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“I WILL NOT SURRENDER”

THE CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS
AND ACTIVISTS IN MYANMAR

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Cover photo: Kay Khaing Tun, a performer of Peacock Generation group looks from a prison van window after a trial in Yangon on November 18, 2019. (Photo by Sai Aung Main / AFP) (Photo by SAI AUNG MAIN/AFP via Getty Images)

CONTENTS

FREEDOMS OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY UNDER ATTACK	2
THE PENAL CODE	
THE CONSTITUTIONAL REFORM ACTIVISTS	4
THE “PEACOCK GENERATION”	6
THE SUPPORTERS OF A FORMER CHILD SOLDIER	8
THE MONK WHO CRITICIZED THE MILITARY	10
THE ENVIRONMENTAL ACTIVIST	11
THE PEACEFUL ASSEMBLY AND PEACEFUL PROCESSION LAW	
THE “RAKHINE LIVES” MATTER PROTESTER	12
THE STUDENTS PROTESTING AGAINST AN INTERNET SHUTDOWN	13
THE KACHIN “ANTI-WAR” PROTESTERS	15
THE KAREN ACTIVISTS	17
THE LABOUR RIGHTS ACTIVISTS	19
THE UNLAWFUL ASSOCIATIONS ACT	
THE RAKHINE NEWS EDITOR	20
THE LAW PROTECTING THE PRIVACY AND SECURITY OF CITIZENS	
THE KARENNI ACTIVISTS	21
MYANMAR’S REPRESSIVE LEGAL FRAMEWORK	22
CONCLUSION AND RECOMMENDATIONS	24

FREEDOMS OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY UNDER ATTACK

Four years after the National League for Democracy (NLD)-led government, headed by State Counsellor Aung San Suu Kyi, came to power, human rights defenders and civil society activists are harassed, intimidated, arrested, prosecuted, and imprisoned simply for the peaceful exercise of their human rights. These human rights violations not only affect the individuals concerned, but also have wider impacts, leading to a culture of fear and self-censorship.



The change in administration during April 2016 had brought fresh hopes that the government would finally close the door on its repressive past and authorities would put an end to politically motivated arrests and imprisonment. There were some positive steps in the early years of the administration – scores of prisoners of conscience were released, and Parliament abolished two draconian laws that were frequently used against dissidents when the country was under direct military rule. However, despite these efforts, human rights defenders and civil society activists have continued to face harassment, intimidation, arrest, prosecution, and imprisonment simply for the peaceful exercise of their human rights. Meanwhile, progress on reforming Myanmar's repressive legal framework has stalled.

This briefing highlights 16 cases of politically-motivated arrest, prosecution, and imprisonment in the last 18 months in Myanmar, involving 58 people. Whether as individuals or in a group, they have each been targeted by the authorities simply for the peaceful exercise of their human rights, in particular freedoms of expression, association, and peaceful assembly. They include human rights defenders, students, journalists, satirical performers, an environmental activist, a labour rights activist and trade union members, and a Buddhist monk, in cases that span nine States and Regions across the length and breadth of the country. Often, people were charged when they tried to speak out against injustice or in support of others in advocating for their rights.

Amnesty International spoke to many of these individuals and their lawyers and family members, and reviewed relevant legislation and official documents. The organization also met with civil society activists, journalists, and diplomats to discuss the wider situation for the rights to freedom of expression, association, and peaceful assembly in the country.

WHO IS A PRISONER OF CONSCIENCE?

Amnesty International considers a prisoner of conscience any person imprisoned solely because of their political, religious, or other conscientiously held beliefs, ethnic origin, sex, gender, colour, language, national or social origin, economic status, birth, sexual orientation, or other status, or for peacefully exercising their human rights – who has not used violence or advocated violence or hatred. Most of the individuals featured in this report are or were prisoners of conscience – or would be if they were to be detained or imprisoned.

All prisoners of conscience must be immediately and unconditionally released, and all charges against them dropped.

In many of the cases highlighted in this briefing, the complainant was a member of the Myanmar military. Indeed, as local civil society organizations have already emphasized, there has been a worrying increase in the number of politically motivated cases filed by members of the armed forces, in particular against individuals and activists who criticise either the military or Myanmar's 2008 military-drafted Constitution. Officials have used Section 505(a) of the Penal Code in particular – until last year a little-known provision criminalizing “incitement” which may prevent a military officer from performing their duties – to target peaceful critics. The cases, which come at a time when the Myanmar military faces increased international attention and pressure following atrocities against the Rohingya population from August 2017 onwards, are an important reminder of military's continuing power and influence in the country.

In some cases featured in this briefing, other state officials filed the complaints – sometimes members of the police force (which under Myanmar's Constitution is under military command), or the General Administration Department (GAD), which has operated under civilian oversight since January 2019.

What all cases have in common is that they are facilitated by Myanmar's repressive legal framework, which comprises a range of laws arbitrarily restricting the rights to freedom of expression, association, and peaceful assembly. Most but not all of these laws pre-date the NLD-led government; however all remain on the books. Some have been amended by the current administration, but these revisions have not been sufficient to bring them into line with international human rights standards. As a result, the laws continue to provide for politically motivated arrests, prosecution, and imprisonment.

The cases in this briefing represent a small fraction of arbitrary arrests, prosecutions, and imprisonment in Myanmar. However, they do give a clear indication of the challenges facing human rights defenders and activists in the country. This situation raises urgent questions about the NLD-led government's commitment to reform and its willingness to respect the rights to freedom of expression, association, and peaceful assembly. The NLD, with its Parliamentary majority, has the power to review and repeal or else amend repressive laws, to ensure that they comply with international human rights standards. However, there is a serious lack of political will, exacerbated by a lack of transparency or consultation with civil society members when it comes to drafting, reviewing, and amending legislation.

As Myanmar prepares for elections currently scheduled for November 2020, the authorities – both the civilian-led government and the military – must create an environment in which civil society and the wider public are able to exercise their rights to freedom of expression, association, and peaceful assembly. Unless the situation changes, and the government commits to genuine and meaningful reforms, cases like those set out in this briefing will continue.

THE CONSTITUTIONAL REFORM ACTIVISTS

The Myanmar Penal Code - Section 505(a)



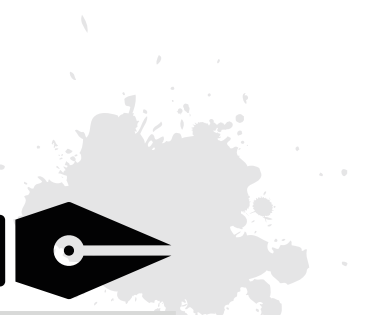
Three constitutional reform activists have been charged with inciting military officials to disregard or fail in their duty after they each made speeches calling for an end to the military's role in politics at a peaceful rally in Tanintharyi Region, southeastern Myanmar. Two have been released on bail; however the third is in prison after being jailed for a similar speech at a different rally. If convicted they each face up to two years in prison.

