2 May 2018, url.
[101] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1295), 17 September 2018, url.

See also Freedom of political expression.

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7.3 Human rights defenders

7.3.1 Amnesty International in its written statement to the UN Human Rights Council in February 2017 noted that:

'There are continued reports of intimidation, harassment and surveillance of human rights defenders (HRDs), lawyers and journalists. The assassination of prominent lawyer U Ko Ni in January shocked the human rights community, and represented an appalling reminder of the risks faced by those who advocate for human rights and tolerance. In her latest statement, the Special Rapporteur also highlighted concerns about reprisals for those who speak against human rights abuses.'[102]

7.3.2 At the end of January 2017, the UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, 'strongly condemned the brutal murder of Ko Ni, a prominent Muslim lawyer and constitutional law expert, who was also the legal adviser to the National League for Democracy (NLD). "This appears to be another shocking example of a reprisal against those speaking out on behalf of the rights of others," the expert said, recalling her recent end of visit statement, where she highlighted her concern at the increasing risks faced by human rights defenders, lawyers, journalists and others working on sensitive issues.'[103] The Special Rapporteur noted in her March 2018 report that the trial of those accused of Ko Ni's murder was ongoing a year on and the alleged ringleader was still at large[104]. The situation remains the same as at 11 January 2019[105].

7.3.3 Human Rights Watch reported in January 2017 that:

'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.'[106]

7.3.4 Khine (Khaing) Myo Htun was released from prison in February 2018, having served his full sentence of 19 months[107].

7.3.5 The Freedom House report 'Freedom on the Net 2018', covering the period 1 June 2017 to 31 May 2018, reported on intimidation and violence faced by human rights defenders, noting:

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[102] Amnesty International, 'Myanmar: Urgent action', 13 February 2017, url.
[103] OHCHR, 'Myanmar: United Nations rights expert condemns', 30 January 2017, url.
[104] UNHRC, 'Report of the Special Rapporteur', (paragraph 13), 9 March 2018, url.
[105] The Irrawaddy, 'Two Years after U Ko Ni Assassination…', 11 January 2019, url.
[106] HRW, 'Burma: Don't Prosecute Peaceful Speech', 24 January 2017, url.
[107] Earth Rights International, 'Earth Rights defender Khaing Myo Htun', 5 March 2018, url.

'The scale and volume of threats against human rights defenders, all of whom use the internet as their principal tool for advocacy, varies depending on the "sensitivity" of the issue. Pro-Rohingya and peace activists report some of the most significant and constant intimidation via direct and indirect messages and comments online.

'In Myanmar, high-profile women and women human rights defenders report regular gender-based intimidation and threats of violence. Common tactics of harassment include cyber-stalking, phishing, hacking, and attempts to cast doubts on women's credibility, integrity, and character. Many are threatened or intimidated with the distribution of knowingly false information, such as doctored sexual or intimate images, sometimes followed by blackmail or extortion.'[108]

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7.4 Journalists, writers and media workers

7.4.1 Reporters without Borders ranked Burma 137 out of 180 countries in its Press Freedom Index for 2018 (6 places lower than 2017), giving it a global score of 43.15 (scores range from 0 to 100, with 0 being completely free and 100 where there is no free expression). Until 2018, Burma's ranking had gradually increased since 2013[109]. The source noted 'Around 20 journalists were prosecuted in 2017, many of them under article 66 (d) of the Telecommunications Act, which criminalizes online defamation. Self-censorship is the rule with any story that might upset the authorities, especially the military.'[110]

7.4.2 The UN Mission reported the case of Reuters journalists, Wa Lone and Kyaw Soe Oo, who were arrested and detained in December 2017. The report noted that their arrests were '… ostensibly for alleged violations of the Official Secrets Act, but in reality in an attempt to prevent or punish them from publishing a story about serious human rights violations committed by the Myanmar security forces. In July 2018, they were charged with offences under the Act with a maximum sentence of 14 years imprisonment. On 3 September 2018 they were convicted and sentenced to seven years imprisonment.'[111] The journalists appealed their sentence[112] but their conviction was upheld by the High Court on 11 January 2019[113].

