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CAUGHT BETWEEN STATE CENSORSHIP AND SELF-CENSORSHIP

PROSECUTION AND INTIMIDATION OF MEDIA WORKERS IN MYANMAR

AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

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Cover photo: A journalist wearing a t-shirt with the slogan "We don't want threat on press freedom" speaks to police at a protest against the imprisonment of media colleagues. The protest took place near the Myanmar Peace Centre in Yangon during a visit by President Thein Sein on 12 July 2014.
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1. SUMMARY

"It is during times of political change that the right to freedom of expression is most essential, ensuring that a well-informed and empowered public is free to exercise its civil and political rights."

Franck La Rue, former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.[1]

Myanmar's media landscape has seen a radical change since the country embarked on a series of important political, economic and social reforms, announced by President Thein Sein in March 2011. The lifting of pre-publication censorship, the release of imprisoned journalists and greater space for freedom of expression have seen the development of an increasingly vibrant and diverse media. These media reforms have been lauded by many in the international community, who are keen to point to increased media freedoms as one of the hallmarks – and successes – of Myanmar's reform process.

A man enjoys reading newly allowed newspapers in Yangon. The newspaper *D-Wave* is the publication of the opposition party the National League for Democracy (NDL), ©Amnesty International, photos by Jiri Pasz

However, the story does not end there. Despite the media reforms, journalists and other media workers in Myanmar face ongoing restrictions in carrying out their work. As these critics become more vocal and the authorities feel more threatened, they have increasingly resorted to tried and tested tactics to stifle dissent. In particular, those deemed critical of the

[1] *Report of the UN Special Rapporteur on the promotion of the right to freedom of opinion and expression*, Franck La Rue, Human Rights Council 26th session, UN Doc. A/HRC/26/30, 2 July 2014, para. 10.

government and the Myanmar Army or who report on subjects which the government or army consider sensitive can face intimidation, harassment and at times arrest, detention, prosecution and even imprisonment.

"Since 2014, the enjoyment of media freedom has reversed... [the authorities] are filing lawsuits against journalists and imprisoning them on 'national security' and defamation charges."

Zaw, a Myanmar-based journalist reporting on religious and political issues.[2]

Since 2014, the situation of freedom of expression has been deteriorating again. During 2014 at least 11 media workers were imprisoned in connection with their peaceful journalistic activities, while others reported direct threats, surveillance, restrictions on access to certain areas of the country, and the use of defamation lawsuits to stifle critical or independent reporting. In October 2014, one journalist was killed by soldiers while held in military custody in an egregious example of the risks media workers continue to face. Threats and intimidation also emanate from extreme Buddhist nationalist groups against media workers and organizations covering anti-Muslim violence in the country. Such cases have had a chilling effect on journalists and other media workers in Myanmar, and have led to a climate in which self-censorship is widely practised.

"The government still has limits. Compared to the previous government we can get away with many more things, but if you go beyond their limits there will be action..."

Saw Yan Naing, journalist with *The Irrawaddy*.[3]

Ensuring that journalists and other media workers are able to undertake their professional activities free from harassment, harm and the fear of prosecution and imprisonment is an essential component to the promotion and protection of human rights in Myanmar. Journalists and other media workers often play a crucial role in exposing human rights abuses perpetrated both by powerful state and non-state actors.

[2] Amnesty International interview, May 2015.

[3] Amnesty International interview, December 2014.

THE RIGHT TO FREEDOM OF EXPRESSION

The right to freedom of expression is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR). It includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers. Such ideas can include political discourse, discussion on human rights, journalism, cultural and artistic expression, teaching and religious discourse.

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

1. Legality: restrictions must be provided by clear, detailed and well-defined laws.
2. Legitimacy: restrictions can only be imposed to serve a legitimate aim explicitly specified in international human rights law, namely to protect the rights and reputation of others; national security, public order, public health, or public morals. Human rights bodies provide strict interpretation of each of these.
3. Necessity and proportionality: measures must be necessary and the state can only impose the least restrictive means required to achieve any of the above aims.

It should be noted that this is a cumulative test – all three requirements need to be met for a restriction to accord with international human rights law and standards.[4]

Advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence is not protected by the right to freedom of expression and States should prohibit such advocacy of hatred.[5]

Indeed, the arrest and imprisonment of journalists and other media workers – coupled with ongoing harassment and intimidation – takes place in a wider context of restrictions on the right to freedom of expression in Myanmar. Scores of activists, including human rights defenders, land activists and farmers, also face arrest, prosecution and imprisonment solely for the peaceful exercise of their human rights.

As Myanmar gears up for general elections towards the end of 2015, there are concerns that restrictions on freedom of expression will intensify. The Myanmar authorities must ensure that journalists and other media workers are able to peacefully exercise their right to freedom of expression and carry out their journalistic activities – including sensitive investigations – without fear of reprisal or arrest.

[4] See for instance International Covenant on Civil and Political Rights, 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.
[5] See for instance International Covenant on Civil and Political Rights, Article 20.

"So far it is ok to report on elections, but it will be a problem if reporters write about votes cheating. There could be a risk to local reporters, the government could take action – arrest them, issue a new law, detain them, shut down their publications, sue their publications. This is a risk."