On 3 April 2019 three activists, **Kyee Myint**, **Saw Wai**, and **Nay Myo Zin** (all m), attended a rally in Kawthaung town in Tanintharyi Region, southeastern Myanmar. At the rally, which was attended by about 700 people, they made speeches in which they criticized the Myanmar military and its role in politics and called for constitutional reforms. Kyee Myint, who is a human rights lawyer, called for the Constitution to be amended to protect the people of Myanmar and prevent the military from staging a coup. Saw Wai, a well-known poet, recited a poem, asking the audience to chant "reject evil laws". The current NLD-led government has attempted to amend the Constitution to reduce the military's role in politics but these attempts have so far failed.



More than six months later, on 17 October 2019, Lt. Col Zaw Zaw of the Myanmar military's Coastal Command filed charges against the three men under Section 505(a) of the Penal Code, which prohibits the circulation of statements and reports with "intent to cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty". Since early 2019 the provision, which carries a sentence of up to two years in prison, has been increasingly used by the Myanmar military to target critics.

Court proceedings began on 20 January 2020. At a court hearing on 3 February, the Kawthaung Township Court judge granted bail to Kyee Myint and Saw Wai on the grounds of their ill health – Kyee Myint suffers from diabetes, hypertension, and kidney problems, while Saw Wai has serious heart problems. However, Nay Myo Zin, a former Myanmar military captain who was already serving one year in prison for calling for constitutional reforms at a peaceful rally in Yangon on 1 April 2019, remained behind bars. First arrested on 19 April 2019 and detained in Yangon's Insein prison, Nay Myo Zin was sentenced to one year in prison on 20 September on another charge of violating Section 505(a) of the Penal Code. He is facing two additional charges under 505(a) for similar speeches at rallies in Ayeyarwaddy and Sagaing Regions. He has been imprisoned in Kawthaung prison since 13 January 2020.



"I ONLY HAVE MY POETRY AS MY WEAPON."

I WILL FIGHT WITH IT... I WILL NOT SURRENDER."

Poet Saw Wai, who is facing two years in prison for reciting a poem at a peaceful rally calling for amendments to Myanmar's 2008 Constitution, which entrenches the military's power in the country.



RELATED CASE: MOE KYAW THU

The Myanmar Penal Code - Section 500

On 23 January 2020, **Moe Kyaw Thu** (m), a writer known by his pen name Mann, was convicted on criminal defamation charges after he gave a speech at a peaceful rally calling for constitutional reforms in Myeik, Tanintharyi Region in southeastern Myanmar on 9 May 2019.

He had spoken at a series of similar rallies across the country from March 2019 onwards, calling for reforms to the 2008 Constitution and an end to the military's role in politics. At the Myeik rally, he had also spoken out against a hardline nationalist monk who had visited the town the week before and delivered a sermon that had angered local residents.

Moe Kyaw Thu continued to give speeches at other constitutional reform rallies in May. However he was later charged for the speech in Myeik after Lt. Col. Kyaw Min Oo, an officer from the Myanmar military's Coastal Command, filed a criminal complaint against him at the Myeik Township Court on 4 June 2019. Moe Kyaw Thu did not find out about the charge until the following day when he was contacted by a journalist. Police did not formally inform him of the charges against him until 20 June 2019.

The initial complaint against Moe Kyaw Thu was filed under Section 505(a) of the Penal Code, which criminalizes "incitement" against the military; however he was later formally charged with criminal defamation under Section 500 of the Penal Code. He was granted bail at his first court hearing on 24 September but was required to travel every two weeks – and then every week – from his home in Yangon to Myeik to attend the hearings. *"Travelling for court hearings is tiring, expensive and time consuming"*, Moe Kyaw Thu told Amnesty International in December 2019. "Since the case against me, there have been no more invitations for speeches at rallies". On 23 January, the Myeik Township Court found him guilty of the offence and fined him 30,000 kyats (US\$ 21).

Under international human rights law, all people charged with criminal offences have the right to be promptly informed in detail of the nature and cause of the charges against them. Information about charges should be provided in writing, and if provided orally, should be confirmed in writing. By failing to inform Moe Kyaw Thu of the criminal charges against him, the Myanmar authorities not only denied him this right, they also violated his right to adequate time and facilities to prepare a defence, which is protected under international law and is a crucial safeguard against unfair trials.

THE “PEACOCK GENERATION”

The Myanmar Penal Code - Section 505(a)
The Telecommunications Law - Section 66(d)

Six members of the satirical poetry troupe “Peacock Generation” were imprisoned for between two and three years after they staged a series of peaceful performances criticizing the military. Some of the performances were streamed online resulting in some group members being charged with “online defamation”. They are all serving their sentences in Insein prison, Yangon.

In April 2019 members of the Peacock Generation staged a series of *thangyat* performances in Myanmar. *Thangyat* is a popular traditional art form in Myanmar, which fuses poetry, comedy, and music, and is usually performed during Myanmar’s New Year water festival in April and other festive occasions. During their performances, members of the group wore military uniforms and criticized the Myanmar military. The group livestreamed some of their performances on social media.



Photos © Mauk Kham Wah

“We perform Thangyat to critique what is wrong in our society... The laws used against us are unjust... As artists, we will continue to fight injustice. We will continue to perform and exercise our right to freedom of expression.”

Nyein Chan Soe, a member of the Peacock Generation who was detained for six months in connection with a series of satirical Thangyat performances.

Shortly afterwards, members of the Myanmar military began targeting the group with criminal complaints, and seven performers were arrested in April and May 2019. Six of them – **Paing Phyo Min** (m), **Paing Ye Thu**, (m) **Kay Khine Tun** (f), **Su Yadanar Myint** (f), **Zayar Lwin** (m), and **Zaw Lin Htut** (m) – were accused of “incitement” against the military under Section 505(a) of the Penal Code. All six were charged by the Botahtaung Township Court, while five were also charged under the same provision by the Mayangon Township Court. On 30 October 2019, the Mayangon Township Court sentenced the five to one year in prison. On 18 November the Botahtaung Township Court sentenced all six members to one year in prison.

Seven members of the group were also charged with “online defamation” under Section 66(d) of the Telecommunications Law for sharing videos of their performance online. On 11 December, the Mayangon Township Court sentenced the six imprisoned members of the group to an additional six months in prison. A seventh member, **Nyein Chan Soe** (m), was acquitted of that charge. Then, on 17 February 2020, the Botahtaung Township court convicted three of the detainees to a second charge of “online defamation”, sentencing them to a further six months in prison. Today, six members are imprisoned in Insein prison, Yangon, serving sentences of between two and three years.

Each of the criminal complaints against the Peacock Generation was filed by a serving military official. While it is impossible to ascertain whether senior military officials were involved in or directed the complaints, it is clear that criticism of the military remains a deeply sensitive subject in Myanmar. The relentless targeting of the group through multiple lawsuits and despite national and international criticism also highlights the power the military still wields, and how abusive laws can be and are quickly deployed to stifle dissent.

“THE GOVERNMENT SHOULD TAKE ACTION AGAINST THE MILITARY AND STOP THEM FROM SUING DISSIDENTS AND ORDINARY PEOPLE”

Nan Lin, a Peacock Generation member, speaking to Amnesty International in December 2019.