7.4.3 The UN Secretary General noted in an August 2016 report, following a visit to Burma between 20 June to 1 July 2016 by the UN Special Rapporteur, that:

'Issues related to the use of certain words or terms remain sensitive. Five individuals were convicted and fined one million kyats under section 8 of the Printing and Publishing Enterprise Law 2014 (harming rule of law and public tranquillity) for publishing a calendar containing the word "Rohingya". Four

[108] Freedom House, 'Freedom on the Net 2018', (Intimidation and violence), 1 November 2018, url.
[109] Reporters without Borders, 'Myanmar', n.d., url.
[110] Reporters without Borders, 'Myanmar', n.d., url.
[111] UNHRC, 'Fact-finding mission on Myanmar', (paragraph 1296), 17 September 2018, url.
[112] Reporters without Borders, 'Could two Reuters journalists be freed soon?', 11 December 2018, url.
[113] FIDH, 'Ongoing imprisonment of Reuters journalists condemned', 11 January 2019, url.

individuals were subsequently convicted and sentenced to one year's imprisonment in June 2016, under section 505 (b) of the Penal Code, for the same offence.'[114]

7.4.4 The UN Special Rapporteur was concerned by reports 'that journalists and media workers continue to face legal action under legislation which is incompatible with international human rights law. There are also increasing reports of government and military interference with individuals' right to freedom of expression online.'[115] In a similar vein, the Special Rapporteur noted in March 2018 that the arrests of 12 journalists in 2017 contributed to a culture of fear, silence and self-censorship among journalists and media personnel in Myanmar[116].

7.4.5 The Freedom House report 'Freedom on the Net 2018' noted:

'Online journalists, human rights defenders, and political activists continue to report intimidation and threats of violence, with at least one attempted murder during the reporting period and another journalist fleeing the country. In one opinion survey published in May 2018, most journalists reported their belief that violence had increased over the past year. Violence and threats of violence were particularly common for journalists and activists reporting in conflict areas or communicating online about sensitive political issues including the Rohingya crisis.'[117]

7.4.6 A survey of professional working journalists in Burma, undertaken by Free Expression Myanmar (FEM) and a coalition of other interested parties, between December 2017 and April 2018, found that media freedom had deteriorated, and the government and military were the main cause of the decline. Journalists believed that legal, physical and psychological violence against them had increased and this was not being addressed by the government or courts. Freedom to report in conflict areas was particularly low[118].

7.4.7 Three journalists from Burma's Eleven Media Group were arrested 10 October 2018 after criticising government spending[119]. They were released on bail 2 weeks later and on 9 November 2018 it was reported that charges, brought under Section 505(b) of the Penal Code, had been dropped. According to Radio Free Asia 'authorities will attempt to deal with the dispute through negotiations with the Myanmar Press Council (MPC).' Chief Minister of Yangon's regional government said he would pursue the legal case if the journalists refused to apologise[120].

See also Freedom of political expression.

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[114] UN General Assembly, 'Situation of human rights in Myanmar', (para 65), 29 August 2016, url.
[115] UNHRC, 'Report of the Special Rapporteur', (page 23), 8 March 2016, url.
[116] UNHRC, 'Report of the Special Rapporteur', (paragraph 16), 9 March 2018, url.
[117] Freedom House, 'Freedom on the Net 2018', (Intimidation and violence), 1 November 2018, url.
[118] FEM, 'Myanmar's Media Freedom at Risk', (page 2), May 2018, url.
[119] Al Jazeera, 'Myanmar arrests three journalists', 10 October 2018, url.
[120] Radio Free Asia, 'Myanmar Drops Charges Against Journalists', 9 November 2018, url.

7.5 Fair trial

7.5.1 Justice Base, a non-governmental organisation promoting the rule of law in transitional and post-conflict societies, provided an analysis of Burma's compliance with fair trial rights in general, following observations in Rangoon region's township and district courts from 12 June 2013 to 30 April 2014 and 11 January 2015 to 28 December 2016. The report cited numerous problems in the judicial process including: ineffective lawyers; the inability to access case documents or to speak privately with legal counsel; court adjournments; the absence of judges and clerks during hearings; pressure from judges to admit guilt; and the payment of 'unofficial fees' to secure bail, access documents, seek adjournments and receive reduced sentences[121]. The USSD HR report 2017 noted 'legal provisions that allow the government to manipulate the courts for political ends, and these provisions were sometimes used to deprive citizens of due process and the right to a fair trial, particularly with regards to the freedom of expression.'[122] A September 2018 report by the OHCHR, examining freedom of the press in Burma, confirmed the failure of the judiciary to uphold the fair trial rights of independent journalists and their right to freedom of expression. The report cited cases in which the rights to a fair trial were breached, including postponed or elongated court hearings and defendants having no access to a lawyer ahead of trial proceedings[123].