A journalist who asked to remain anonymous.[6]

KEY RECOMMENDATIONS TO THE MYANMAR AUTHORITIES:

- Immediately and unconditionally release all journalists and other media workers who have been detained or imprisoned solely for the peaceful exercise of their right to freedom of expression, and immediately drop all charges brought – and vacate any convictions – against those who have solely peacefully exercised their rights to freedom of expression and assembly;
- Publicly commit to ensuring that journalists and other media workers are able to carry out peaceful journalistic activities without fear of intimidation, harassment or retribution and guarantee the integrity of journalists and media workers, including against attacks or threats coming from non-state groups, at all times, not least around the forthcoming elections; and
- Review and amend all laws, including the Official Secrets Act, the Media Law, the Printing and Publishing Law, and Articles 499 and 505(b) of the Penal Code which violate the right to freedom of expression, and bring them into line with international human rights law and standards.

This briefing has been produced in the context of Amnesty International's ongoing research on freedom of expression in Myanmar, and is based on direct interviews with media workers – both national and international – currently operating in Myanmar, as well as their families and representatives, lawyers and civil society organizations. It also draws from desk-based research, including media monitoring, legal analysis and a review of academic and other writings on freedom of expression.

Most journalists interviewed by Amnesty International spoke on condition of anonymity, citing concerns for their safety or the safety of their families. Some names, dates and interview locations have therefore not been disclosed.

[6] Amnesty International interview, December 2014.

2. ARREST, DETENTION AND IMPRISONMENT

"We don't have any safety… they [the authorities] can arrest us, they can take us to court anytime."

Lawi Weng, reporter for *The Irrawaddy*.[7]

Journalists and other media workers in Myanmar face the ongoing risk of arrest, detention and imprisonment. In 2014, there was a sudden increase over previous years in the number of media workers jailed solely for peacefully exercising their right to freedom of expression. At least 10 journalists and media workers are currently behind bars after being convicted, some of them sentenced to lengthy terms of imprisonment. Amnesty International considers all of them to be prisoners of conscience who must be immediately and unconditionally released.

PRISONER OF CONSCIENCE

Amnesty International considers as a prisoner of conscience any person imprisoned or otherwise physically restricted solely because of his/her political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status, or for exercising his or her right to freedom of expression or other human rights – who has not used violence or advocated violence or hatred.

All prisoners of conscience must be set free at once and without conditions, and all charges or other proceedings against them abandoned.

The arrest and imprisonment of journalists occurs in a wider context of restrictions on freedom of expression. The authorities continue to use old laws that excessively restrict the right to freedom of expression – such as Section 505(b) of the Penal Code and the Official Secrets Act – in order to criminalize peaceful expression and assembly. Some of the provisions of these laws place broad and vague restrictions on the exercise of human rights which go well beyond the limited restrictions permissible under international human rights law and standards. As long as these laws remain on the books in their current form, the authorities will retain the power to stifle the exercise of freedom of expression in the country.

[7] Amnesty International interview with Lawi Weng, 20 January 2015.

THE *UNITY* MEDIA WORKERS

Five media workers for the *Unity* newspaper are currently serving seven years in prison with hard labour for reporting on an alleged secret chemical weapons factory.[8]

Lu Maw Naing, a reporter for the newspaper, was arrested without a warrant on 31 January 2014 by Special Branch police in Pauk Township, Pakokku District, and taken to Pakokku prison. The following day, three other *Unity* reporters – **Yarzar Oo**, **Paing Thet Kyaw** and **Sithu Soe** – and the newspaper's chief executive officer **Tint San**, were also arrested without a warrant at their office in Yangon. The five men were arrested after *Unity* published an article on 25 January 2014 about an alleged secret chemical weapons factory in Pauk Township. The government has denied the allegations and the authorities reportedly seized copies of *Unity* across the country.

The five men were charged under Article 3(1) A/9 of Myanmar's Official Secrets Act 1923. State media confirmed that they had been charged with *"disclosing State secrets, trespassing on the restricted area of the factory, taking photographs and the act of abetting*". On 10 July they were each sentenced to 10 years in prison with hard labour, later reduced on 2 October to seven years' imprisonment with hard labour by the Magwe Regional Court. Reliable sources have raised fair trial concerns with Amnesty International, including lack of access to lawyers and prison authorities' failures to respect attorney-client confidentiality. All five are currently detained at Pakokku prison.

[8] Amnesty International, *Myanmar: Ill-health concerns for detained journalist* (Index: ASA 16/004/2014), 7 April 2014; *Myanmar: Media workers imprisoned in Myanmar* (Index: ASA 16/013/2014), 15 July 2014; and *Myanmar: Imprisoned media workers sentences reduced* (Index: ASA 16/023/2014), 3 October 2014.

The arrest and imprisonment of the *Unity* media workers in particular has had a chilling effect on journalists working in Myanmar. Many have told Amnesty International that the case is seen by their profession as serving as a warning to all media workers and have expressed fears that the same could happen to them if they are not "careful" in reporting on stories that the authorities dislike. While this case is perhaps the most well-known, other cases also underscore journalists' and media workers' fears of possible arrest.

The *Bi-Midday Sun* media workers

On 16 October 2014, media workers **Kyaw Zaw Hein**, **Win Tin**, **Thura Aung**, **Yin Min Htun** and **Kyaw Min Khaing** from the *Bi-Midday Sun* newspaper were each sentenced to two years' imprisonment by the Pabedan Township Court in Yangon after the paper published claims that opposition leader Aung San Suu Kyi and ethnic leaders had been elected as an interim government.