RELATED CASE: THE “PEACOCK GENERATION” SUPPORTERS

The Myanmar Penal Code - Sections 332 & 353

The arrest of the Peacock Generation members caused considerable outcry among civil society activists in Yangon. In a show of solidarity, on 20 May 2019 a group of activists gathered at the Botahtaung Township Court to attend a court hearing. The detainees were due to arrive at the court at 1pm but were delayed by approximately two hours. When they arrived, they told supporters that they had arrived late because police had used force while handcuffing them in order to bring them to the court. When police attempted to push Su Yadanar Myint into the court room, the situation became chaotic, and a scuffle broke out. A police officer reportedly sustained minor injuries to his nose and power lip.

Five Peacock Generation supporters who were present – **Nilar Thein** (f), **Naing Thu** (m) **Min Han Htet** (m), **Nan Lin** (m), and **Shar Yamone** (f) – were subsequently charged in connection with the incident. They were initially accused of four Penal Code offenses but were later charged with “voluntarily causing hurt to deter public servant from his duty” (Penal Code Section 332) and “assault or criminal force to deter a public servant from discharge of his duty” (Section 353), which carry sentences of up to three years and two years respectively. They are free on bail.



  Peacock Generation performers © Peacock Generation

THE SUPPORTERS OF A FORMER CHILD SOLDIER

The Myanmar Penal Code - Sections 505(b) & 153 The Union Seal Law - Section 7



Nay Zar Tun, Khin Cho Naing, and Myint Zaw are currently serving between 12 and 18 months in prison for peacefully protesting politically motivated charges against former child soldier Aung Ko Htwe, Nay Zar Tun's younger brother. He was arrested in August 2017 and charged after giving a media interview about his experience of being forcibly recruited into the Myanmar military. His three supporters are currently serving their sentences in Insein prison, Yangon.

On 17 January 2018, around 15 people, including **Nay Zar Tun** (f), **Khin Cho Naing** (f), and **Myint Zaw** (f), staged a peaceful protest outside the Dagon Seikkan Township Court building in Yangon. The protest followed a judge's decision to charge former child soldier Aung Ko Htwe with "incitement" under Section 505(b) of Myanmar's Penal Code, after he gave a media interview in which he talked about being abducted and forcibly recruited into the Myanmar military as a child. Angry at the injustice, some of the protesters called the judge a "cow without conscience" and stepped on a photocopy of Myanmar's Constitution.



The next day, police arrested two demonstrators **Lay Lay** (f) and **Naung Naung** (m) – and accused them of leading the protest. Both were charged with "incitement" under Section 505(b) of the Penal Code and "wantonly giving provocation with intent to cause riot" under Section 153. They were subsequently sentenced to 18 months in prison each. They have both been released after completing their sentences. Three other accused activists went into hiding.

More than a year after the protest, on 7 May 2019 Myint Zaw was arrested while waiting outside Insein prison to find out if Aung Ko Htwe was released in the mass prisoner amnesty announced by the President. Khin Cho Naing and Nay Zar Tun turned themselves in on 4 and 19 June 2019 respectively, and were subsequently taken to Insein prison.

On 24 December 2019, Nay Zar Naing, Khin Cho Naing and Myint Zaw were convicted and sentenced to one year in prison under Section 505(b) and to six months in prison under Section 153 of the Penal Code, to be served concurrently. Khin Cho Naing and Myint Zaw were convicted of a further charge under Section 7 of the Union Seal Law and sentenced to an additional six months in prison.

*"I SUPPORTED AUNG KO HTWE BECAUSE HE WAS FORCIBLY RECRUITED [INTO THE MILITARY] AND SPENT HIS YOUTH AS A CHILD SOLDIER. [WHEN HE SPOKE OUT ABOUT HIS EXPERIENCE] HE WAS CHARGED AND LOST HIS RIGHTS... I COULDN'T STAND IT ANYMORE. **THE MILITARY CAN SUE ORDINARY PEOPLE FOR NUMEROUS REASONS, BUT PEOPLE DON'T HAVE THE SAME OPPORTUNITY TO HOLD THE MILITARY TO ACCOUNT.***

Lay Lay, who was imprisoned for protesting against the unjust charges against former child soldier Aung Ko Htwe.



RELATED CASE: AUNG KO HTWE

The Myanmar Penal Code - Sections 505(b) & 228

Aung Ko Htwe (m) was arrested on 18 August 2017. His "crime" was to give a media interview, broadcast earlier that month, in which he described his experiences as a child soldier, including how the military abducted and forcibly recruited him when he was 13 years old. He was charged with "incitement" under Section 505(b) of Myanmar's Penal Code.

During the trial at the Dagon Seikkan Township Court, Yangon, Aung Ko Htwe criticized the presiding judge, announced that he did not have faith in the judicial system, and refused to participate in further court proceedings. For this, he was charged with "intentional insult of a public servant sitting at any stage of a judicial proceeding" under Section 228 of the Penal Code. On 14 February 2018, he was found guilty of this offence and sentenced to six months in prison.

On 28 March 2018 the same court convicted and sentenced him to two years in prison under Section 505(b) of the Penal Code. Immediately after his conviction, and in protest against the sentence, Aung Ko Htwe reportedly stepped on a printed copy of Myanmar's 2008 Constitution. In response, the court charged him with "causing destruction of the whole or any part of the Union Seal" under the Union Seal Law (Sections 6 and 7), although he was later acquitted of the charge. He was released from prison on 6 September 2019, having spent just over two years in prison.



© ↑ Aung Ko Htwe © Steve Tickner/ Frontier Myanmar

THE MONK WHO CRITICIZED THE MILITARY

The Myanmar Penal Code - Section 500

Abbot U Arriyawuntha Biwuntha, also known as Myawaddy Mingyi Sayadaw, a Buddhist monk living in Mandalay in central Myanmar, is facing criminal defamation charges after a military official complained about a media interview in which he criticized the military and accused a senior official of donating a large sum of money to a hardline religious nationalist group. He is currently free on bail.

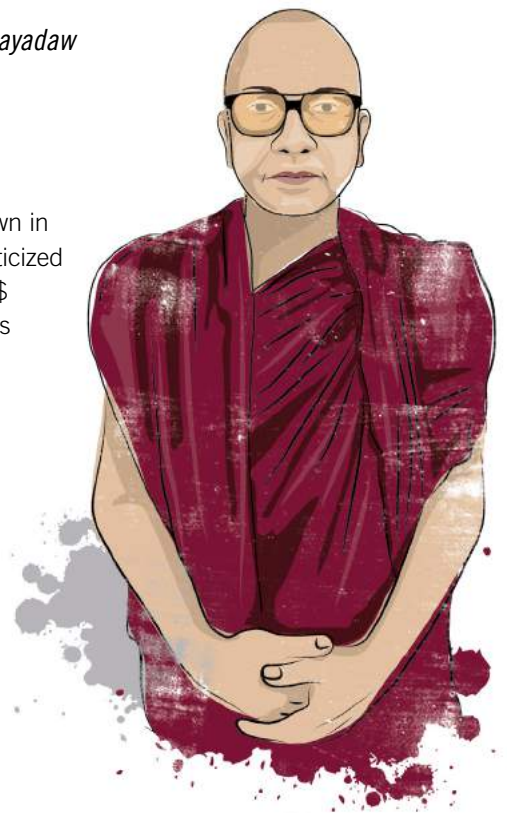
“Religious leaders have a moral obligation to tell the truth and speak out against wrongdoings... By restricting freedom of expression, by silencing those who dare to speak out and criticize, the government and others in positions of power and influence can do bad things without consequences.”