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7.6 Internet freedom

7.6.1 The Freedom House 'Freedom on the Net 2018' report noted, in relation to internet user rights:

'The constitution also provides specific – but highly limited – guarantees for citizens to "express and publish their convictions and opinions" and "freely develop literature, culture, arts, customs and traditions" provided that they are "not contrary to the laws enacted for Union [of Myanmar] security, prevalence of law and order, community peace and tranquility, or public order and morality." Article 357 of the constitution includes a protection for private communications. The constitution includes no provisions directly relating to the internet, surveillance, or access to information, although Article 96 and Schedule 1 (8.m) provide parliament with authority to establish laws regulating the internet.

'Several laws explicitly penalize online activity and have been used to imprison internet users.'[124]

7.6.2 The 'Freedom on the Net 2018' noted that, whilst access to the internet improved during the reporting period (June 2017 – May 2018), internet freedom declined. The report added that there were few restrictions on anonymous internet use, although the government enforced the registration of SIM cards in 2017[125].

[121] Justice Base, 'Monitoring in Myanmar', (pages i), October 2017, url.
[122] USSD, 'HR Report 2017', (Section 1e), 20 April 2018, url.
[123] OHCHR, 'The Invisible Boundary', (pages 1, 10 and 12), 11 September 2018, url.
[124] Freedom House, 'Freedom on the Net 2018', (Violations of user rights), 1 November 2018, url.
[125] Freedom House, 'Freedom on the Net 2018', (Obstacles; Surveillance), 1 November 2018, url.

7.6.3 In her report dated March 2016, the Special Rapporteur noted '...increasing reports of government and military interference with individuals' right to freedom of expression online' and that 'Special Branch informers reportedly engage in online monitoring, including by alleged hacking of Facebook accounts and interception of email communications. Under sections 76 and 77 of the Telecommunications Law 2013, the Government has broad powers to enter and inspect telecommunication services for matters relating to national defence and security or public interest, and intercept data in an emergency situation.'[126]

7.6.4 Human Rights Watch and the Freedom House 'Freedom on the Net 2016' report cited a number of arrests and prosecutions for defamation in violation of section 66d of the Telecommunications Law, which occurred during 2015 and into 2016[127] [128].

7.6.5 Human Rights Watch reported in January 2017 that '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.'[129]

7.6.6 Amnesty International in its written statement to the UN Human Rights Council in February 2017 noted that 'There has been a surge in the number of people investigated for "online defamation" under the vaguely worded 2013 Telecommunications Law, with individuals being arrested and charged for Facebook posts critical of the authorities. Early efforts to repeal and amend repressive laws appear to have stalled and the law reform process has been marked by a lack of transparency and consultation.'[130]

7.6.7 The Freedom on the Net 2018 report noted:

'Between 2013 and December 2017, over 100 cases had been brought under the Telecommunications Law Article 66(d), almost all of which were brought under the NLD government. The majority of plaintiffs in the cases were affiliated with the state, including public officials, political party officials, and military officers, while the majority of the accused were activists, online journalists, or other civil society representatives. By December 2017, 20

[126] UNHRC, 'Report of the Special Rapporteur', (paragraphs 23 and 25), 8 March 2016, url.
[127] HRW, '"They Can Arrest You at Any Time"', (pages 62-64), June 2016, url.
[128] Freedom House, 'Freedom on the Net 2016', 14 November 2016, url.
[129] HRW, 'Burma: Don't Prosecute Peaceful Speech', 24 January 2017, url.
[130] Amnesty International, 'Myanmar: Urgent action', 13 February 2017, url.

percent of these cases were decided in court – all with guilty verdicts and six-month jail sentences.'[131]

7.6.8 The Human Rights Watch (HRW) World Report 2019, covering 2018, reported 'Prosecutions for criminal defamation increased in 2018, particularly under section 66(d) of the 2013 Telecommunications Act, with most complainants state, military, or political party officials; over 60 percent of defendants were journalists, activists, or others addressing matters of public interest. Acquittals were rare.'[132]

See also Freedom of political expression and Freedom of speech and media.