Reporter Kyaw Zaw Hein, managing editor Win Tin and editor-in-chief Thura Aung were arrested in Yangon by Special Branch Police on 7 and 8 July 2014. Officer-in-charge Yin Min Htun and publisher Kyaw Min Khaing were arrested on 16 July 2014 by Thai authorities in the border town of Mae Sot, before being handed over to the Myanmar authorities.
All five were convicted and sentenced under Section 505(b) of the Penal Code, which provides for up to two years' imprisonment for anyone who makes, publishes or circulates information which may cause public fear or alarm, and which may incite people to commit offences "against the State or against the public tranquillity". They are all currently held in Yangon's Insein prison.

The emerging pattern illustrated by the cases of the *Unity* and the *Bi-Midday Sun* newspapers is arousing profound concern. In both instances the authorities have charged not only the author of a story deemed offensive, but all the staff of the newspaper connected to the story, in what amounts to collective punishment. As most staff of the newspaper are in detention as a consequence, the authorities thus ensure that the publication will no longer be able to operate and may be forced to close down.

SHORT-TERM IMPRISONMENT

In addition to the journalists above who are currently imprisoned, several others have been detained for short periods after being charged with offences relating to their peaceful work. These cases also illustrate the atmosphere of restriction and intimidation.

Video journalist Zaw Pe

On 7 April 2014, **Zaw Pe,** aka Thu Ya Thet Tin, a video journalist for the radio and television broadcaster *Democratic Voice of Burma* (DVB), was sentenced to one year in prison for "*house trespass*" under Article 448 of Myanmar's Penal Code and "*assault to deter a public servant from discharge of his duty"* under Article 353. He was charged after attempting to conduct an interview with a Magwe Division Education Department official about allegations of corruption. Zaw Pe was released on 4 July after a court in Magwe region reduced his prison sentence from one year to three months.[9]

[9] Amnesty International, *Myanmar: Imprisoned for corruption investigation* (Index: ASA 16/006/2014), 2 May 2014.

Amnesty International considers that Zaw Pe was imprisoned solely because he attempted to investigate allegations of government corruption.

The *Myanmar Post Weekly* workers

On 18 March 2015, editor-in-chief **Than Htike Thu** and deputy-chief reporter **San Moe Tun** from the *Myanmar Post Weekly* were each sentenced to two months' imprisonment for defamation under Article 499 of the Penal Code. A member of the Myanmar Army who is also a Member of Parliament (MP) in Mon State filed a complaint against the two journalists after they published an interview with him in January 2014. The MP claimed that they had misrepresented him in the headline they chose for the article.[10] Both were released in May 2015.

Under Article 499 of the Penal Code, those found guilty of defamation can face a maximum of two years' imprisonment, a fine or both. Amnesty International opposes laws criminalizing defamation, whether of public figures or private individuals. Defamation should be treated as a matter for civil litigation. According to the UN Human Rights Committee, the UN body charged with overseeing the implementation of the International Covenant on Civil and Political Rights, imprisonment is never an appropriate penalty for defamation and States should consider decriminalizing it.[11]

"The number of journalists languishing in jail speaks for itself about the level of media freedom."

Sein Win, training director at the Myanmar Journalism Institute.[12]

THREATENED WITH PRISON FOR PEACEFULLY PROTESTING FOR MEDIA FREEDOM

In light of the resurgence in arrests and sentencing of media workers, journalists have organized peaceful protests and assemblies calling for greater respect for press freedom. However, their actions have often been met by more charges or threats of prosecution by the authorities.

- In April 2014 **Yae Khe**, a reporter for *Mizzima*, a multimedia news organization previously in exile which now operates in Myanmar, organized a peaceful protest in Pyay, a town in Bago Region, calling for greater press freedom and the release of imprisoned journalists. The authorities responded by charging him with protesting without permission under Article 18 of the Peaceful Assembly and Peaceful Procession Law, which at the time carried a maximum punishment of one year in prison.[13] On 17 July 2014, he was found

[10] Amnesty International interview with Myint Kyaw, General Secretary of Myanmar's Journalist Network, also a member of Myanmar's Interim Press Council, 30 March 2015.
[11] Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 47.
[12] Amnesty International interview, May 2015.
[13] The law was amended in June 2014, reducing the maximum punishment under Article 18 to six months in prison.

guilty and ordered to pay a fine of 20,000 kyat (around US$20).[14]

■ On 12 July 2014, two days after the *Unity* media workers were sentenced to 10 years' imprisonment, authorities prevented journalists wearing t-shirts emblazoned with the words "*Stop Killing Press*" from attending a Myanmar Peace Centre event in Yangon, where President Thein Sein was present. The journalists responded by staging a silent protest outside the venue, some of them covering their mouths with black tape to highlight the restriction on freedom of expression. After the event, police in Yangon announced they would charge more than 50 journalists under Article 18 of the Peaceful Assembly and Peaceful Procession Law – apparently including journalists who were simply covering the protest. However, following international outcry, the police did not pursue the charges.[15]

Journalists protest against the imprisonment of the *Unity Weekly* media workers near the Myanmar Peace Centre in Yangon during a visit by President Thein Sein. 12 July 2014. © REUTERS/Soe Zeya Tun

The fear of arrest contributes to an environment in which some journalists censor themselves by means such as using fake names, choosing not to report on issues which could be deemed too sensitive by the authorities, or avoiding giving details of sources and locations.

[14] Amnesty International, *Myanmar*: *Jailing of new prisoners of conscience casts doubt on reform* (Index: ASA 16/007/2014), 2 May 2014.
[15] Frontline Defenders, *More than 50 journalists charged for protesting the 10 year prison sentence of* Unity Weekly *journalists*, 15 July 2014, available at: http://www.frontlinedefenders.org/node/26607

"Yes I feel scared … the government can use whatever articles [of the law] they want if they want to fine or arrest you. That's obvious the law is in their hand. We may get arrested and our sources as well."