Abbot U Arriyawuntha Biwuntha, also known as Myawaddy Mingyi Sayadaw speaking to Amnesty International in December 2019.

On 20 July 2019, Khit Thit Media, a news outlet in Myanmar, published an interview with Abbot **U Arriyawuntha Biwuntha** (m), who is well known in Myanmar as Myawaddy Mingyi Sayadaw. In the interview, the Abbot criticized a senior military official for donating 30 million kyats (approximately US\$ 21,000) to the Buddha Dhamma Prahita Foundation, a hardline religious nationalist organization in Myanmar that previously operated under the name *Ma Ba Tha* (the Association for the Protection of Race and Religion). Myawaddy Mingyi Sayadaw accused the military of repressing the people of the country and referred to them as “thieves” and “bandits”.

On 3 September 2019, Lt. Col Thawda Htway from the military's Central Command in Mandalay Region submitted a complaint to the Pyigyitagon Township Court, in Mandalay, accusing Myawaddy Mingyi Sayadaw of “criminal defamation” and “incitement” under Sections 500 and 505(a) of the Penal Code. The court accepted the Section 500 charge and set a first hearing for 7 November 2019. At the hearing, Myawaddy Mingyi Sayadaw was granted bail after paying a 10 million kyat (US\$ 7,000) bond. His trial is ongoing.

Myawaddy Mingyi Sayadaw has previously criticized the military and hardline nationalist religious groups. He was actively involved in the 2007 “Saffron Revolution”, which saw tens of thousands of monks and ordinary people take to the streets in towns and cities across Myanmar. The demonstrations, which initially started as a protest against commodity price hikes, quickly evolved into wider calls for an end to military rule. Myawaddy Mingyi Sayadaw has also been actively involved in supporting villagers protesting against the controversial Letpadaung copper mine in central Myanmar.



THE ENVIRONMENTAL ACTIVIST

The Myanmar Penal Code - Section 505(b)

Police are investigating an ethnic Karen environmental activist after he helped a community in Kayin State, southeastern Myanmar, raise its concerns about the environmental and social impacts of a cement factory. He has been charged with “incitement” and is in hiding, fearful of arrest. He faces up to two years in prison if found guilty of the charge.

Saw Tha Phoe (m) is a civil society activist who works primarily in southeast Myanmar to raise awareness of industries that have negative environmental, social, and human rights impacts on surrounding communities.

On 17 January 2020, he attended a traditional prayer ceremony with some 1,000 residents from villages close to a controversial cement factory in Kayin State – also known as Karen State. Since September 2019, residents from 30 nearby villages have complained about negative environmental impacts of the factory and alleged that water in surrounding ponds, rivers, and lakes has become contaminated. A member of several environmental civil society networks, Saw Tha Phoe had been helping villagers to document and raise awareness about the situation. Although he did not organize the prayer ceremony, he supported community leaders in highlighting their concerns with national media.



“Now I cannot work freely... people see me as a criminal. We can face charges in court, but we don’t have a guarantee that the law will protect us. [People here] want development, but it has to be sustainable development. The communities that I work with will face more difficulties if the government doesn’t allow them to speak out, and activists cannot help.”

Saw Tha Phoe speaking to Amnesty International in March 2020.

On the evening of 6 March 2020, police officers from Myaing Ka Lay and Hpa-An arrived at Saw Tha Phoe’s house to arrest him. They did not show a warrant. Saw Tha Phoe was not at home, but the police officers told his relatives that an official from the Hpa-An General Administration Department had filed a complaint against him, accusing him of “incitement” under Section 505(b) of the Penal Code for his involvement with the prayer ceremony. Section 505(b) is a “non-bailable” offence, meaning anyone charged under its provisions is immediately taken into pre-trial custody. In practice, authorities have often used the provision against activists – in particular leaders – to keep them detained for the duration of their trial. The charge carries a maximum sentence of two years in prison.

The charge against him has led Saw Tha Phoe to go into hiding. His family and colleagues have also reported being placed under surveillance by local authorities. In addition to threatening his personal security and liberty, the charge has seriously hindered Saw Tha Phoe’s ability to do his work and support communities advocating for their rights.

THE “RAKHINE LIVES” MATTER PROTESTER

The Peaceful Assembly and Peaceful Procession Law - Section 19



Than Hla aka Min Bar Chay, an ethnic Rakhine development worker, was charged for protesting without permission after he had participated in two peaceful protests calling for justice and an end to violations by the military in Rakhine State, western Myanmar. He was sentenced to 15 days in prison on 20 March 2020 on one of the charges; the same day the authorities announced that the second charge had been dropped.



“The elected NLD government, they went through a lot to become what they are right now... but they are not resolving the problems. It’s really sad... What I see is the situation is becoming worse [than] it was under the military government”

Than Hla, speaking to Amnesty International in December 2019.



© ↑ © Than Hla

On 2 July 2019, **Than Hla** (m) aka Min Bar Chay, an ethnic Rakhine development worker, and five others staged a peaceful protest in U Ottama Park in Sittwe, Rakhine State in western Myanmar. They were protesting against military violations against civilians in Rakhine State, including allegations of killings and torture. Since January 2019 there has been a serious escalation in fighting between the Myanmar military and the Arakan Army, an ethnic Rakhine armed group. Civilians have increasingly borne the brunt of the violence. The protest was peaceful – the demonstrators gathered in the park holding placards calling for justice for military violations and wearing t-shirts that read “Rakhine Lives Matter”. The next day, Than Hla heard rumours that he and other protesters would be charged, but continued to go about his daily business.

More than two months later, on 20 September 2019, Than Hla was picking up his son from school. They were buying fruit from a market stand when officers from the Sittwe Township police arrested him. He was taken to the No. 1 police station in Sittwe where he was interrogated and informed that he had been charged with violating Section 19 of the Peaceful Assembly and Peaceful Procession Law. He also learned that he was facing a separate charge under the law for participating in a peaceful protest in Sittwe Township in January 2019. At the latter demonstration, he staged a peaceful protest outside the Rakhine State Government building in Sittwe calling for an investigation after police had shot and killed seven people during a demonstration in Mrauk-U town, also in Rakhine State, in January 2018. In both cases, a member of the Myanmar military filed the complaint.

Than Hla was granted bail by the Sittwe Township Court. He told Amnesty International that the case had had a negative impact on his ability to do his work, as he had to arrange his schedule and travel plans around the court dates. On 20 March 2020 he was sentenced to 15 days in prison or a 20,000 kyat fine for the “Rakhine Lives Matter” protest. Than Hla, who maintains the case against him is unjust, opted to serve the prison sentence. The same day, authorities announced that the second case against him had been dropped. He was released on 3 April after completing his sentence.

THE STUDENTS PROTESTING AGAINST AN INTERNET SHUTDOWN

The Peaceful Assembly and Peaceful Procession Law – Section 19

Nine students were charged after they participated in a peaceful protest calling for an end to a government-imposed internet shutdown in Rakhine and Chin States, and for accountability for military abuses in these conflict-affected areas. On 25 March 2020, a court in Yangon sentenced seven members of the group to one month in prison. Two others remain in hiding.

