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Home Office

Country Policy and Information Note
Burma: Critics of the Government

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March 2017

Preface

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

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

Country information

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

Feedback

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

Independent Advisory Group on Country Information

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

Independent Chief Inspector of Borders and Immigration,

5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspector@icinspector.gsi.gov.uk

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

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Policy guidance

Updated: 12 March 2017

1. Introduction

1.1 Basis of claim

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

1.2 Points to note

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

1.2.2 The guidance in this note does not apply to claims based on the person being Rohingya. Guidance for such claims is being prepared and will be issued shortly.

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2. Consideration of issues

2.1 Credibility

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

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

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

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2.2 Assessment of risk

i. State treatment

2.2.1 Since the change from military rule to a civilian government in March 2016, there is a growing tolerance of diversity of political opinion, freedom of association, and improvements in freedom of the press and internet based expression. There are some concerns about the ongoing restrictions on the exercise of the rights to freedoms of expression, association and assembly; and the continuing intimidation, harassment and arrest of real or perceived critics of the government. Broad reforms have resulted in the release of thousands of political prisoners (see Political reform, Political affiliation

including Political prisoners, Freedom of association and assembly, and Freedom of speech and media).

2.2.2 Furthermore, authorisation to exit Burma, in the form of a "D-form", is no longer required. Therefore, a person who left Burma "illegally" is no longer at real risk of imprisonment on return to Burma unless that person is returned without a passport or Certificate of Identity issued by the relevant Burma Embassy (see Entering and exiting Burma).

2.2.3 The Home Office's view is that these significant and durable changes to Burma's governance and exit/entry procedures amounts to strong grounds supported by cogent evidence to depart from the findings in TS (Political opponents –risk) Burma/Myanmar CG [2013] UKUT 281 (IAC) (25 June 2013), and HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 (23 January 2006), which were based explicitly on conditions under the previous military junta. Therefore, the Country Guidance in TS and HM should no longer be followed by decision makers.

2.2.4 Whilst some old repressive legislation has already been repealed there remain some legal provisions from under the previous military regime that are still applied to arrest, prosecute, and convict civil society actors, journalists, human rights defenders, and persons deemed critical of the government, the risk of being detained and treated in such a way as to amount to persecution is significantly reduced (see Freedom of political expression, Freedom of association and assembly and Freedom of speech and media. For information on prison conditions, see the country policy and information note on Burma: Prison conditions).

2.2.5 A person is unlikely to be at risk solely for voicing their political opinion. Those at risk are likely to be those where there are additional aggravating factors such as making defamatory remarks against leading figures, or failing to comply with laws concerning the terms of approved demonstrations. Each case needs to be considered on its facts and the onus is on the person to demonstrate that they would be at risk (see Freedom of political expression, Freedom of speech and media and Freedom of association and assembly).

ii. Sur place activities

2.2.6 A person who has a profile of voicing opposition to the Burmese government in the UK – through participation in demonstrations or political meetings – is no longer considered to be at a real risk of detention on return to Burma due to their political activities. As with those who voice political opinion inside Burma, those at risk are likely to be those where there are additional aggravating factors such as making defamatory remarks against leading figures. Each case needs to be considered on its facts and the onus is on the person to demonstrate that they would be at risk.

2.2.7 Thousands of names have been removed from the former military government's "blacklist" of persons – both Burmese and foreign nationals – deemed political dissidents. Some civil society actors have had their names placed back on the "blacklist", which may restrict exit from, and entry to, Burma. The numbers of Burmese citizens on the 'black list' are small (185 people out of a total population of approximately 57 million. The onus is on the person to show that their name appears on the list (see Blacklist).

2.2.8 A person who is politically active in the UK and possesses a Burmese passport, or a certificate in lieu of, issued by the Burmese Embassy, is unlikely to face any risks in terms of violating the immigration law upon the person's return to Burma. However, if that person is on the "blacklist" he/she might remain of interest to the Burmese authorities upon return (see Entering and exiting Burma). Each case must be considered on its facts.

iii. Illegal departure

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

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

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

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2.3 Protection

2.3.1 Where the person's fear is of persecution/serious harm at the hands of the state, they will not be able to avail themselves of the protection of the authorities.

2.3.2 The government do not directly control the security forces or the application of the law. Security forces may act with impunity in some cases and there are no currently avenues of redress in such circumstances (see Post-March 2016 government).

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

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2.4 Internal relocation

2.4.1 Where the person's fear is of persecution/serious harm at the hands of the state, they will not be able to relocate to escape that risk.

2.4.2 For further guidance on internal relocation, see the Asylum Instruction on Assessing Credibility and Refugee Status.

2.5 Certification

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

2.5.2 For further guidance on certification, see Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

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3. Policy summary

3.1.1 In light of changes to the political climate and exit/entry procedures, the existing Country Guidance in TS and HM should no longer be followed by decision makers.

3.1.2 Since the change from military rule to a civilian government in March 2016, there is a growing tolerance of diversity of political opinion, freedom of association, and marked improvements in freedom of the press and internet based expression. There remain some concerns about the ongoing restrictions on the exercise of the rights to freedoms of expression, association and assembly; and the continuing intimidation, harassment and arrest of real or perceived critics of the government.

3.1.3 Legal provisions remain and are still applied to arrest, prosecute, and convict civil society actors, journalists, human rights defenders and perceived critics of the government. However, a person is unlikely to be at risk solely for voicing their political opinion.

3.1.4 Broad reforms have resulted in the release of thousands of political prisoners and thousands of names have been removed from the former military government's "blacklist" of persons – both Burmese and foreign nationals – deemed political dissidents.

3.1.5 A person who has a profile of voicing opposition to the Burmese government in the UK – through participation in demonstrations or political meetings – is no longer considered to be at a real risk of detention on return to Burma due to their political activities.