A journalist working in Kachin State.[16]

ARBITRARY ARREST OF JOURNALISTS REPORTING ON STREET PROTEST

Since the beginning of 2015, Amnesty International has become increasingly concerned that journalists covering protests risk arbitrary arrest and detention.

On 4 March 2015, two journalists working for media outlets *DVB* and *7 Day Daily* were arrested while reporting on a strike at garment factories in Yangon's Insein Township Industrial Zone. They were detained for several hours before being released by the police.[17]

On 10 March 2015, Myanmar police violently dispersed student protesters in the town of Letpadan in central Myanmar.[18] Journalists **Phyo Aung Myint** from *The Reporter Weekly* and **Nyan Linn Htun** from the *Myanmar Post Weekly* were arrested during the crackdown and detained for three days before being released without charge.[19] Just a few days earlier in the same town, *Irrawaddy* photographer **Sai Zaw** reported being manhandled by security forces after a plain-clothed man ordered the police to arrest him at the student protest. At the time he had been filming the man ordering police officers to arrest protesters.[20]

Journalists must be free to report on public events, including protests and demonstrations, without fear of arrest or harassment. Ahead of the general elections, public gatherings, protests and street demonstrations are likely to increase. It is crucial that security forces understand that their duty is to protect journalists, not to harass or arrest them.

"At the moment self-censorship is about not going to prison."

Cherry Thein, journalist with *The Myanmar Times*.[21]

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[16] Amnesty International interview with a journalist working in Kachin State, 24 February 2015.
[17] *The Irrawaddy*, "Local media slam authorities for arresting journalists", 5 March 2015, available at: http://www.irrawaddy.org/burma/local-media-slam-authorities-for-arresting-journalists.html
[18] Amnesty International, *Myanmar: Violent crackdown against protesters must end*, 10 March 2015, available at: https://www.amnesty.org/en/articles/news/2015/03/myanmar-violent-crackdown-on-protesters/
[19] Amnesty International interview with Myint Kyaw, General Secretary of Myanmar's Journalist Network, also a member of Myanmar's Interim Press Council, 30 March 2015.
[20] *The Irrawaddy*, "Police crackdown on student protest, harass *Irrawaddy* photographer", 6 March 2015, available at: http://www.irrawaddy.org/burma/police-crack-down-on-student-protests-harass-irrawaddy-photographer.html
[21] Amnesty International interview with Cherry Thein, journalist with *The Myanmar Times*, January 2014.

3. INTIMIDATION AND HARASSMENT

"We now know that media, journalists, bloggers and others are under stress in the country and so it's no longer just a past tense, it's also what's happening today..."

David Kaye, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, speaking on the situation in Myanmar in February 2015.[22]

DIRECT THREATS TO JOURNALISTS' PHYSICAL SECURITY

THREATS BY THE MYANMAR AUTHORITIES

The arrest and imprisonment of media workers takes place in a broader context of journalists being threatened and intimidated while carrying out their work. Threats appear to emanate predominantly from the Myanmar Army but also from other authorities.

THREATENED BY THE MILITARY WHILE REPORTING ON CONFLICT

In October 2014, fighting erupted in Kayin and Mon states between the Democratic Karen Benevolent Army (DKBA) and the Myanmar Army. Lawi Weng, a reporter for *The Irrawaddy*, travelled to Mon State to report on the fighting. He told Amnesty International:

I took a boat to go to the village where the fighting was taking place in the morning. At the military checkpoint the army captain asked me who I was, who I worked for and told me that if I go further they won't be able to guarantee my own and my foreign photographer's security. As I was trying to explain that we need to go through the checkpoint because we are journalists and we need to do our work, the Army captain threatened me, saying, ***"I can accuse you of disrupting our work and bring you to court".***

*After we managed to go through the checkpoint and arrived in the village where the fighting took place, the local Army captain told us we could stay only for 10 minutes. After 20 minutes in the village the Army captain called me and told me we had to leave and that we were not allowed to take pictures. However when we were leaving my colleague took pictures of the army captain in the tea shop. After that, the captain screamed at us "****Do you want to be detained?"*** *Another soldier suspected me of being a member of the DKBA. He wanted to detain me but I think they were afraid because of the presence of my foreign colleague.*

Special Branch officers escorted us back to the village and followed us everywhere we went. They took the both of us on their motorbikes and drove us to the bus station. When we arrived to take the boat again the same Army captain at the check point threatened me with legal action for taking photographs without authorization and deleted all our pictures.

[22] *Mizzima*, "Free expression watchdog shares thoughts on Myanmar", 20 February 2015, available at: http://www.mizzima.com/free-expression-watchdog-shares-thoughts-myanmar

In January 2015, the Myanmar Army also released a statement via the military-run *Myawaddy* news outlet threatening to take action against anyone who wrote about the Army's suspected involvement in the killing of two Kachin women.[23] On 20 January 2015, a local Baptist church leader of Kaunghka village, Mungbaw Sub-township, Northern Shan State, found the bodies of two ethnic Kachin women who had been partially stripped of their clothes, badly beaten and who appeared to have been raped. Villagers strongly suspected that Myanmar Army soldiers were responsible, since soldiers from Battalion 88, Infantry 503, were staying in the village that same night.[24]

On 3 May 2015, World Press Freedom Day, the Myanmar Army sent a statement to Myanmar's Interim Press Council stating that they would prosecute anyone who aired or published statements made by the Myanmar National Democratic Alliance Army (MNDAA) – an armed group operating in the Kokang region in Shan State. The MNDAA and the Myanmar Army have been engaged in heavy fighting since early February 2015. A freelance journalist working in Myanmar commented: "*The Myanmar military chose to announce on World Press Freedom Day that journalists can no longer publish quotes from the MDNAA, otherwise we could be jailed for three years for being seen to support an illegal group. How are we to openly provide information that is non-biased and non-partisan in this case?*"[25]

"It is hard always to know their [the authorities'] limits, but anything critical of the military or military affairs… if you expose those issues you can be jailed, intimidated… they can use the law against you."