“We didn’t request permission to protest. If we did, it would probably be rejected, and even if the authorities allowed it, they could use the law to censor us by telling us what signs we could use and slogans we could shout. And anyway, if the police want to, they can block a demonstration. It doesn’t matter whether we had permission or not.”

A student protester, speaking to Amnesty International in March 2020.

On 23 February 2020, around 100 protesters, many of them students, gathered in Yangon to peacefully march in protest against a government-imposed internet shutdown in Rakhine and Chin States in western Myanmar. The shutdown – which was initially imposed in June 2019 and partially lifted in September – had been re-imposed on 3 February 2020, cutting hundreds of thousands of people off from mobile internet services. Nine student activists – **Aung Pyae Sone Phyo** (m), **Naung Htet Aung** (m), **Ma Nhin** (f), **Aye Myat Mon Kyaw** (f), **Ko Thuta Soe** (m), **Zaw Htet Naing** (m), **Thet Tin Aung** (m), **Kyaw Lynn** (m), and **Mrat Hein Twan** (m) – were among those who attended the march.



The protesters had three key demands to the Myanmar authorities: to immediately reinstate full internet coverage; to ensure accountability for the shelling of a school in Rakhine State, reportedly by the Myanmar military, on 13 February 2020; and to allow domestic and international media full access to the area so they could independently report on the situation. The protesters had not notified the authorities of their plan to protest, fearful that if they did, the demonstration would be banned, or their chants and demands censored.

Police watched as demonstrators chanting slogans and holding signs that read “stop internet shutdown” marched towards the Hledan Centre. There, several people gave speeches before the group dispersed. The following day, police arrested six of the student activists and told them they – and three others – would be charged with protesting without permission under Section 19 of the Peaceful Assembly and Peaceful Procession Law. The six were released soon afterwards but were later rearrested along with a seventh activist in mid-March and taken to Insein prison, Yangon. On 25 March the Kamayut Township Court found them guilty and sentenced them to one month in prison. Six were released on 3 April owing to time already served, the seventh was due for release on 13 April. Two other activists charged for the protest are currently in hiding, fearful of arrest.



INTERNET SHUTDOWN IN RAKHINE AND CHIN STATES

The Telecommunications Law - Section 77

On 21 June 2019, the Myanmar authorities suspended mobile internet services in nine conflict affected townships in western Myanmar: Buthidaung, Kyauktaw, Maungdaw, Minbya, Mrauk-U, Myebon, Ponnagyun, and Rathedaung in Rakhine State and Paletwa in Chin State. The shutdown meant that people living in the affected areas were unable to access the internet, although mobile telephone calls and text messaging services were still available. A government official quoted in local media said the shutdown, believed to have been invoked under Section 77 of the Telecommunications Law, was imposed as a result of “weak rule of law” and “instability” in the area. The Law grants the authorities broad and arbitrary powers to order the suspension of telecommunications in the country.



© ↑ © Mary Tran / Amnesty International

The shutdown was lifted in five of the nine townships in early September. However, on 3 February 2020, a telecommunications provider reported that the Myanmar Ministry of Transport and Communications had ordered the reinstatement of restrictions in the five townships for three months. In a statement, the company said that the Ministry had referenced “security requirement and public interest” in issuing the order.

The shutdown applies to an area that has seen serious escalation of fighting between the Myanmar military and ethnic Rakhine armed group the Arakan Army since the start of 2019. Amnesty International and others have documented serious crimes by the Myanmar military there, including war crimes, as well as abuses by the Arakan Army. Fighting between the two forces is ongoing, with continuing reports of violations.

The shutdown has had a serious impact on communities living in the affected areas. Affected users are restricted in their access to emergency services and other information and services, including healthcare and mobile banking. The shutdown has also hindered urgently-needed humanitarian organizations’ provisions of aid and assistance to communities at risk, including people displaced by the conflict. Moreover, the situation has made it more difficult for activists and journalists to document and share information about the situation on the ground, in particular because they can no longer rely on secure and encrypted messaging services for communication.

THE KACHIN “ANTI-WAR” PROTESTERS

The Peaceful Assembly and Peaceful Procession Law - Section 20

Two internally displaced youth leaders were convicted and fined for violating Myanmar’s Peaceful Assembly and Peaceful Procession Law after staging a series of peaceful protests in which they demanded an end to armed conflict in Kachin State, northern Myanmar, and called on the military to stop filing lawsuits against peaceful activists in the country.

On 5 September 2019, **La Nu** and **Hka Mai** (both m) led a peaceful protest against charges filed against two other Kachin activists and to raise awareness of the situation of internally displaced people in Kachin State. Almost 100,000 people have been displaced there since June 2011, when armed conflict erupted between the Myanmar military and the Kachin Independence Army, an ethnic Kachin armed group. Around 200 people – almost all of them displaced people – participated in the protest in Myitkyina, the capital of Kachin State, where they held signs that read “I hate war” and “war is not the answer”.



↑ Anti-war protesters demonstrate in Kachin State, June 2019 © Emily Fishbein

“WE DIDN’T DO ANYTHING WRONG...”

WE DID NOT BREAK ANY LAWS, OUR PROTEST WAS JUST TO HIGHLIGHT THE SUFFERINGS AND EXPERIENCES OF DISPLACED PEOPLE...”

La Nu, speaking to Amnesty International in December 2019.



The pair had notified the authorities in advance of their plan to demonstrate; however, police arrived at the demonstration and asked La Nu and Hka Mai to accompany them to the police station. There, the chief of police informed them that they would be charged under Section 20 of the Peaceful Assembly and Peaceful Procession Law, because the signs included words and phrases that had not been approved. They were released after posting bail.

The protests continued and on 9 September were joined by a group of activists from Yangon, who had travelled to Myitkyina to protest in solidarity with Reverend Samson, a senior religious leader in the Kachin community, who was due to attend a hearing at the Myitkyina Township Court. He was expected to learn about charges filed against him by the Myanmar military after he had criticized them in a meeting with US President Donald Trump in July 2019. However, when the case was dismissed, the Yangon activists joined the displaced people who were protesting. Some wore t-shirts with messages denouncing the military for filing lawsuits against activists. La Nu and Hka Mai did not wear the t-shirts; however, the police informed them that as organizers of the protest they would be charged with a second offence under Section 20, since the slogans had not been included in the permission request, and therefore not “approved”.

The case was heard before the Myitkyina Township Court on 10 September 2019. The court delivered a guilty verdict under both charges the same day, and sentenced La Nu and Hka Mai to seven days in prison or a fine of 20,000 kyat (US\$ 14). The pair chose to pay the fine, which is a significant amount of money for displaced people, who on average receive around 15,000 kyats per month for food from humanitarian organizations. When they went to pay the fine they were told by a court clerk that an anonymous individual had already paid.



RELATED CASE: SENG NU PAN AND PAUL LU

The Peaceful Assembly and Peaceful Procession Law - Section 19
The Myanmar Penal Code - Section 228

“For each protest, we submit a permission request, including the estimated number of people and slogans. Sometimes police tell us to remove words referring to the military. But no matter how we try to comply with their requirements, one way or another protesters are charged under the Peaceful Assembly and Peaceful Procession Law.”