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Section 8 updated: 22 January 2019

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[133]. In 2012, the Ward or Village 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.'[134]

8.1.2 The Fortify Rights report, published in March 2015, 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.' 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[135].

8.1.3 The Irrawaddy, an online news website, reported on 27 May 2016 that a bill to amend and repeal sections of the Ward or Village Tract Administration

[131] Freedom House, 'Freedom on the Net 2018', (Prosecutions), 1 November 2018, url.
[132] HRW, 'World Report 2019', (Freedom of speech), 17 January 2019, url.
[133] Residents of Myanmar Registration Rules, 1951, url.
[134] Fortify Rights, 'Midnight Intrusions', (pages 12 and 18), March 2015, url.
[135] Fortify Rights, 'Midnight Intrusions', (pages 12 and 18-19), March 2015, url.

Law was tabled in Parliament in May. Whilst NLD legislators argued that the new bill aligned with democratic norms and preserved freedom of movement for citizens, military lawmakers claimed that national security would be in jeopardy if the bill was approved[136].

8.1.4 In June 2016 the Upper House of Parliament approved changes to the Ward and Village-tract Administration Bill 2012 that will remove the guest registration requirement[137]. In September 2016, the Lower House passed amendments to the Law and abolished the provisions requiring citizens to report overnight guests to authorities[138].

8.1.5 For information on freedom of movement for Rohingya, see the Country Policy and Information Note on Burma: Rohingya.

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Section 9 updated: 22 January 2019

9. Entering and exiting Burma

9.1 Points of entry and exit

9.1.1 In correspondence with the Country Policy and Information Team (CPIT), dated 17 January 2017, a lawyer from the law firm DFDL, based in Rangoon (Yangon), stated 'Myanmar citizens may exit Myanmar via international entrances or exits - such as Yangon International Airport, Mandalay International Airport and Naypyitaw International Airport, Tachilek, Myawaddy, Htee Kee and Kawthoung.'[139]

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9.2 Immigration procedures

9.2.1 DFAT reported on the treatment of returnees, in its January 2017 Country Information Report for Burma, noting that:

'Check-in and immigration procedures for Myanmar passport-holders are functionally similar to standard international practices. Airport staff review booking details and check the name in the passport against the name on the reservation. Customs and immigration staff vet baggage and conduct a cursory check that the photograph in the passport matches the bearer of the document. Immigration staff scan the passport document. There is no integration of police and immigration identity systems. Immigration cards record standard information about the person entering the country. Inbound Myanmar nationals are required to provide their father's name on the form; outbound Myanmar nationals are required to list their father's name, their address and their identity card number.' [140]

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[136] The Irrawaddy, 'Debate Over Burma's Household Guest Registration', 27 May 2016, url.
[137] Mizzima, 'Changes to the Ward and Village-tract Administration Bill approved', 6 June 2016, url.
[138] The Irrawaddy, 'Lower House Abolishes Overnight Guest Registration', 20 September 2016, url.
[139] DFDL, 'correspondence with Country Policy and Information Team', 17 January 2017, Annex A.
[140] DFAT, 'Country Information Report', (paragraph 5.39), 10 January 2017, url.

9.3 Exit visas

9.3.1 A lawyer from the law firm DFDL, based in Yangon, stated in correspondence with CPIT in January 2017:

'Exit visas are not required to leave Myanmar.

'Both the Myanmar Passport Act and Myanmar Immigration Act do not expressly provide any legal stipulations regarding visas in order to exit Myanmar. The provisions of these laws primarily concern immigration permits and passport visas for the purposes of entry into Myanmar.

'Under the old policy of previous governments, Myanmar citizens were required to hold a valid passport and a valid departure document known as a "D-form" to legally exit Myanmar. However, this requirement to hold a valid D-form was rescinded three years ago.