3.1.6 Exit visas ("D-forms") are no longer required to exit Burma. A Burmese national without a valid or expired passport may be able to obtain a Certificate of Identity from the Burmese Embassy, to allow them entry into Burma.

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

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Country information

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4. Political history

4.1 Background

4.1.1 Burma (also known as Myanmar) was ruled by a military junta from 1962 to 2011. The regime suppressed all dissent and was widely condemned internationally for gross human rights abuses.[1]

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

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4.2 2015 elections

4.2.1 General elections took place in Burma on 8 November 2015. The elections were largely seen as fair although hundreds of thousands of people were not able, or ineligible, to vote, including Rohingyas who are not recognised as citizens, and those affected by ongoing ethnic conflicts in seven areas of the country.[4]

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

[1] BBC News, 'Myanmar Country Profile', 30 March 2016, http://www.bbc.co.uk/news/world-asia-pacific-12990563, date accessed 3 October 2016.
[2] BBC News, 'Myanmar Profile – Timeline', 30 March 2016, http://www.bbc.co.uk/news/world-asia-pacific-12992883, date accessed 3 October 2016.
[3] Council on Foreign Relations, 'CFR Backgrounder – Understanding Myanmar', 25 March 2016, http://www.cfr.org/human-rights/understanding-myanmar/p14385, date accessed 3 October 2016.
[4] BBC News, 'Myanmar MPs meet for first time since election', 16 November 2015, http://www.bbc.co.uk/news/world-asia-34830284 date accessed 3 October 2016.
[5] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 5, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[6] Bandow, D., 'New World Beckons In Burma: Opposition Dominates Election But Will Military Yield Real Power?', Forbes, 16 November 2015, http://www.forbes.com/sites/dougbandow/2015/11/16/new-world-beckons-in-burma-opposition-dominates-election-but-will-military-yield-real-power/#2b6a37307968, date accessed 3 October 2016.

Shan Nationalities League for Democracy (SNLD) and the Arakan National Party (ANP) performed well in their respective states.'[7]

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5. Political reform

5.1 Changes to political climate

5.1.1 In her report, dated March 2016, the UN Special Rapporteur noted that, despite an opening up of democratic space, she continued to express concern at the 'ongoing restrictions on the exercise of the rights to freedoms of expression, association and assembly; the continuing arrests of individuals in relation to the exercise of these rights; and the increasing intimidation, monitoring and surveillance of human rights defenders.'[8]

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

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

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

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

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5.2 Post-March 2016 government

5.2.1 Parliament convened, with the newly-elected legislators, on 1 February 2016. In mid-March, Htin Kyaw of the NLD was elected president, though effectively serving as a proxy, with Aung San Suu Kyi as the key decision maker. Retired Lt.-General Myint Swe, of the former government, became

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[7] Freedom House, Freedom in the World 2016 - Myanmar, 7 March 2016, available at: http://www.refworld.org/docid/56dea2f35f.html, date accessed 18 October 2016.
[8] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 7, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[9] Myanmar Times, 'Hluttaws revoke oppressive state protection law', 26 May 2016, http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/20512-hluttaws-revoke-oppressive-state-protection-law.html, date accessed 21 October 2016.
[10] UN General Assembly, 'Situation of human rights in Myanmar', paragraph 7, 5 August 2016, available at: http://www.refworld.org/docid/57d9421a4.html, date accessed 5 October 2016.

vice president 1, and Henry Van Thio, an ethnic Chin legislator, became vice president 2. The new administration took power at a formal handover ceremony on 30 March 2016[11]. On 6 April a new State Counsellor role, akin to Prime Minister, was created and assumed by Aung San Suu Kyi[12]. In accordance with the Constitution, the military continued to head the Ministries of Home Affairs and Defence and Border Affairs[13]. The new Parliament includes more than 100 former political prisoners[14]. (See also Political prisoners).

5.2.2 As reported in TIME on 1 April 2016, 'The military operates autonomously of Burma's elected establishment... All defense-related decisions must pass through the National Defense and Security Council (NDSC), in which the army holds a majority. The Tatmadaw [Burmese army] also runs the crucial Border Affairs Ministry that manages Burma's war-torn ethnic regions.'[15]

5.2.3 In his inaugural speech to Parliament, President Kyaw 'committed his Government to the priorities outlined in the NLD manifesto of national reconciliation, internal peace, the pursuit of a constitutional evolution towards a federal union and of improving the living standards of the people.'[16] Aung San Suu Kyi reiterated these commitments on 18 April 2016, in her Burmese New Year speech to the nation, stating national reconciliation was the most important[17].

5.2.4 The Foreign and Commonwealth Office (FCO) reported in its Human Rights Priority Country update report: January to June 2016 that:

'Burma continues to make significant progress on human rights following the historic elections of 2015 and the transition to a new, more civilian, democratic and accountable government. While the government has shown early willingness to address areas of concern, it has inherited enormous challenges... There are continuing concerns relating to civil and political rights. The new government has released numerous political prisoners since taking office and taken active steps to repeal old repressive legislation, but

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[11] International Crisis Group, 'Myanmar's New Government: Finding Its Feet?', 29 July 2016, https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-s-new-government-finding-its-feet, date accessed 5 October 2016.
[12] Assistance Association for Political Prisoners and the Former Political Prisoners Society, '"After release I had to restart my life from the beginning" The Experiences of Ex-political Prisoners in Burma and Challenges to Reintegration', page 17, 25 May 2016, http://aappb.org/wp-content/uploads/2016/05/Report-eng.pdf, date accessed 21 October 2016.
[13] UN General Assembly, 'Situation of human rights in Myanmar', paragraph 8, 5 August 2016, available at: http://www.refworld.org/docid/57d9421a4.html, date accessed 5 October 2016.
[14] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[15] TIME, 'Burma's Transition to Civilian Rule Hasn't Stopped the Abuses of Its Ethnic Wars', 1 April 2016, http://time.com/4277328/burma-myanmar-suu-kyi-ethnic-wars/, date accessed 12 October 2016.
[16] UN General Assembly, 'Situation of human rights in Myanmar', paragraph 9, 5 August 2016, available at: http://www.refworld.org/docid/57d9421a4.html, date accessed 5 October 2016.
[17] International Crisis Group, 'Myanmar's New Government: Finding Its Feet?', 29 July 2016, https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-s-new-government-finding-its-feet, date accessed 5 October 2016.