Saw Yan Naing, journalist with *The Irrawaddy*.[26]

Threats can also emanate from local level state officials. Lawi Weng, the *Irrawaddy* journalist who was threatened in Mon State by Myanmar Army captains, was also threatened with legal action while trying to observe vote counting during the Yangon City Development Committee's election in December 2014. An election official threatened to sue him for obstructing a civil servant. It was only after Lawi Weng negotiated with a more senior officer that he was permitted to observe the counting of the vote.

Zarni Mann, also a reporter with *The Irrawaddy*, explained that at a road block established by the police during student protests in January 2015, a Township Officer said to members of the media present: "*You media will get in big trouble, the situation will be like in Afghanistan*

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[23] *The Irrawaddy*, "Army statement warns against linking Kachin teachers' murders to troops", 29 January 2015, available at: http://www.irrawaddy.org/burma/army-statement-warns-linking-teachers-murders-troops.html

[24] Amnesty International, *Myanmar: Investigate alleged rape and killing of two Kachin women* (Index: ASA 16/006/2015), 22 January 2015.

[25] Amnesty International interview, May 2015.

[26] Amnesty International interview with Saw Yan Naing, December 2014.

if you continue to follow the student protest."[27] Zarni Mann understood this to be a threat of physical violence.

When asked by Amnesty International whether he was threatened, another journalist who operates in Kachin State in northern Myanmar – where there has been an ongoing conflict between the Myanmar Army and armed ethnic groups since June 2011 – answered: "*Not directly but in an indirect way, like they come and talk to our close friends or even our colleagues by saying 'Hey your friend over there is reporting in a biased way on some cases, they better watch carefully.' Actually what they mean is that they don't want us to report about them and if we do we'll be in trouble."*[28]

"We walk a fine line on the cusp, finding out that we've hit a nerve when they arrest someone or ban the media from covering an issue in a balanced and fair way."

A freelance journalist working in Myanmar.[29]

DEATH OF JOURNALIST AUNG KYAW NAING IN MILITARY CUSTODY

In October 2014 freelance journalist Aung Kyaw Naing, also known as Par Gyi, was killed while in the custody of the Myanmar Army.[30] He had been arrested on 30 September 2014 in Kyaikmayaw Township, Mon State, and later transferred to the Myanmar Army's Light Infantry Battalion 208. At the time of his arrest Aung Kyaw Naing was reporting on recent fighting between the Myanmar Army and armed Kayin groups in the area.

His fate remained unknown for about three weeks, until on 23 October 2014 the Secretary of the Interim Myanmar Press Council received a statement from the Myanmar Army informing him that Aung Kyaw Naing had been shot dead on 4 October while trying to escape military custody. In the statement the Army alleged that Aung Kyaw Naing was a "communication captain" for an armed group operating in and around Kayin State.

There are credible reports that Aung Kyaw Naing was tortured while in the custody of the Myanmar Army. His wife, a prominent human rights activist, was told by a police officer that he had seen Aung Kyaw Naing in military custody and that it appeared he had been beaten. Amnesty International has received reports that eyewitnesses claimed to have seen a man being tortured by military soldiers around the same time and in the same place Aung Kyaw Naing is believed to have been detained. The Myanmar National Human Rights Commission (MNHRC) opened an investigation into the death and ordered an autopsy examination. This found that Aung Kyaw Naing had sustained multiple fractures to his skull and

[27] Amnesty International interview with Zarni Mann, reporter for *The Irrawaddy* in Mandalay, 1 February 2015.
[28] Amnesty International interview with a journalist working in Kachin State, 24 February 2015.
[29] Amnesty International interview, May 2015.
[30] Amnesty International, *Myanmar: Ensure independent and impartial investigation into the death of journalist* (Index: ASA 16/028/2014), 30 October 2014.

ribs, as well as five gunshot wounds.[31]

In November 2014, after national and international pressure, the police and the MNHRC each opened an investigation. The MNHRC in its findings established that Aung Kyaw Naing was not affiliated to an armed group, but it did not identify potential perpetrators and nor did it address any of the allegations of torture. The MNHRC simply recommended that the police carry out an investigation and for the case to be tried in front of a civil court.

However, on 8 May 2015, the MNHRC announced in a statement that two military officials had been court martialled and acquitted of charges of culpable homicide, in relation to the death of Aung Kyaw Naing.

At the time of writing no one is known to have been held to account for Aung Kyaw Naing's death.