Seng Nu Pan, speaking to Amnesty International in December 2019.

Other ethnic Kachin activists have also faced arrest, prosecution, and imprisonment for speaking out against armed conflict and trying to highlight the situation of displaced people in Kachin State. **Seng Nu Pan** (f) and **Paul Lu** (m) were charged with violating the Peaceful Assembly and Peaceful Procession Law after they had organized an event to commemorate the eight-year anniversary of the resumption of armed conflict in June 2011.

On 6 June 2019, the two notified the authorities in Myitkyina of their intention to hold a series of events on 8 and 9 June. However, they were told that because the events were an annual occurrence, no notification was needed. In the end, the group only held activities on 9 June, during which a small group staged a performance in front of some 600 people at People’s Park in Myitkyina and in an alley near Sein Mya Ayeyar Park. The performance lasted around an hour and included scenes describing battles, attacks on civilians by military helicopters, and people being forced to run for their lives. Seng Nu Pan, who was herself displaced as a result of the conflict, sang a song entitled “I want to go home”.

The next day, the head of the Myitkyina Township police informed Seng Nu Pan and Paul Lu that they would be charged for protesting without permission under Section 19 of the Peaceful Assembly and Peaceful Procession Law. On 11 June, the pair were brought before the Myitkyina Township Court, where they were granted bail. On 2 September, they were each convicted and sentenced to 15 days in prison.

In protest against the verdict, Paul Lu handed the presiding judge a set of broken scales, symbolising Myanmar’s broken justice system. He was charged with “intentional insult or interruption to public servant sitting in judicial proceeding” under Section 228 of the Penal Code. On 6 September he was sentenced to a further three months in jail. Seng Nu Pan was released from prison on 16 September, and Paul Lu on 16 December, after they had completed their sentences.



THE KAREN ACTIVISTS

The Peaceful Assembly and Peaceful Procession Law - Section 19



Four ethnic Karen activists were each sentenced to one month in prison after they took part in a peaceful demonstration protesting the demolition of homes at a controversial housing project in Kayin State – also known as Karen State. One of the activists – Naw Ohn Hla – is a prominent human rights defender who has often been targeted in connection with her peaceful activism.

On 19 April 2019, four ethnic Karen activists – **Naw Ohn Hla** (f) , **Maung U** (m), **U Nge (aka) Hsan Hlaing** (m), and **Sandar Myint** (f), participated in a peaceful demonstration organized by residents of the Shwe Mya Sandi housing project in Kayin State, southeastern Myanmar. Residents had been protesting against demolition of their homes in February 2019, after the government declared that the land used for the project had been acquired unlawfully. Protest organizers Maung U, U Nge (aka) Hsan Hlaing, and Sandar Myint had notified authorities of their intention to march along the road to Myawaddy, a town on the Myanmar-Thai border. Naw Ohn Hla was not involved in organizing the protest but she joined in a show of solidarity.



© ↑ Naw Ohn Hla © Democracy, Peace and Women Organization (DPW)

Soon after the peaceful march, police charged the four activists under Section 19 of the Peaceful Assembly and Peaceful Procession Law, accusing them of protesting without authorization. This law has frequently been used to target peaceful activists, in particular those campaigning for justice for communities affected by human rights violations and abuses. Although officially the law only requires notification of a protest, in practice, authorities treat the notification requirement as a request for permission.

On 17 January 2020 the Myawaddy Township Court found the four activists guilty and sentenced each of them to one month in prison. They were released on 16 March after completing their sentences in Hpa-An prison, Kayin State.



RELATED CASE: THE KAREN MARTYRS DAY PROTEST

The Peaceful Assembly and Peaceful Procession Law – Section 20

“The police and township officials did not give any reason when I asked why we had to remove the term ‘Karen Martyrs Day’ ... it shows that the authorities arbitrarily use the Peaceful Assembly Law to oppress people. Preventing cultural rights, including events and ceremonies, is not fair. The government needs to understand and fully provide ethnic rights.”

Naw Ohn Hla, speaking to Amnesty International in December 2019.

Naw Ohn Hla, is a prominent activist in Myanmar, who has frequently been targeted for arrest, prosecution and imprisonment by the Myanmar authorities. In October 2019, she was imprisoned along with two other ethnic Karen activists – **Saw Albert Cho** (m) and **Saw Thein Zaw Min** (m) – for their role in organizing a peaceful event commemorating Karen Martyrs Day at Mahabandula park in Yangon on 12 August 2019.

On 9 August 2019 the group notified local authorities of their intention to hold the event but were told they were not allowed to use the word “martyr” during the event. The event went ahead, but the forbidden word was used. Police subsequently charged the three organizers under Section 20 of the Peaceful Assembly and Peaceful Procession Law, for using the word “martyr” and therefore violating the notified conditions for the event. They were each sentenced to 15 days in prison by the Kyauktada Township Court on 2 October 2019. They served their sentences in Yangon’s Insein prison before being released.

THE LABOUR RIGHTS ACTIVISTS

The Peaceful Assembly and Peaceful Procession Law - Section 19

Eight people – seven factory workers and a labour rights activist – have been charged in connection with a peaceful protest outside a garment factory in the Patheingyi Industrial Zone in Ayeyarwady Region during September 2019. If found guilty and convicted, they each face up to three months in prison.



© ↑ Kha Kha © Amnesty International

On 2 September 2019, thousands of workers from a garment in factory in the Patheingyi Industrial Zone in Ayeyarwady Region, southwestern Myanmar, began peacefully protesting against alleged labour rights violations at the factory. The protests, which were aimed at raising concerns over health and safety, salaries and benefits, and working hours, were organized by eight people – **Kha Kha (aka) Zar Zar Lin** (f), a labour rights activist who lives in Yangon, and seven factory workers **Cho Mi Khine** (f), **Aung Naing Win** (m), **Yin Yin Aye** (f), **Win Zaw Htway (aka) Pho Khwar** (m), **Aung San Oo** (m), **Hnin Nwe Lwin** (f), and **May Myat Thu** (f), who are also trade union leaders. They had previously submitted a letter to the Myoma Township authorities on 29 August 2019, requesting permission to protest.

At around 9am on 2 September, some 1,000 factory workers gathered outside the factory to begin a peaceful protest. Officers from the Myoma Township police arrived on the scene and asked the protesters to disperse. At around 9:30am, the local township authorities invited Kha Kha and the seven workers to what they believed would be a mediation meeting. However, when they arrived at the Township General Administration Department office, Kha Kha was informed that she would be charged with violating Section 19 of the Peaceful Assembly and Peaceful Procession Law, as the police claimed she had not requested permission to protest. The seven factory workers objected to Kha Kha being targeted, and insisted that if she was to be charged, as fellow protest organizers they should be charged too.

The protests continued for two more days, until on 4 September the factory and workers were able to agree demands and the protests were called off. However, on 6 September, the eight activists were called to the Myoma police station where they were told that the case against them would be going ahead, and that they would need guarantors to secure bail. Since then, court proceedings have been slow, in particular after the complainant – a police officer – was transferred to a different part of Myanmar. The seven factory workers continue working in the factory while Kha Kha, who is based in Yangon, has to make weekly trips to the court to attend hearings.