they do not directly control the security forces or the application of the law by the judiciary.'[18]

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

'It pains me to see when talking to the ordinary people of Myanmar during this visit their feelings of optimism and hope slowly fading just after one year when the whole country was elated with the outcome of the last general elections. From my meetings and conversations with the State Counsellor and the various officials, I can see their genuine commitment and dedication in improving the lives of all in Myanmar. Somehow this commitment has yet to translate into real actions that are felt on the ground. I encourage the Government to appeal to all communities in the country to be more open and understanding of each other, to respect each other instead of scapegoating others for the sake of advancing their own self-interests. It would be particularly important for the security forces to always act within the parameters of the rule of law and in compliance with human rights. It would be crucial for the Government to combat the apparent climate of impunity that seem to have emboldened certain extreme elements by taking the law into their own hands and meting out their own justice. There must be accountability and justice must be done and seen to be done to reassure the ordinary people that no one is above the law.'[19]

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6. Political affiliation

Note that between 27 February 2017 to 24 March 2017 the UN Human Rights Council will convene discussing amongst others the human rights situation in Myanmar/Burma. Relevant documents and reports will be submitted ahead and after the meeting which can be accessed here.

6.1 Freedom of political expression

6.1.1 According to the Union Election Commission's official party list, 91 political parties were registered to contest the November 2015 elections[20]. The Political Parties Registration Law, which came into effect in September 2014, allows only full citizens to form political parties, and full or naturalised citizens to be party members[21] therefore preventing political participation by

[18] Foreign and Commonwealth Office, 'Human Rights Priority Country update report: January to June 2016', 21 July 2016, https://www.gov.uk/government/publications/burma-human-rights-priority-country/human-rights-priority-country-update-report-january-to-june-2016, date accessed 14 October 2016.
[19] UN Office of the High Commissioner for Human Rights, 'End of Mission Statement by Special Rapporteur on the situation of human rights in Myanmar', 20 January 2017, http://www.ecoi.net/local_link/335242/463848_en.html, date accessed 21 February 2017
[20] Myanmar Times, 'Election parties', 2 September 2015, http://www.mmtimes.com/index.php/election-2015/parties.html, date accessed 12 October 2016.
[21] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 22, 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, date accessed 18 October 2016.

ethnic Rohingya who lack full citizenship documents after effectively being made stateless by a 1982 law[22].

6.1.2 Freedom House noted that during the 2015 elections, many of the registered parties, including the NLD, '... convened meetings and large rallies throughout the country.' The same source added 'The government has allowed members of the parliament to speak about democratic rights since 2011. While the legislators' time to speak has often been severely limited, many of their speeches receive coverage in the domestic media.'[23]

6.1.3 Burma's main opposition, the former ruling Union Solidarity and Development Party (USDP), reorganised in August 2016, ahead of by-elections in 2017, and national elections due to be held in 2020. Before stepping down from his post in the reshuffle, party chairman and ex-president of Burma, Thein Sein, called for party reform, interparty consolidation and the revival of democracy within the party.[24]

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

'The NLD government generally accepts peaceful political dissent. Many media restrictions have been relaxed since 2011. Nonetheless, some laws restricting political activism remain, and protesters have continued to be arrested, including since the NLD came to power. For example, in May 2016 a group of workers protesting for labour rights attempted to march on parliament. More than 70 protesters were detained and 51 were charged by police under the Peaceful Assembly and Peaceful Procession Law (which requires permission from authorities to conduct a peaceful assembly or procession) and Sections 143, 145 and 147 of the Penal Code (which prohibit unlawful assembly and rioting). The parliament is currently considering amendments to the Peaceful Assembly Law. If passed, the amended law, inter alia, would only require protesters to advise authorities of their protest, rather than obtain official permission.'[25]

6.1.5 DFAT assessed that:

'[I]n the course of normal events, Myanmar citizens face a low risk of official or societal harassment, discrimination, violence or imprisonment on the basis of their actual or imputed political opinion. People who actively participate in public protests against the government or the military face a moderate risk of being arrested and detained. Given the NLD government only assumed power in March 2016, it is unclear at this stage whether those detained in these circumstances will typically be released more quickly than under the previous government.'[26]

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[22] Freedom House, Freedom in the World 2016 - Myanmar, 7 March 2016, available at: http://www.refworld.org/docid/56dea2f35f.html, date accessed 18 October 2016.
[23] Freedom House, Freedom in the World 2016 - Myanmar, 7 March 2016, available at: http://www.refworld.org/docid/56dea2f35f.html, date accessed 18 October 2016.
[24] Radio Free Asia, 'Myanmar opposition party changes leadership, strategy', 23 August 2016, available at: http://www.refworld.org/docid/57d8fd7a7.html, date accessed 12 October 2016.
[25] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Myanmar', (paragraph 3.47), 10 January 2017. Available on request.
[26] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information

See also Freedom of association and assembly.