Franck La Rue, former UN Special Rapporteur on the promotion of the right to freedom of opinion and expression, has stated that "*impunity is one, if not the main, cause of the unacceptably high number of journalists who are attacked or killed every year. States must recognize that in cases of violence against journalists, impunity generates more violence in a vicious cycle.*"[32]

The death of Aung Kyaw Naing has had a significant impact on journalists working in Myanmar. The lack of accountability in the case only perpetuates a culture of impunity and exposes journalists to further risks. Some journalists view it as an ominous warning on the limits of new found media freedoms. As one journalist told Amnesty International: "*The death of Ko Par Gyi [Aung Kyaw Naing] was a lesson for other journalists, this is the limit. You cannot go into military controlled areas and report freely.*"[33]

Security and safety concerns are not limited to journalists but also extend to their sources and the people they interview. Journalists working in Kayin and Kachin States – both heavily militarized areas – have raised security concerns for their sources. One told Amnesty International that he tries to strike a balance between being accurate and withholding locations, names or information that could allow militias, ethnic armed groups or the Myanmar Army to identify who his sources are.[34]

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[31] Myanmar National Human Rights Commission, *The inquiry report of the Myanmar National Human Rights Commission into the death of Ko Aung Naing (a), Ko Aung Kyaw Naing (a), Ko Par Gyi*, 2 December 2014, available at: http://www.mnhrc.org.mm/en/2014/12/the-inquiry-report-of-the-myanmar-national-human-rights-commission-into-the-death-of-ko-aung-naing-a-ko-aung-kyaw-naing-a-ko-par-gyi/

[32] *Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Franck La Rue, UN Human Rights Council 20th session, UN Doc. A/HRC/20/17, 4 June 2012, para. 65.

[33] Amnesty International interview with Saw Yan Naing, December 2014.

[34] Amnesty International interview with a journalist operating in Kayin State, 26 January 2015.

THREATS BY NATIONALIST GROUPS

"I am also wary about writing critical pieces about 969 or Ma Ba Tha[35] and their leaders…The backlash among the public is just as strong as from the government."

A freelance journalist working in Myanmar.[36]

Some journalists also face threats and harassment from extreme Buddhist nationalist groups after reporting on violent clashes between Muslims and Buddhists or on the situation of the Rohingya – a minority who have faced pervasive discrimination for decades. Journalists have had their equipment destroyed, received abusive letters and phone calls and been threatened with physical violence. Some have received insulting messages on social media. Newspapers have reported being threatened with demonstrations outside their offices or that "actions" will be taken against them.

THREATENED BY EXTREME NATIONALIST GROUPS

On 1 and 2 July 2014, riots involving Buddhist and Muslim mobs in Mandalay led to the deaths of two people and injuries to dozens of others. Clashes started after a rumour that a Muslim man had raped a Buddhist woman spread on social media. Zarni Mann of *The Irrawaddy* was reporting on the clashes and she told Amnesty International:[37]

*During the first day of the violence some men wearing Buddhist monk's robes and young men armed with iron bars and swords tried to destroy my camera and phone. They told us they would beat us to death because they don't want their pictures on the newspaper and they also shouted**: "No more questions. Beat them up! Smash their heads."** Some of the mob accused me and my colleagues of being members of an Islamic media. They also threatened our photographer saying that they would kill him if they saw their pictures published.*

Later we saw the picture of our photographer circulated on Facebook by some individuals supporting Buddhist nationalist movements such as the 969 and the Ma Ba Tha. Underneath the photo was his name and the message: "Find this man, he is a photographer for The Irrawaddy*, he reports the news for the Muslims, kill him or destroy his camera."*

When we complained at the police station, we showed them the photo and told them about the Facebook post but they didn't care, they said that they can't give special protection and that next time we need to stay behind the police line.

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[35] The "969" movement and the Ma Ba Tha organization are nationalist anti-Islam movements led by hardline Buddhist monks who are calling – among other things – for Buddhists to boycott Muslim businesses, to refrain from marrying Muslims and to not convert to Islam.

[36] Amnesty International interview, May 2015.

[37] Amnesty International interview with Zarni Mann, 1 February 2015.

When Zarni Mann reported on the events she added: *"The effect of all this is that some reporters no longer dare go out to cover clashes… The events …have left me fearful, but I will continue to report what is happening in Mandalay."*[38]

Even though in some cases the perpetrator of violence against journalists is not the State, the Myanmar authorities' obligation to ensure effectively the exercise of freedom of expression includes an obligation of due diligence to protect individuals against abuses of the right by non-state actors.[39] In particular, the police must investigate all threats of violence against media workers.

As a result of the threats from the Myanmar Army and some Buddhist nationalist groups, journalists have expressed fears of travelling in conflict areas where the Myanmar Army operates and in Rakhine State where tensions between Buddhist and Muslim communities have been high.

OTHER FORMS OF HARASSMENT

Direct attacks against media workers such as arrests and threats to physical integrity are obvious triggers for self-censorship. However, authorities can further encourage self-censorship by more subtle forms of harassment and by creating administrative and bureaucratic obstacles to the publication of independent news. As the former UN Special Rapporteur on the promotion of freedom of opinion and expression, Franck La Rue, has said: "*Ensuring that journalists can effectively carry out their work means not only preventing attacks against journalists and prosecuting those responsible, but also creating an environment where independent, free and pluralistic media can flourish…"*[40]

USE OF THE NEW MEDIA LAW TO FINE MEDIA WORKERS

In addition to old laws restricting freedom of expression, recently adopted laws continue to place far-ranging and arbitrary restrictions on the right to freedom of expression. In March 2014, the government enacted two laws relating to the media: the Printing and Publishing Law[41] and the Media Law.[42]

One of the Media Law's stated aims is to "*establish and develop responsibilities, ethics, rules and regulations and practices to be adopted*" by media organizations.[43] The law establishes a

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[38] *The Irrawaddy*, "In Mandalay violent threats against those trying to report on riots", 8 July 2014, available at: http://www.irrawaddy.org/burma/mandalay-violent-threats-trying-report-riots.html

[39] *Report of the UN Special Rapporteur on the promotion of the right to freedom of opinion and expression*, Franck La Rue, Human Rights Council 26th session, UN Doc. A/HRC/26/30, 2 July 2014, para. 36.