'Myanmar citizens may legally exit Myanmar with a valid passport issued by the Myanmar Passport Issuing Board under the Ministry of Home Affairs, and subject to possessing a valid visa to enter the intended country as issued by the relevant Embassy.'[141]

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9.4 Entering Burma

9.4.1 U Gambira, also known as Nyi Nyi Lwin, was arrested on 19 January 2016 for allegedly crossing the Thai-Burma border illegally. In November 2007, U Gambira was arrested for his role in leading mass anti-government protests in August and September of that year. He was given a 68-year sentence but released in a presidential amnesty on 13 January 2012[142]. On 26 April 2016, a court sentenced U Gambira to 6 months imprisonment for contravening Section 13.1 of the Burma Immigration Act[143]. Charges were dropped against Gambira in July 2016 and he was released from prison[144].

9.4.2 DFAT reported in its January 2017 Country Information Report that:

'Former political prisoners and exiled activists are now typically able to return safely to Myanmar. In preparation for this report, DFAT spoke with a number of political and human rights activists who had been imprisoned or exiled from Myanmar during the period of military rule; these people had been able to freely return to Myanmar in recent years, and have remained politically active. People who are known to have actively and openly criticised the military may face a higher level of scrutiny than other political activists such as LGBTI or democracy activists.'[145] (See also Political affiliation)

9.4.3 The lawyer from DFDL stated that:

'Under the provisions of the Myanmar Immigration Act and the Myanmar Passport Act it is a crime for a Myanmar citizen to enter Myanmar without a passport. The crime is punishable by a jail term, fine, or both.

[141] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.
[142] Amnesty International, 'Urgent Action, 20 January 2016, url.
[143] The Irrawaddy, 'Ex-Monk U Gambira Gets Six Months, 26 April 2016, url.
[144] BBC News, 'Gambira: Burmese monk freed after new charges dropped', 1 July 2016, url.
[145] DFAT, 'Country Information Report', (paragraph 5.34), 10 January 2017, url.

'The Myanmar Passport Rules provides that "subject to the provisions hereinafter contained no person proceeding from any place outside the Union of Myanmar shall enter the Union of Burma by sea or by land unless he is in possession of a passport".

'A person who enters Myanmar without a valid passport or a certificate issued by the competent authority will be arrested under Section 10 of the Myanmar Immigration Act which states that:

> "any Immigration Officer or any Police Officer may enter any place or conveyance and arrest without warrant any person whom may reasonably suspect of contravening or having contravened or being about to contravene any of the provisions of this Act".

'Furthermore, a person who enters Myanmar without a valid passport or a certificate issued by the competent authority will face imprisonment or fine or both under Section 13 of the Myanmar Immigration Act which states that:

> "whoever enters or attempts to enter the Union of Myanmar or whoever after legal entry remains or attempts to remain in the Union of Myanmar in contravention of any of the provisions of this Act or the rules made thereunder or any of the conditions set out in any permit or visa shall be punished with imprisonment for a term which may extend from a minimum of six months to a maximum of 5 years or with fine of a minimum of Kyat 1500 or with both".

'Therefore, the Myanmar Immigration Act expressly prohibits Myanmar citizens from entering Myanmar without a valid Union of Myanmar passport, or a certificate in lieu thereof, issued by the competent authority. This certificate is a Certificate of Identity issued by the relevant Myanmar Embassy to persons not in possession of a valid or expired passport.

'Under the Myanmar Passport Act, the President of the Union may enact rules requiring that persons entering the Union of Myanmar must be in possession of a passport, and for all matters incidental to that purpose. Under these powers, the President of the Union may prohibit any person not in possession of a passport from entering the Union of Myanmar.'[146]

9.4.4 The lawyer concluded that 'In light of the above, a Myanmar national who is returned to Myanmar without a passport or a certificate issued by the competent authority could face imprisonment under the Myanmar Immigration Act and Myanmar Passport Act.'[147]

9.4.5 DFAT noted that 'Returnees to Myanmar who departed the country illegally are technically subject to up to five years imprisonment for having illegally crossed a border. DFAT understands that this provision has not been enforced in recent years.' [148] (See also Exit visas).

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[146] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.
[147] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.
[148] DFAT, 'Country Information Report', (paragraph 5.36), 10 January 2017, url.