6.1.6 Amnesty International reported that:

'Aung Win Hlaing, a member of the National Democratic Force party in Myanmar, has been sentenced to nine months in prison for a Facebook post critical of the President' in September 2016, and was 'charged under article 66(d) of the 2013 Telecommunications Law for a Facebook post calling Myanmar's new President, Htin Kyaw, an "idiot" and "crazy" after his decision to abolish a township level committee which Aung Win Hlaing chaired. The complaint was brought by a local member of the President's party, the National League for Democracy (NLD)'.[27]

6.1.7 Human Rights Watch reported in January 2017 that 'Burma's government should act to end the prosecution of peaceful critics in violation of their right to free speech', with Human Rights Watch's Asia Director, Brad Adams, commenting that '"Though Burma's new government includes more than 100 former political prisoners, it has done little to eliminate the laws used to prosecute peaceful expression […] Instead, during the government's first year there was an escalation in prosecutions of peaceful political speech".' [28]

6.1.8 Human Rights Watch gave examples of defamation cases, including:

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

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

'Other recent defamation prosecutions include a case filed by a member of the Arakan National Party for alleged insults to the party chair, cases filed by two NLD members of parliament against a woman who criticized them for interfering in a dispute with her housemaid, and a case filed by a former MP in the army-backed Union Solidarity and Development Party against an individual who advised him to "do good deeds." A woman who allegedly insulted State Counsellor Aung San Suu Kyi and an NLD member

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Report Myanmar', (paragraph 3.50), 10 January 2017. Available on request.

[27] Amnesty International: Urgent Action: 281/16 [ASA 16/5302/2016], 9 December 2016, http://www.ecoi.net/file_upload/1226_1481557039_asa1653022016english.pdf, 9 December 2016

[28] Human Rights Watch, 'Burma: Don't Prosecute Peaceful Speech - Government Failing to Protect Critics from Arrest, Jail', 24 January 2017, https://www.hrw.org/news/2017/01/24/burma-dont-prosecute-peaceful-speech, date accessed 21 February 2017

who alleged that a local administrator was stealing flood relief are among the many others facing prosecution.'[29]

See also Journalists, writers and media workers.

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

'There is one word that has hung heavily on my mind during this visit – reprisals. In every one of my visits and in every one of my meetings, I ask the Government of Myanmar to ensure that the people I speak to and even work with, do not suffer reprisals for speaking out on rights issues or expressing their opinions. Yet, distressingly several people I met during this visit would say to me, "I don't know what will happen to me after our meeting." In one case, an individual directly told me they thought they would be arrested following our conversation. In another village, where there were more than two communities living separately but side by side, I asked if that person was comfortable talking to me. The response: "I am afraid I will not give the right answer'…But the message is clear. Do not express yourself. Do not speak your mind if your opinion or position does not fit or support the narrative and agenda of those who have no qualms in how you live or die. Sadly, this is not an isolated incident. Reportedly, there are at least four more cases of beheadings.'[30]

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6.2 Monitoring and surveillance

6.2.1 In her March 2016 report the UN Special Rapporteur expressed concern at continued reports of civil society actors being monitored by military intelligence and the Special Branch Police, including being followed and photographed at meetings whilst their families, friends and colleagues were questioned on their whereabouts.[31]

6.2.2 Similarly, in her August 2016 report, the UN Special Rapporteur had continued to hear reports of '... monitoring and surveillance of civil society actors and human rights defenders. During her visit, interlocutors were photographed and questioned by security personnel. During a private meeting with a village community in Rakhine State, she discovered a recording device placed by a Government official.'[32]

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[29] Human Rights Watch: Burma: Don't Prosecute Peaceful Speech - Government Failing to Protect Critics from Arrest, Jail, 24 January 2017, https://www.hrw.org/news/2017/01/24/burma-dont-prosecute-peaceful-speech, date accessed 21 February 2017
[30] UN Office of the High Commissioner for Human Rights, 'End of Mission Statement by Special Rapporteur on the situation of human rights in Myanmar', 20 January 2017, http://www.ecoi.net/local_link/335242/463848_en.html, date accessed 21 February 2017
[31] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 25, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[32] UN General Assembly: Situation of human rights in Myanmar [A/71/361], (paragraph 39), 29 August 2016 (available at ecoi.net) http://www.ecoi.net/file_upload/1226_1478087528_n1627260.pdf, date accessed 2 February 2017.

6.3 Political prisoners

6.3.1 The US Department of State Country Report on Human Rights Practices for 2015 (USSD HR Report 2015) noted that:

'While the government released dozens of political prisoners during the year, it continued to arrest new ones. Groups assisting political prisoners estimated that more than 100 political prisoners had been convicted and sentenced as of December. As of September [2015] more than 400 were facing trial on various charges, of whom 100 or more were in detention. This number did not include detainees in Rakhine State, estimated to be in the hundreds.

'Many released political prisoners experienced significant restrictions following their release, including an inability to resume studies undertaken prior to incarceration, secure travel documents, or obtain other documents related to identity or ownership of land. Under section 401, released political prisoners faced the prospect of serving the remainder of their sentences if rearrested for any reason.'[33]

6.3.2 In its response to the Special Rapporteurs report of March 2016, the Government of Burma insisted that no one faced arrest on political grounds[34]. However, on 7 April 2016, Aung San Suu Kyi declared: '"I am going to try… for the immediate release of political prisoners, political activists and students facing trial related to politics".'[35]

6.3.3 The Special Rapporteur reported that, of the 6,966 and 102 prisoners released in presidential amnesties in July 2015 and January 2016 respectively, 55 human rights defenders and political prisoners were among them. However, civil society estimated that 84 political prisoners remained in prison whilst over 400 were detained awaiting trial.[36]. In April 2016 President Htin Kyaw pardoned up to 200 political prisoners[37]. The FCO cited the release of 235 political prisoners in April and a further 77 in May, though added that 'Activists remain at risk..., because the legal and institutional

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[33] US Department of State, 'Country Report on Human Rights Practices for 2015 – Burma', Section 1e, 13 April 2016, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252751, date accessed 18 October 2016.

[34] UN Human Rights Council, Observations by Myanmar on the report of the Special Rapporteur on the situation of human rights in Myanmar, paragraph 6, 9 March 2016, A/HRC/31/71/Add.1, available at: http://www.refworld.org/docid/56eada274.html, date accessed 18 October 2016.