“WE HAVE TO IMPROVE THE LIVING CONDITIONS OF WORKERS [IF WE ARE] TO IMPROVE THE COUNTRY’S ECONOMY...”

THE GOVERNMENT SHOULD WORK WITH CIVIL SOCIETY AND LABOUR RIGHTS ACTIVISTS, SPEAK TO THEM, LISTEN TO THEM... [THIS] OPPRESSION MAKES ME WORK HARDER – IF A PERSON LIKE ME CAN BE CHARGED, WORKERS WHO ARE POOR AND IN DIFFICULT CONDITIONS MUST BE TREATED EVEN WORSE.”

Kha Kha, speaking to Amnesty International in December 2019.

THE RAKHINE NEWS EDITOR

The Unlawful Associations Act - Section 17(2)



News editor Aung Marm Oo is in hiding after being accused of violating Myanmar's Unlawful Associations Act, a repressive law that has often been used to target ethnic minorities in the country. He is the Editor-in-Chief of Development Media Group, a Rakhine State-based news agency which has been reporting on violations during the armed conflict between the Myanmar military and the Arakan Army. The charge carries a maximum five-year prison sentence.

“The government can and should drop the case against me and grant the registration for Development Media Group to do our work freely.”

Aung Marm Oo, Editor-in-chief of Development Media Group (DMG), a Rakhine State-based media organization.

Aung Marm Oo (m), aka Aung Min Oo aka Oo Ba Khin, is the founder and Editor-in-Chief of Development Media Group (DMG), a media agency established in 2012 that reports on news and current affairs, especially in Rakhine State. Since the start of 2019, when fighting escalated between the Myanmar military and the Arakan Army, an ethnic Rakhine armed group, DMG has regularly reported on human rights violations and abuses, in particular by the Myanmar military. In early May 2019, Aung Marm Oo learned that he was facing criminal charges under Section 17(2) of Myanmar's Unlawful Associations Act, which provides for up to five years' imprisonment for any person who manages, assists, or promotes an unlawful association.

“Media workers shouldn't be targets... [we] shouldn't be oppressed. Independent media should be supported and promoted.”

Ne Win San, Editor of Development Media Group, Rakhine State.

The Unlawful Associations Act is a vaguely-worded law which has long been used by the Myanmar authorities to arrest and detain ethnic minority civilians in conflict-affected areas. The complaint against Aung Marm Oo was filed on 1 May 2019; however, Aung Marm Oo was only made aware of the charge after it was reported by another media outlet. To date he is unclear what specifically the charge relates to, but he believes it is linked to DMG's reporting.

On 5 and 6 May 2019, police officers in Sittwe, the capital of Rakhine State, interrogated two journalists from DMG, asking questions about Aung Marm Oo, his whereabouts, and DMG's reporting on the situation in Rakhine State. Officers from Myanmar's Special Branch have also searched Aung Marm Oo's home and questioned members of his family. He has been in hiding for more than 11 months, fearing arrest and detention.

In addition to the charges against Aung Marm Oo, DMG has also faced difficulties in renewing its media license, and the publishing license for the bi-weekly Development News Journal. Without these licenses the organization will no longer be able to operate legally, placing its reporters at greater risk of harassment and possible arrest, and undermining the group's ability to provide information on the situation in Rakhine State.

THE KARENNI ACTIVISTS

The Law Protecting the Privacy and Security of Citizens



Six ethnic Karenni activists were sentenced to six months in prison in October 2019 after a court found them guilty of defaming the Kayah State Chief Minister. Arrested and detained in June 2019, they were released in December 2019 owing to time already served.



Dee De © UKSY (Union of Karenni State Youth)

“The government says we can protest and enjoy freedom of expression according to the law. But they are not just laws. They do not support us and uphold our human rights... They are used by those in power to oppress us.”

Dee De, speaking to Amnesty International in January 2020.

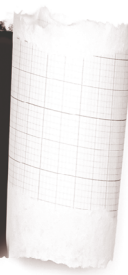
Kayah State – also known as Karenni State, in southeastern Myanmar – has been the site of controversy in recent years for ethno-political reasons. In 2018 the NLD-led state authorities announced plans to erect a statue of General Aung San, one of the leaders of Myanmar’s independence movement and father of the country’s de facto leader Aung San Suu Kyi, in the main square of Loikaw, the capital of Kayah State. The plans were immediately met with resistance from local communities, who complained that the decision reinforced the cultural and political domination of the Bamar – Myanmar’s largest ethnic group – over ethnic minority communities in the State. A series of protests throughout 2018 resulted in dozens of peaceful activists being charged with unlawful assembly, “incitement”, and defamation.

When the authorities unveiled the statue in February 2019, the local community was incensed, and thousands took to the streets in protest, demanding that the statue be moved elsewhere. On 12 February police responded to the protests with force, firing rubber bullets and tear gas at the protesters. Several people were injured. In an effort to diffuse the situation, Karenni leaders met with state government officials to find a compromise. After a series of meetings, authorities agreed to drop the charges pending against peaceful protesters. However, no action was taken to remove the offending statue.

On 25 March 2019 six leading activists – **Khu Kyu Phe Kay**, **Khun John Paul**, **Myo Hlaing Win**, **Khun Tomas**, **Dee De**, and **Khu Ree Rhe** (all m) – issued a statement on social media accusing the Kayah State Chief Minister and other government officials of being “traitors” to the ethnic Karenni people. The Chief Minister responded by filing a complaint against them, accusing them of criminal defamation under the Law Protecting the Privacy and Security of Citizens (the Privacy Law), enacted by the NLD-led government in March 2017. The charge carries a maximum three-year prison sentence.

The six activists initially went into hiding before police arrested them in June 2019. Khu Kyu Phe Kay was detained on 2 June, while the five others were arrested on 21 June when attending an event commemorating National Karenni Day. All six were denied bail during a hearing at the Loikaw Township Court on 24 June, and sent to Loikaw prison for the duration of their trial. On 2 October, they were sentenced to six months in prison by the Loikaw Township Court. In November, the activists learned that the Kayah State Chief Minister had filed an appeal against their sentences, claiming that the prison terms should have been longer. However, the appeal was later withdrawn, and all six activists were released in December owing to time already served.

MYANMAR'S REPRESSIVE LEGAL FRAMEWORK



Cases of politically motivated arrest and imprisonment are made possible by a number of laws in Myanmar that arbitrarily restrict the rights to freedom of expression, association, and peaceful assembly. These laws are often vaguely worded and overly broad, allowing them to be applied arbitrarily against people criticizing the authorities, in particular the military, or speaking out against injustice. Other laws are, on their face, completely incompatible with the protection of the rights to freedom of expression, association, and peaceful assembly.

THE PENAL CODE

Myanmar's Penal Code contains a number of provisions that are used to restrict the rights to freedom of expression. As reported in this briefing, of particular concern are the following:

Sections 499-500: Section 499 criminalizes defamation, which under Section 500 carries a maximum sentence of two years' imprisonment. It has been used in cases where an individual has criticized a public official, in particular those linked to the Myanmar military. Amnesty International opposes laws criminalizing defamation, whether of public figures or private individuals, and considers that defamation should be treated as a matter for civil litigation. The use of defamation laws with the effect of inhibiting legitimate criticism of government or public officials violates the right to freedom of expression.