[40] *Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Franck La Rue, UN Human Rights Council 20th session, UN Doc. A/HRC/20/17, 4 June 2012, para. 78.

[41] Article 19, *Myanmar: Printing and Publishing Law*, November 2014, available at: http://www.article19.org/resources.php/resource/37765/en/myanmar:-printing-and-publishing-law

[42] *The New Light of Myanmar*, "Translation of Myanmar's newly enacted Media Law", p.6, 20 March 2014.

[43] Article 19, *Myanmar: News Media Law*, July 2014, available at:

code of conduct under which media workers are obligated to avoid "*a writing style which deliberately affects the reputation of a specific person or/and organization or generates negative impact to the human right...*" and "*ways of writing which may inflame conflicts regarding nationality, religion and race*".[44] Anyone found guilty of violating this provision is liable to a fine of up to 1 million kyats (around US$1,000).[45]

The wording of this provision is vague and overly broad, opening the law up to arbitrary or abusive application. Worryingly, authorities have already started using this article to prosecute journalists and media organizations for publishing stories deemed too critical of the President or the state security forces. For instance, workers from the *Myanmar Herald* are currently on trial in Myanmar's capital, Nay Pyi Taw, after the journal published an interview with an opposition party leader who criticized President Thein Sein, calling him an "idiot".

The Ministry of Information responded to the article by making a complaint against 11 members of staff, including the editor-in-chief, editor, reporter, designer, distributor and others. They have all been charged under Article 9(g) of the Media Law.[46]

A journalist leaves his camera on the ground during a protest over jailed colleagues near the Myanmar Peace Center where Myanmar President Thein Sein was visiting in Yangon, Myanmar, 12 July 2014. © EPA/NYEIN CHAN NAING

http://www.article19.org/resources.php/resource/37623/en/myanmar:-news-media-law

[44] The Media Law, Articles 9(g) and 9(f).

[45] The Media Law, Article 25(b).

[46] Amnesty International interview with Myint Kyaw, General Secretary of Myanmar's Journalist Network, also a member of Myanmar's Interim Press Council, 15 January 2015.

In the case of the *Myanmar Herald,* the Ministry of Information has filed a complaint against most of the newspaper's staff and not just those accused of having committed the act of defamation. The result is that the *Myanmar Herald* may have to pay multiple fines for its employees. In Myanmar, where many newspapers are new and struggle for funding, such fines can lead papers to close – some temporarily or in other cases permanently.

The case is deeply concerning, and could set a worrying precedent, allowing the authorities to use the Media Law to deter journalists from publishing stories and interviews critical of the government and to effectively shut down media outlets.

SURVEILLANCE OF JOURNALISTS AND POLITICAL UNCERTAINTY

Under Myanmar's previous military government, Special Branch officers would regularly follow and monitor journalists, reporters, human rights defenders and political activists. This pattern continues today, with journalists confirming that Special Branch officers continue to monitor and follow them, take their pictures, question them regarding their work and identity, and attend trainings for the media.

"There are still people who follow me around. I have had people call my mobile and harass me for days, including in the middle of the night... I recently covered the student protests and had plainclothes policemen coming up and taking photos or recording me on their phones as I interviewed students and their families. I definitely feel like I am being monitored…"

A freelance journalist working in Myanmar.[47]

This constant and day to day surveillance sends a clear message to media workers that they and their work is being closely scrutinized, and contributes to a general feeling of insecurity. Journalists have told Amnesty International that they fear that photographs taken as they carry out their work could be used against them. For example, they fear that pictures of them covering protests could be used in the future as evidence that they took part in unauthorized protests.[48]

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[47] Amnesty International interview, May 2015.

[48] Amnesty International interview, February 2015.

"This continued surveillance and monitoring sends the message that the authorities are still collecting information on journalists that they could use against us if the political situation changes again."

Journalist operating in Kayin State.[49]

The uncertainty around the political situation in Myanmar and a fear that it could return to conditions experienced under the former regime adds to the overall cautiousness exercised by some media workers. A journalist operating in Kachin State explained that one of his friends who is a police officer often "jokes" with him, saying: "*if there's a military coup again you'll be the first one to be arrested.*"[50]

RESTRICTIONS ON ACCESS TO CERTAIN AREAS OF THE COUNTRY

Although foreign journalists have been allowed back into Myanmar since 2012, it remains difficult to obtain the required journalist visas. The lack of transparency around visa regulations allows the authorities to limit access to the country to reporters and media organizations they deem too critical. According to one journalist Amnesty International interviewed, the threat to deny a visa is used by the Minister of Information when it does not appreciate a news story.

In addition, journalists told Amnesty International that they were not allowed access to certain areas of the country, such as in villages affected by conflict, and areas where there have been reports of land confiscation or where violence against Muslims has taken place. They have also been denied access to court hearings or areas around development projects. The UN Human Rights Committee has stated that it is generally incompatible with international human rights law and standards to restrict freedom of movement for journalists if they are seeking to exercise their freedom of movement. This would include access to conflict-affected areas or places where there are allegations of human rights abuses.[51]

CONCLUSION

The Myanmar authorities are clearly making concerted attempts to restrict what journalists can report on, and from where. A climate of lack of transparency and openness with the press, in which there are very few opportunities to obtain information from official spokespeople, leads to the conclusion that the government is also attempting to control the nature and timing of information the public may receive.