[35] Assistance Association for Political Prisoners and the Former Political Prisoners Society, '"After release I had to restart my life from the beginning" The Experiences of Ex-political Prisoners in Burma and Challenges to Reintegration', page 17, 25 May 2016, http://aappb.org/2016/05/after-release-i-had-to-restart-my-life-from-the-beginning-the-experiences-of-ex-political-prisoners-in-burma-and-challenges-to-reintegration/report-eng/, date accessed 21 October 2016.

[36] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 28, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.

[37] VOA News, 'Myanmar Eyes Nationwide Clemency for Political Activists', 20 April 2016, http://www.voanews.com/a/myanmar-eyes-nationwide-clemency-for-political-activists/3294322.html; Radio Free Asia, 'Rights Groups Respond to Myanmar's Release of Political Prisoners With Praise And Caution', 12 April 2016, http://www.rfa.org/english/news/myanmar/rights-groups-respond-to-myanmars-release-of-political-prisoners-with-praise-and-caution-04122016155607.html, date accessed 14 October 2016.

loopholes under which politically motivated arrests are made remain in place.'[38] The Assistance Association for Political Prisoners – AAPP (Burma), noted that as of October 2016 there were 206 political prisoners in Burma – 98 serving prison sentences; 24 awaiting trial in prison; and 84 awaiting trial outside of prison[39].

6.3.4 A joint report by the AAPP (Burma) and the Former Political Prisoners Society, published in May 2016, observed that ex-political prisoners have been subject to close monitoring upon release' and were 'often harassed by the authorities...'. Political prisoners granted amnesty were often on conditional release under Article 401 of the Code of Criminal Procedure, which states that if a person violates the terms of their release they may be "arrested ... without warrant and remanded to complete the un-expired portion of the sentence"[40].

6.3.5 On 16 August 2016 the Ministry of Home Affair informed parliament that President Htin Kyaw and state advisor Aung San Suu Kyi stayed 274 proceedings against 457 political activists during the first 100 days the new government had been in office[41].

6.3.6 Amnesty International noted in its joint statement that despite calls by the UN General Assembly (UNGA) to '"resume working with the political prisoner review committee" and "to provide for the full rehabilitation of former prisoners of conscience," the government of Myanmar has given no indication that it will reconstitute such a committee or design plans to provide for the rehabilitation of freed prisoners of conscience.'[42]

6.3.7 Amnesty International, in its written statement to the UN Human Rights Council in February 2017, noted that 'Scores of prisoners of conscience have been released since Myanmar was last reviewed by the Council, but prisoners of conscience continue to be jailed.'[43]

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[38] Foreign and Commonwealth Office, 'Human Rights Priority Country update report: January to June 2016', 21 July 2016, https://www.gov.uk/government/publications/burma-human-rights-priority-country/human-rights-priority-country-update-report-january-to-june-2016, date accessed 14 October 2016.

[39] Assistance Association for Political Prisoners (Burma), 'AAPP-B Monthly Chronology of October 2016 and Current Political Prisoners list', 18 November 2016, http://aappb.org/2016/11/aapp-b-monthly-chronology-of-october-2016-and-current-political-prisoners-list/ , date accessed 22 November 2016.

[40] Assistance Association for Political Prisoners and the Former Political Prisoners Society, '"After release I had to restart my life from the beginning" The Experiences of Ex-political Prisoners in Burma and Challenges to Reintegration', page 51, 25 May 2016, http://aappb.org/2016/05/after-release-i-had-to-restart-my-life-from-the-beginning-the-experiences-of-ex-political-prisoners-in-burma-and-challenges-to-reintegration/report-eng/, date accessed 21 October 2016.

[41] Myanmar Times, 'Activists call for release of all political prisoners before Panglong Conference', 17 August 2016, http://www.mmtimes.com/index.php/national-news/22014-activists-call-for-release-of-all-political-prisoners-before-panglong-conference.html, date accessed 14 October 2016.

[42] Amnesty International, 'Myanmar: Why a UNGA resolution is still needed', 1 September 2016, ASA 16/4745/2016, available at: http://www.refworld.org/docid/57c838314.html, date accessed 14 October 2016.

[43] Amnesty International, Myanmar: Urgent action needed to address deteriorating human rights situation, 13 February 2017, https://www.amnesty.org/en/documents/asa16/5683/2017/en/, accessed 21 February 2017

7. Freedom of association and assembly

Note that between 27 February 2017 to 24 March 2017 the UN Human Rights Council will convene discussing amongst others the human rights situation in Myanmar/Burma. Relevant documents and reports will be submitted ahead and after the meeting which can be accessed here.

7.1 Legal rights

7.1.1 The UN Special Rapporteur expressed concern in her report of March 2016 of the '... continuing application of problematic legal provisions (both historic and recently-enacted) to arrest, prosecute, and convict civil society actors, journalists, and human rights defenders,' particularly, in regards to freedom of association and assembly, section 18 of the Peaceful Assembly and Peaceful Procession Law 2011 (as amended in 2014) (Peaceful Assembly Law); sections 143, 145, 146, 147 of the Penal Code, and section 17(1) of the Unlawful Associations Act[44].

7.1.2 The table below has been recreated from the Human Rights Watch (HRW) report dated June 2016, which identified the laws used to criminalise peaceful expression that, according to HRW, have proven to be most prone to misuse[45]:

Laws penalising assemblies	**Definition of offense**	**Maximum penalty**
Peaceful Assembly and Peaceful Processions Act 2012 (amended 2014)	Article 18: conducting a peaceful assembly or peaceful procession without government consent Article 19: deviating from the permitted location or route, or violating any of the broad restrictions on the conduct of an assembly contained in article 12 of the law	6 months in prison and fine 3 months in prison and fine
Peaceful Assembly and Peaceful Processions Act 2016	Article 17: conducting a peaceful assembly or peaceful procession without giving notice Article 18: deviating from the location or route specified in the notice, or violating any of the broad restrictions on the conduct of an assembly contained in article 9 of the law	3 months in prison and fine for first offence, increased penalties for repeat offence 3 months in prison and fine

[44] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 19, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[45] Human Rights Watch, '"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma', page 30, June 2016, http://www.ecoi.net/file_upload/1002_1467545164_burma0616web.pdf, date accessed 14 October 2016.