9.5 Blacklist

9.5.1 The lawyer from DFDL stated that 'The former military government of Myanmar created a blacklist of persons who were deemed to be political dissidents or a threat to the regime. People in Myanmar who were on the blacklist were prohibited from obtaining passports to travel outside the country, and those people outside the country faced difficulties in returning.'[149]

9.5.2 On 3 August 2016, Radio Free Asia (RFA) reported that the names of 619 people, including 248 citizens and 371 foreigners, had been removed from the country's "blacklist", which restricted exit and entry into Burma for those deemed to be political threats. The report added that in May, the Ministry of Foreign Affairs announced that it would 'allow those exiled under previous governments whose names were on the blacklist to return to Myanmar.'[150]

9.5.3 The UN Special Rapporteur, in her report dated 29 August 2016, was concerned to hear that '[S]everal civil society actors were currently facing visa restrictions on their entry to Myanmar or had, once again, been placed on the "blacklist".' [151]

9.5.4 The lawyer from DFDL stated that:

'On August 2012, former Myanmar President U Thein Sein removed the names of some 2,000 people from a blacklist of foreign and Myanmar nationals, who were previously regarded as threats to peace and stability by Myanmar's former military dictatorship.

'On July 2016, the new Myanmar government further removed the names of 248 Myanmar nationals and 371 foreigners from the blacklist. Following the instructions of the Ministry of Labour, Immigration and the Population Union Minister, the list was handed over to other concerned Ministries such as the Ministry of Home Affairs and Ministry of Foreign Affairs. The Ministry also affirmed that it would continue to remove the names of those who "serve for the goods merit of the country". The Union Minister has highlighted the removal of political activists from the blacklist as a priority.

'At the present time, 185 Myanmar nationals, and 3,566 foreigners still remain on the blacklist although the new government intends to further reduce this number.

'In summary, a person who is politically active in the UK and possesses a Myanmar passport, or a foreign passport with a duly issued visa, faces no risks in terms of violating the immigration law upon the person's return to Myanmar.'[152]

9.5.5 The UN Special Rapporteur noted in her report in September 2017 (following a July 2017 visit to Burma) that 178 nationals and 3,893 foreigners remained on the blacklist. The Special Rapporteur added 'While noting information

[149] DFDL, correspondence with Country Policy and Information Team, 17 January 2017, Annex A.
[150] Radio Free Asia, 'Myanmar Government Removes More Than 600 Names', 3 August 2016, url.
[151] UN General Assembly, 'Situation of human rights in Myanmar', (para 39), 29 August 2016, url.
[152] DFDL, correspondence with Country Policy and Information Team, 17 January 2017, Annex A.

received that blacklisted persons can ask to be removed from the list, she is concerned over the continued lack of transparency on its functioning.'[153]

9.5.6 CPIT could find no information, within the sources consulted (see Bibliography), to confirm whether a person who is politically active in the UK and/or on the 'blacklist' would be likely to be detained following their return to Burma on account of their activities.

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[153] UNHRC, 'Report of the Special Rapporteur', (paragraph 25), 8 September 2017, url.

Annex A

Advice from DFDL on illegal exit, 17 January 2017

17 January 2017

UK Home Office

[redacted]

Country Policy and Information Team

Immigration and Border Policy Directorate

[redacted]

E-mail: [redacted]

Re: Political Activist Advice Letter

Dear [redacted]

Thank you for your email of November 28, 2016 requesting our legal assistance concerning Myanmar political activists and their illegal exit from Myanmar and legal ramifications of their possible return. We set our advice below. Should you require any additional clarification, we will be glad to be of service.

1. Background

DFDL has been requested to provide information on the following questions:

1. Are exit visas still required in order to leave Burma (Myanmar)?

2. Would a Burmese national returned to Burma without a passport face imprisonment?

3. Would a person who is politically active in the UK, (e.g. critical of the Burmese government) be at risk upon their return to Burma?

2. Legal References

1. The Myanmar Passport Act, 1920;

2. The Myanmar Passport Rules, 1948; and

3. The Myanmar Immigration (Emergency Provisions) Act 1947.

3. Legal Advice

3.1 Are exit visas still required in order to leave Myanmar?

Exit visas are not required to leave Myanmar.