Section 505(a): Under Section 505(a) it is an offence to make, publish or circulate any statement, rumour or report with intent to cause, or which is likely to cause *"any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such"*. The charge carries a maximum two year prison sentence. The provision has increasingly been used by members of the armed forces to target activists criticizing the military and its role in politics.

Section 505(b): This provision has long been used to arrest and imprison activists peacefully exercising their right to freedom of expression. It provides up to two years in prison for any person who makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause *"fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity"*. The provision is vaguely worded and allows the authorities broad scope to prosecute individuals who criticize the government.

THE PEACEFUL ASSEMBLY AND PEACEFUL PROCESSION LAW

The law has often been used to arrest and prosecute peaceful activists. It was amended in October 2016, removing the requirement for police permission to assemble, and replacing it with a requirement to notify police 48 hours in advance of an assembly. However, in practice authorities treat the notification requirement as a request for permission. Further amendments proposed by the government in February 2018 are deeply problematic and regressive, and include a requirement for assembly organizers to provide information about the amount and source of funds used to hold a demonstration.



THE TELECOMMUNICATIONS LAW

Section 66(d) of the 2013 Telecommunications Law criminalizes “online defamation” and provides for up to two years in prison for “*extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network*”. Beginning in October 2015, this provision has been used to initiate a wave of criminal prosecutions of individuals for peaceful communications on social media and has increasingly stifled criticism of the authorities.

Amnesty International is also concerned about other provisions in the Law that have been used to unlawfully restrict the rights to freedom of expression, including access to information. In particular Section 77 of the Law, which grants the Myanmar authorities broad and arbitrary powers to suspend telecommunications networks, was invoked to justify a shutdown of mobile internet services in Rakhine and Chin States from June 2019 onwards, which remained in effect at the time of writing, and is believed to be the basis for an official order to telecommunications companies to block access to more than 200 websites in March 2020.



THE UNLAWFUL ASSOCIATIONS ACT

The Unlawful Associations Act requires associations to register with the government and contains sweeping provisions to arbitrarily outlaw peaceful associations. Under Section 17(1) of the Act, any person who is a

member of an unlawful association, who meets with its members, or provides the association with assistance can be sentenced to up to three years in prison. In addition, Section 17(2) states that any person who “manages, assists or promotes” an unlawful association can be sentenced for up to five years. The Law has often been used to arrest and detain ethnic minority civilians in conflict-affected areas, in particular men perceived to be of fighting age, who are then accused of links to an ethnic armed group.



THE PRIVACY LAW

The law, enacted by the current NLD-led Parliament in March 2017, criminalizes defamation. Section 8(f) states that: “*No one shall unlawfully interfere with a citizen’s personal or family matters or act in any way to slander or harm their reputation.*” Under Section 10, such “offences” carry a sentence of between six months and three years in prison, as well as a fine. The law is broadly worded – of particular concern is the fact that the law can be used by anyone to file complaints – not just those whose reputations have allegedly been damaged. Such provisions are open to abuse because they could be used in the cases of personal disputes. Parliament is currently considering amendments which would reduce the maximum prison sentence from three to two years; however these revisions would be insufficient to bring the law in line with international human rights standards. As already indicated, Amnesty International opposes laws criminalizing defamation, whether of public figures or private individuals.

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

The rights to freedom of expression, association, and peaceful assembly are protected under international human rights law. Although Myanmar has neither signed nor ratified key human rights treaties, which guarantee these rights, they are enshrined in the Universal Declaration of Human Rights (UDHR), which articulates the most basic rights that all UN member states, including Myanmar, are bound to respect, protect, promote and fulfil as part of their obligations under the UN Charter.

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

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

This is a cumulative test – all three requirements need to be met for a restriction to comply with international human rights standards.¹

The laws described above do not satisfy these criteria and therefore should be repealed or amended and brought into line with international standards.

¹ 7 ICCPR Article 19(3); Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, paras. 21-36

CONCLUSION AND RECOMMENDATIONS

Just over four years since the National League for Democracy (NLD)-led government came to power, human rights defenders and activists continue to be harassed, intimidated, arrested, prosecuted, and imprisoned for peacefully exercising their human rights.

A number of vaguely worded and overly broad laws have allowed the authorities – in particular the military – to target critics solely for the peaceful exercise of their rights. While the NLD-led administration made some positive steps when it first assumed office, efforts to reform the country's repressive legal framework have largely stalled. Meanwhile, there are ongoing concerns about a lack of transparency and consultation with civil society, legal experts, and others when drafting, reviewing, or amending legislation.

As the country gears up for general elections scheduled for late 2020, it is vital that the authorities take the opportunity to stop politically motivated arrests and imprisonment, and ensure that the rights to freedom of expression, association, and peaceful assembly are fully and effectively respected, protected, promoted, and fulfilled.

To this end, Amnesty International calls on the Myanmar authorities to:

- Immediately and unconditionally release all those detained or imprisoned simply for the peaceful exercise of their human rights, and drop all charges pending against those who are facing imprisonment simply for the peaceful exercise of these rights. Expunge the criminal records of all those convicted solely for the peaceful exercise of their rights;
- Repeal, or review and amend all laws whose provisions violate the rights to freedom of expression, association, and peaceful assembly to ensure these and other laws comply with international human rights standards. Pending the amendment of these laws to bring them in line with international standards, the laws should not be used to harass, intimidate, arrest, prosecute, or imprison human rights defenders, activists, and others simply for exercising their human rights;
- Ensure broad and transparent consultation with civil society, legal experts, and others when drafting, reviewing, and amending legislation;
- Ensure that human rights defenders, activists, and others exercising their human rights are free from harassment, intimidation, discrimination, and the threat of criminalization through the application of repressive laws; and that they are able to conduct their important work in a safe environment and without any reprisals;
- Ensure that security forces do not obstruct and stop human rights defenders, activists and others from exercising their human rights;
- Accede without delay and reservation to core international human rights treaties and their additional protocols, including to the International Covenant on Civil and Political Rights and the UN Convention on the Elimination of all forms of Racial Discrimination, incorporate their provisions into domestic law, and fully and effectively implement their provisions in law, policy, and practice.



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“I WILL NOT SURRENDER”

THE CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS AND ACTIVISTS IN MYNAMAR

Just over four years since the National League for Democracy (NLD)-led government came to power, human rights defenders and activists continue to be arrested, prosecuted, and imprisoned for peacefully exercising their human rights. This briefing profiles 16 recent cases of such politically motivated arrests, prosecutions, and imprisonment in Myanmar. They include human rights defenders, students, journalists, satirical performers, an environmental activist, a labour rights activist and trade union members, and a Buddhist monk, in cases that span the length and breadth of the country.

Ongoing prosecutions are made possible by a number of vaguely worded laws which authorities – in particular the Myanmar military – use to target human rights defenders and activists. As the current administration comes towards the end of its term and the country gears up for general elections in late 2020, it is vital that the authorities take the opportunity to close the door on politically motivated arrest and imprisonment. This includes releasing all those imprisoned for exercising their rights, reforming Myanmar’s repressive laws, and ensuring that the rights to freedom of expression, association, and peaceful assembly are respected and protected.