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

7.1.3 The UN Secretary General noted in his report of August 2016 that the Right of Peaceful Assembly and Peaceful Procession law, amended in 2014, was examined and approved by the bill committee in the Upper House 'with the aim of relaxing and scaling back penalties for and restrictions on public protests and processions that required prior permission. Such demonstrations will now require only prior notification.'[46] However, Human Rights Watch noted in its report dated June 2016, that the new law retained many of the flaws of the previous law[47], whilst Article 19, which works to defend the right to freedom of expression, stated that the law continued to include criminalisation and prison sentences for peaceful protest, and vague provisions that could be used arbitrarily to restrict freedom of expression[48].

7.1.4 Human Rights Watch stated that, during 2016:

[46] UN General Assembly, 'Situation of human rights in Myanmar', paragraph 10, 5 August 2016, available at: http://www.refworld.org/docid/57d9421a4.html, date accessed 5 October 2016.
[47] Human Rights Watch, '"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma', page 3, June 2016, http://www.ecoi.net/file_upload/1002_1467545164_burma0616web.pdf, date accessed 14 October 2016.
[48] Article 19, 'Myanmar: Peaceful Assembly and Peaceful Procession Bill', page 3, May 2016, https://www.article19.org/data/files/medialibrary/38410/16th-May-2016-LA-myn-FOA.pdf, date accessed 14 October 2016.

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

'Arrests and prosecutions for participation in peaceful assemblies have continued under the new administration. For example, on May 15, the leaders of an interfaith "peace walk" in downtown Rangoon were arrested and charged under the act, while on May 23 a solo protester who was marching from Rangoon to the site of the controversial Letpadaung mine was arrested and charged.'[49]

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7.2 Farmers and land rights activists

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

'In an attempt to protect their rights, people have increasingly resorted to public protests against land confiscations. Unfortunately some of those exercising their right to peaceful assembly, including farmers and land-rights activists, continue to face harassment, intimidation and criminal prosecution. Such prosecutions should immediately cease and those detained for peaceful protests should be released.'[50]

7.2.2 Human Rights Watch stated in its report dated 3 November 2016, that land confiscation and reprisals against protesters was particularly acute in Karen State. According to the report, the research of which was conducted between January and August 2015, '... farmers who protest land-taking and try to stake a claim to their land face retaliation by police and government officials, and prosecution under peaceful assembly and criminal trespass laws.'[51]

7.2.3 With regards to the Monywa project consisting of the Letpadaung, and the Sabetaung and Kyisintaung (S&K) copper mines, as well as the Moe Gyo sulphuric acid factory, Amnesty International reported in February 2017 that apart from serious human rights concerns such as forced evictions, ongoing environmental management failures, there were incidents of repression of peaceful protests.[52]

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[49] Human Rights Watch, '"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma', pages 4-5, June 2016, http://www.ecoi.net/file_upload/1002_1467545164_burma0616web.pdf, date accessed 14 October 2016.

[50] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraphs 63, 64 and 66, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.

[51] Human Rights Watch, '"The Farmer Becomes the Criminal" Human Rights and Land Confiscation in Karen State', 3 November 2016, https://www.hrw.org/report/2016/11/03/farmer-becomes-criminal/human-rights-and-land-confiscation-karen-state, date accessed 8 November 2016.

[52] Amnesty International, 'Mountain of Trouble: Human rights abuses continue at Myanmar's Letpadaung mine', page 4, 10 February 2017,

7.2.4 The report specifically found that:

'Many people in the communities surrounding the Monywa project remain deeply unhappy with how the mines are managed. The loss of their lands has placed their agricultural livelihoods, and their futures, at risk. They are fearful of the damage that they believe is being done to the environment and the health of their families. The government has promised to resolve differences between the communities and the mining companies. Yet villagers and activists who are opposed to the Monywa project continue to face arrest and harassment. Myanmar Wanbao and the authorities continue to use Section 144 of the Code of Criminal Procedure. This provision allows magistrates to restrict access to particular designated areas. Research for Amnesty International's 2015 report found that the authorities used it to block access to areas around the two mines and charge villagers who protest against the companies. In 2016, Amnesty International found similar misuse. For example three villagers were convicted of trespass after taking part in a protest outside the main gate of the S&K mine.'[53]

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7.3 Demonstrations

7.3.1 Protesters continued to face arrest for contravening assembly laws in 2016: On 14 May 2016, 5 protesters taking part in a march in Yangon (Rangoon) with activists and students, to promote religious tolerance, were arrested because the campaigners had deviated from the agreed protest route[54]. On 18 May 2016, police charged 51 striking factory workers and activists "for joining in or continuing an unlawful assembly and rioting" as they protested for their labour rights near the administrative capital of Naypyidaw[55]. According to the Democratic Voice of Burma, on 17 October 2016, 15 of the workers arrested in May were indicted on charges of unlawful assembly and sedition[56].

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8. Freedom of speech and media

Note that between 27 February 2017 to 24 March 2017 the UN Human Rights Council will convene discussing amongst others the human rights

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https://www.amnesty.org/en/documents/asa16/5564/2017/en/, accessed 21 February 2017

[53] Amnesty International, 'Mountain of Trouble: Human rights abuses continue at Myanmar's Letpadaung mine', page 5, 10 February 2017, https://www.amnesty.org/en/documents/asa16/5564/2017/en/, accessed 21 February 2017

[54] Al Jazeera, 'Myanmar takes legal action against protesters', 17 May 2016, http://www.aljazeera.com/news/2016/05/myanmar-charge-activists-staging-peace-march-160517050908238.html, date accessed 22 November 2016.