Both the Myanmar Passport Act and Myanmar Immigration Act do not expressly provide any legal stipulations regarding visas in order to exit Myanmar. The provisions of these laws primarily concern immigration permits and passport visas for the purposes of entry into Myanmar.

Under the old policy of previous governments, Myanmar citizens were required to hold a valid passport and a valid departure document known as a “D-form” to legally exit Myanmar. However, this requirement to hold a valid D-form was rescinded three years ago.

Myanmar citizens may legally exit Myanmar with a valid passport issued by the Myanmar Passport Issuing Board under the Ministry of Home Affairs, and subject to possessing a valid visa to enter the intended country as issued by the relevant Embassy. Myanmar citizens may exit Myanmar via international entrances

or exits - such as Yangon International Airport, Mandalay International Airport and Naypyitaw International Airport, Tachilek, Myawaddy, Htee Kee and Kawthoung.

3.2 Would a Myanmar national returned to Myanmar without a passport face imprisonment?

Under the provisions of the Myanmar Immigration Act and the Myanmar Passport Act it is a crime for a Myanmar citizen to enter Myanmar without a passport. The crime is punishable by a jail term, fine, or both.

The Myanmar Passport Rules provides that “subject to the provisions hereinafter contained no person proceeding from any place outside the Union of Myanmar shall enter the Union of Burma by sea or by land unless he is in possession of a passport”.

A person who enters Myanmar without a valid passport or a certificate issued by the competent authority will be arrested under Section 10 of the Myanmar Immigration Act which states that:

“any Immigration Officer or any Police Officer may enter any place or conveyance and arrest without warrant any person whom may reasonably suspect of contravening or having contravened or being about to contravene any of the provisions of this Act”.

Furthermore, a person who enters Myanmar without a valid passport or a certificate issued by the competent authority will face imprisonment or fine or both under Section 13 of the Myanmar Immigration Act which states that:

“whoever enters or attempts to enter the Union of Myanmar or whoever after legal entry remains or attempts to remain in the Union of Myanmar in contravention of any of the provisions of this Act or the rules made thereunder or any of the conditions set out in any permit or visa shall be punished with imprisonment for a term which may extend from a minimum of six months to a maximum of 5 years or with fine of a minimum of Kyat 1500 or with both”.

Therefore, the Myanmar Immigration Act expressly prohibits Myanmar citizens from entering Myanmar without a valid Union of Myanmar passport, or a certificate in lieu thereof, issued by the competent authority. This certificate is a Certificate of Identity issued by the relevant Myanmar Embassy to persons not in possession of a valid or expired passport.

Under the Myanmar Passport Act, the President of the Union may enact rules requiring that persons entering the Union of Myanmar must be in possession of a passport, and for all matters incidental to that purpose. Under these powers, the President of the Union may prohibit any person not in possession of a passport from entering the Union of Myanmar.

In light of the above, a Myanmar national who is returned to Myanmar without a passport or a certificate issued by the competent authority could face imprisonment under the Myanmar Immigration Act and Myanmar Passport Act.

3.3 Would a person who is politically active in the UK (e.g. critical of the Myanmar government) be at risk upon their return to Myanmar?

Under Section 3 the Myanmar Passport Act, the President of the Union is empowered to enact rules which may:-

(a) prohibit any person not in possession of a passport from entering the Union of Myanmar;

(b) prescribe the duties and responsibilities of the passport issuing authorities under this Act; and

(c) exempt any person or class of persons partially or entirely from any provisions under this Act.

The former military government of Myanmar created a blacklist of persons who were deemed to be political dissidents or a threat to the regime. People in Myanmar who were on the blacklist were prohibited from obtaining passports to travel outside the country, and those people outside the country faced difficulties in returning.

On August 2012, former Myanmar President U Thein Sein removed the names of some 2,000 people from a blacklist of foreign and Myanmar nationals, who were previously regarded as threats to peace and stability by Myanmar’s former military dictatorship.

On July 2016, the new Myanmar government further removed the names of 248 Myanmar nationals and 371 foreigners from the blacklist. Following the instructions of the Ministry of Labour, Immigration and the Population Union Minister, the list was handed over to other concerned Ministries such as the Ministry of Home Affairs and Ministry of Foreign Affairs. The Ministry also affirmed that it would continue to remove

the names of those who “serve for the goods merit of the country”. The Union Minister has highlighted the removal of political activists from the blacklist as a priority.