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[49] Amnesty International interview with a journalist working in Kayin State, 26 January 2015.
[50] Amnesty International interview with a journalist working in Kachin State, 24 February 2015.
[51] Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 45.

4. RECOMMENDATIONS

"I think the last challenge will be really encouraging the government to see journalists not as enemies and not as problems, but rather as fundamental to the building of democratic institutions."

David Kaye, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, speaking on the situation in Myanmar in February 2015.[52]

Despite media and political reforms, journalists and other media workers in Myanmar continue to operate in an environment where the fear of physical violence, of arrest, prosecution and imprisonment constantly hang over their heads. These threats can seriously inhibit the right to freedom of expression by creating a climate of self-censorship.

The harassment, threats, arrests and imprisonment of journalists – along with the killing of Aung Kyaw Naing – are constant reminders to journalists and media workers that the authorities can still arbitrarily and with impunity retaliate against newspapers and journalists who report on issues deemed sensitive. One journalist Amnesty International talked to explained that he was scared of being arrested or killed "*because now you know it can happen*".[53]

A journalist wears a black cap that reads 'Press Freedom' as he take a picture in front of the Dagon Township court, Yangon, Myanmar, 23 August 2012. © EPA/NYEIN CHAN NAING

[52] *Mizzima*, "Free expression watchdog shares thoughts on Myanmar", 20 February 2015, available at: http://www.mizzima.com/free-expression-watchdog-shares-thoughts-myanmar

[53] Amnesty International interview, December 2014.

If the Myanmar government is serious about human rights reforms and respecting the right to freedom of expression, it must not only ensure media workers can exercise their work without fear of reprisal, but ahead of the upcoming general elections it must also work to create an environment conducive to a diverse and vibrant media landscape.

"Nowadays, press freedom in Myanmar is very much better than before... But many journalists are still in prison or charged by the authorities. Journalists are still practising self-censorship because they are afraid of getting problems with the government."

Peter Aung reporter for *DVB*.[54]

Recommendations to the Myanmar authorities:

- Immediately and unconditionally release all journalists and other media workers who have been detained or imprisoned solely for the peaceful exercise of their right to freedom of expression and immediately vacate any convictions or charges brought against those who solely peacefully exercised their rights to freedom of expression and assembly;

- Publicly commit to ensuring that journalists and other media workers are able to carry out peaceful journalistic activities without fear of surveillance, intimidation, harassment, arrest, prosecution or retribution, and guarantee the integrity of journalists and media workers, including against attacks or threats coming from non-state groups, not least around the forthcoming elections;

- Review and amend all laws, including the Official Secrets Act, the Media Law, the Printing and Publishing Law, Articles 499 and 505 (b) of the Penal Code which violate the right to freedom of expression, and bring them into line with international human rights law and standards;

- Ensure an independent, impartial and effective investigation into the death of journalist Aung Kyaw Naing as well as into all allegations of human rights violations against journalists and media workers and that those found responsible are brought to justice before an independent, civilian court, in trials which meet international standards of fairness and which do not impose the death penalty; and

- Ratify the International Covenant on Civil and Political Rights (ICCPR) at the earliest opportunity, incorporate its provisions into domestic law, and implement them in policy and practice.

[54] Amnesty International interview, May 2015.

Recommendations to the international community, including to the Association of South East Asian Nations (ASEAN), the UN and governments of European Union states and the USA:

- Publicly call on the Government of Myanmar to immediately and unconditionally release all media workers who have been deprived of liberty solely for the peaceful exercise of their right to freedom of expression and to drop all politically-motivated charges against journalists and other media workers;

- Publicly call on the Government of Myanmar to ensure that journalists and media workers can carry out peaceful activities without fear of intimidation, arrest, prosecution and retribution from the authorities; and

- Publicly urge the Government of Myanmar to ratify the International Covenant on Civil and Political Rights (ICCPR) at the earliest opportunity, incorporate its provisions into domestic law and implement them in policy and practice.

I WANT TO HELP

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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CAUGHT BETWEEN STATE CENSORSHIP AND SELF-CENSORSHIP

PROSECUTION AND INTIMIDATION OF MEDIA WORKERS IN MYANMAR

The political, economic and social reforms announced by President Thein Sein in March 2011 have transformed the climate for media workers in Myanmar. The lifting of pre-publication censorship, the release of imprisoned journalists and greater space for freedom of expression have seen the development of an increasingly vibrant and diverse media.

However, despite these reforms, journalists and other media workers in Myanmar have faced increasing restrictions as they try to carry out their work. In particular, those deemed critical of the government and the Myanmar Army, or who report on subjects which the government or army consider sensitive, can face intimidation, harassment, imprisonment and even death.

During 2014, at least 11 media workers were imprisoned in connection with their peaceful journalistic activities, while others reported direct threats, surveillance, restrictions on access to certain areas of the country, and the use of defamation lawsuits to stifle critical or independent reporting. In October 2014, one journalist was killed by soldiers while held in military custody, in an egregious example of the risks media workers continue to face.

This short briefing, *Caught between state censorship and self-censorship – prosecution and intimidation of media workers in Myanmar*, explores the current context in which media workers are hampered in their professional activities and presents individual illustrative cases. In its recommendations to the Myanmar authorities and the international community, it underlines the need for the government to respect the right to freedom of expression and to ensure that all journalists are able to carry out their work free from intimidation, harassment and the threat of arrest.

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