[55] Radio Free Asia, 'Myanmar Police Charge Workers Involved in Labor Rights Protest', 20 May 2016, http://www.rfa.org/english/news/myanmar/myanmar-police-charge-workers-involved-in-labor-rights-protest-05202016150207.html, date accessed 22 November 2016.

[56] Democratic Voice of Burma, 'Sagaing marchers indicted on unlawful assembly, sedition charges – Aung Ko Ko Latt', 18 October 2016, http://www.burmanet.org/news/2016/10/18/democratic-voice-of-burma-sagaing-marchers-indicted-on-unlawful-assembly-sedition-charges-aung-ko-ko-latt/, date accessed 22 November 2016.

situation in Myanmar/Burma. Relevant documents and reports will be submitted ahead and after the meeting which can be accessed here.

8.1 Legal rights

8.1.1 As reported by the Special Rapporteur in March 2015 'The Printing and Publishing Enterprise Law last year [2014] replaced the Press (Emergency Powers) Act and the Printers and Publishers Registration Law. The new law requires all publications to be registered by the Ministry of Information, with five-year licences granted. While this improves on the one-year licenses provided previously, the new law lacks safeguards to prevent the politicization of decisions on the granting of such registrations.'[57] The Committee to Protect Journalists stated that 'The [Printers and Publishers Registration] Law bans news that could be considered insulting to religion, disturbing to the rule of law, or harmful to ethnic unity. Publications must be registered under the law, and those found in violation of its vague provisions risk de-registration.'[58]

8.1.2 The UN Special Rapporteur noted in her March 2016 report '... the Government's efforts to update media-related legislation, including the adoption of the 2014 News Media Law, the 2014 Printing and Publishing Enterprise Law and the 2015 Law Concerning Television and Radio Broadcasting. Whilst many of these laws improve on the previous framework, they also contain problematic provisions. In addition, the enactment of these laws without repeal of earlier provisions has created a complicated media law framework. Concern about harassment, a lack of clarity regarding the operation of regulatory laws, and physical attacks on journalists, has resulted in fear and self-censorship amongst the media, which hampers the functioning of an independent press in Myanmar.'[59]

8.1.3 Whilst the News Media Law 2014 introduced some improvements for media freedom, and violations of the law did not impose prison sentences, the UN Special Rapporteur stated that 'the law places vague restrictions on freedom of expression, with media workers permitted to investigate, publish and broadcast information in accordance with undefined "rules and regulations" that may lead to unforeseen restrictions, with other "entitlements" qualified by reference to the constitution or other unspecified laws.'[60]

8.1.4 The Emergency Provisions Act 1950, which imposed penalties of up to seven years' imprisonment 'for "anything" that is done with various broad categories of intent, including anything done to affect the "loyalty" of civil

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[57] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 6, 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, date accessed 18 October 2016.

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

[59] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 24, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.

[60] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 7, 9 March 2015, A/HRC/28/72, available at: http://www.refworld.org/docid/55082e974.html, date accessed 18 October 2016.

servants or to "spread false news"'[61], was repealed on 4 October 2016. U Aung Kyi Nyunt, the chairman of a panel in Parliament's upper house that helped draft the legislation abolishing the law said "the law does not fit with the current situation of democratization in the country". The law had not been enforced since the new government came to power in March 2016[62]. However, the repeal of the law was not retroactive so those currently imprisoned under the Act were not being reviewed[63].

8.1.5 Human Rights Watch noted that a '… variety of laws have been enacted to regulate the [internet], many of which have been aimed at censoring online content.'[64] In summary, the Telecommunications Law 2013 'Imposes penalties of up to three years' imprisonment for a range of broadly worded acts carried out through the telecommunications network, including defamation (section 66d); Allows government bodies unlimited power to enter and inspect any telecommunications service, or require them to submit documents, if it is in the public interest or in the interests of national security (section 76); Allows the Ministry of Information and Communications Technology broad powers to suspend or take control of any telecommunications service in an emergency situation (section 77).'[65]

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8.2 Human rights defenders

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

'There are continued reports of intimidation, harassment and surveillance of human rights defenders (HRDs), lawyers and journalists. The assassination of prominent lawyer U Ko Ni in January shocked the human rights community, and represented an appalling reminder of the risks faced by those who advocate for human rights and tolerance. In her latest statement, the Special Rapporteur also highlighted concerns about reprisals for those who speak against human rights abuses.'[66]

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[61] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', page 22, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[62] The New York Times, 'Myanmar Repeals 1950 Law Long Used to Silence Dissidents', 5 October 2016, http://www.nytimes.com/2016/10/06/world/asia/myanmar-burma-emergency-provisions-act.html?_r=0, date accessed 18 October 2016.
[63] Reuters, 'Myanmar asked to review disputed terrorism case after law reform', 5 October 2016, http://www.reuters.com/article/us-myanmar-muslims-idUSKCN1250SK?il=0, 26 October 2016.
[64] Human Rights Watch, '"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma', page 61, June 2016, http://www.ecoi.net/file_upload/1002_1467545164_burma0616web.pdf, date accessed 14 October 2016.
[65] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 19, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[66] Amnesty International, 'Myanmar: Urgent action needed to address deteriorating human rights situation', 13 February 2017, https://www.amnesty.org/download/Documents/ASA1656832017ENGLISH.pdf, , accessed 21 February 2017

8.2.2 At the end of January 2017 the UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, 'strongly condemned the brutal murder of Ko Ni, a prominent Muslim lawyer and constitutional law expert, who was also the legal adviser to the National League for Democracy (NLD). "This appears to be another shocking example of a reprisal against those speaking out on behalf of the rights of others," the expert said, recalling her recent end of visit statement, where she highlighted her concern at the increasing risks faced by human rights defenders, lawyers, journalists and others working on sensitive issues.'[67]