At the present time, 185 Myanmar nationals, and 3566 foreigners still remain on the blacklist although the new government intends to further reduce this number.

In summary, a person who is politically active in the UK and possesses a Myanmar passport, or a foreign passport with a duly issued visa, faces no risks in terms of violating the immigration law upon the person’s return to Myanmar.

4. Qualifications

Our advice is subject to the following qualifications:

(a) While there is a substantial body of law based on the ‘Burma Code’ of laws and regulations enacted and implemented under British colonial rule until 1947, much of which is still in force in Myanmar, successive changes of government of different political hues have led to an inconsistent approach to law-making in Myanmar since that time. The laws and regulations of Myanmar have in the recent past often been: (i) poorly drafted, and (ii) supplemented or otherwise modified by undocumented practices, policies adopted and applied as law in a non-transparent way, discretionary decisions of government agencies and authorities and the exercise of powers which have not been granted to the exercise or in accordance with the provisions of prevailing laws and regulations. Such practices, policies, decisions and exercises of powers may:

i. not have been published or announced; or

ii. not have been ruled upon by the courts or enacted by legislative bodies or

iii. be subject to change without notice; or

iv. be applied inconsistently.

(b) We rely exclusively on the laws and regulations published in the Official Gazette of Myanmar. We cannot be sure that the Official Gazette contains a complete record of laws and regulations currently in force. We are therefore not liable to any party if our understanding of the law and regulations would or may be modified by reason of a law or regulation which is not published in the Official Gazette.

(c) For laws enacted between 1948 and 1987, 2011 and 2012 we may be required to rely on unofficial English translations of the official Myanmar language versions thereof. Where we prepare and convey information relating to such laws and regulations in the English language, we will not be responsible for any inherent

compatibility between the two languages to express the same or similar concept or where an unknown context would or may permit an alternative interpretation.

(d) Certain countries still have restrictions on trade, investment and other financial or commercial dealings with officials of the Myanmar Government or with notified and listed persons with Myanmar citizenship. The information herein is not and should not be construed as commentary or advice on such restrictions.

(e) The information provided herein is limited to and based on the laws of Myanmar and nothing herein should be construed as advice or an opinion on the laws of any jurisdiction other than Myanmar.

(f) This advice is limited to a legal advice, not including any tax considerations.

5. Reliance

This advice:

[redacted]

- is limited to the matters stated herein and does not extend, and is not to be read as extending by implication, to any matter;
- shall be construed as a legal advice of the relevant laws as they relate to contemplated transactions and arrangements only, and is not a legal opinion, being a formal statement of counsel that a particular transaction is legal under the laws and restrictions of Myanmar; and
- will not be updated to take account of subsequent changes to the legislation or other practices of regulatory authorities unless specific arrangements are made. It is your responsibility to seek further advice, if you are to rely on our advice at a later date.

We trust that our observations above will be sufficient at the present time. If you have any questions with regard to the contents of this letter, please contact us.

Yours faithfully,

DFDL

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Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the country information section. The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Political history
    - Background
    - Elections of 2015
- Political reform
    - Changes to political climate
    - Post-March 2016 government
- Political affiliation
    - Freedom of political expression
    - Monitoring and surveillance
    - Political prisoners
- Freedom of association and assembly
    - Legal rights
    - Farmers and land rights activists
    - Demonstrations
- Freedom of speech and media
    - Legal rights
    - Right to free speech
    - Human rights defenders; Journalists, writers and media workers
    - Fair trial
    - Internet freedom
- Freedom of movement
    - Legal rights and restrictions
- Entering and exiting Burma
    - Points of entry and exit
    - Immigration procedures
    - Exit visas; Entering Burma
    - Blacklist

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Version control

Clearance

Below is information on when this note was cleared:

- version **3.0**
- valid from **28 January 2019**

Changes from last version of this note

Updated country information following IAGCI review, January 2019. Updated assessment, which no longer departs from the Country Guidance TS (Political opponents –risk) Burma/Myanmar CG [2013] UKUT 281 (IAC) (25 June 2013).

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