8.2.3 Human Rights Watch reported in January 2017 that 'Burma's colonial-era penal code also continues to be used to prosecute peaceful expression. Authorities have charged activist Khine Myo Htun with "incitement" and making statements that could "alarm" the public for allegedly accusing the military of committing war crimes in Rakhine State. Khine Myo Htun, who has been denied bail since his arrest in July, faces up to two years in prison on each charge. Veteran activist Htin Kyaw has been charged with making a statement "that may impede a member of the Tatmadaw [army] in the execution of their duty," for statements criticizing the military.'[68]

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8.3 Journalists, writers and media workers

8.3.1 Reporters without Borders ranked Burma at 143 out of 181 countries in its Press Freedom Index for 2016, giving it a global score of 45.48 (scores range from 0 to 100, with 0 being the best possible score and 100 the worst). Burma's ranking has gradually increased since 2013. The report noted:

'The Burmese government seems to have opted for (closely) monitored freedom instead of the drastic censorship that was in effect until recently. So media that cover political subjects have a bit more freedom. The Burmese-language state media nonetheless continue to censor themselves and avoid any criticism of the government or the armed forces. Tension between Muslims and Buddhists continues to be a highly sensitive subject.'[69]

8.3.2 The UN Special Rapporteur stated in her August 2016 report, following a visit to Burma between 20 June to 1 July 2016, that:

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

[67] UN Office of the High Commissioner for Human Rights, 'Myanmar: United Nations rights expert condemns senseless killing of respected muslim lawyer Ko Ni', 30 January 2017, http://www.ecoi.net/local_link/335742/465201_en.html, date accessed 21 February 2017

[68] Human Rights Watch, 'Burma: Don't Prosecute Peaceful Speech - Government Failing to Protect Critics from Arrest, Jail', 24 January 2017, https://www.hrw.org/news/2017/01/24/burma-dont-prosecute-peaceful-speech, date accessed 21 February 2017

[69] Reporters without Borders, 'Burma - Closely monitored freedom but slightly less censorship', 2016 World Press Freedom Index, undated, https://rsf.org/en/burma, date accessed 18 October 2016.

imprisonment in June 2016, under section 505 (b) of the Penal Code, for the same offence.'[70]

8.3.3 The UN Special Rapporteur was concerned by reports 'that journalists and media workers continue to face legal action under legislation which is incompatible with international human rights law. There are also increasing reports of government and military interference with individuals' right to freedom of expression online.'[71] The Freedom House report 'Freedom on the Net' noted that although there were no incidents of violence recorded during the reporting period (June 2015 to May 2016), 'journalists operating on and offline reported receiving death threats.'[72]

8.3.4 DFAT assessed in its January 2017 report that '[J]ournalists in Myanmar who report critically on the military face a moderate risk of being prosecuted through the judicial system and receiving sentences that could be considered high by international standards. DFAT assesses that, in general, journalists face a low risk of physical violence as a result of their reporting.' [73]

8.3.5 Human Rights Watch specifically highlighted that:

'Officials in the Thein Sein government aggressively used criminal defamation provisions in both the Penal Code and the News Media Law against journalists who published articles that allegedly showed the government or military in a bad light or were somehow embarrassing. Prosecutions of the media are of particular concern since they may cause journalists and media outlets to self-censor and decline to cover matters of public interest.'[74]

8.3.6 Reporters Without Borders called in a December 2016 article:

'[T]he Burmese authorities to step up their investigation into newspaper reporter Soe Moe Tun's week-old murder in the northwestern city of Monywa and to redouble efforts to identify who masterminded his death. The reporter, who was based in Monywa and worked for Burma's *Daily Eleven* newspaper, had recently covered the proliferation of illegal karaoke bars in the city as well as illegal logging in the surrounding region… Media personnel are often threatened in Burma because of their reporting, UNESCO said in a statement last month, adding that 'ending impunity on all

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[70] UN General Assembly: Situation of human rights in Myanmar [A/71/361], (paragraph 65), 29 August 2016 (available at ecoi.net) http://www.ecoi.net/file_upload/1226_1478087528_n1627260.pdf, date accessed 2 February 2017.
[71] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 23, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.
[72] Freedom House, 'Freedom on the Net 2016', 14 November 2016, https://freedomhouse.org/report/freedom-net/2016/myanmar, date accessed 22 November 2016.
[73] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Myanmar', (paragraph 3.57), 10 January 2017. Available on request.
[74] Human Rights Watch, '"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma', page 61, June 2016, http://www.ecoi.net/file_upload/1002_1467545164_burma0616web.pdf, date accessed 14 October 2016.

the harassment against journalists is the most important step toward guaranteeing the safety of journalists'.'[75]

8.3.7 In November 2016 Reporters Without Borders reported on the dismissal of 'British investigative reporter Fiona MacGregor's […] by the Myanmar Times, an English-language daily based in Rangoon, over a story about the alleged rape of Rohingya women that upset Burma's government. According to information obtained by RSF, the government's meddling was not limited to one phone call from MOI [Ministry of Information].'[76]

8.3.8 Also in November 2016 Reporters Without Borders called on '[T]he Burmese judicial system to drop criminal defamation proceedings against two leading journalists who have been held since 11 November over an editorial suggesting that Rangoon region chief minister Phyo Min Thein took a bribe.'[77]

See also Freedom of political expression.

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8.4 Internet freedom

8.4.1 Freedom House stated in its Freedom of the Press 2016 report for Burma that 'Internet penetration increased to 22 percent in 2015, up from just 2 percent in 2013, increasing residents' access to independent news and information.'[78]

8.4.2 In her report dated March 2016, the Special Rapporteur noted '...increasing reports of government and military interference with individuals' right to freedom of expression online' and that 'Special Branch informers reportedly engage in online monitoring, including by alleged hacking of Facebook accounts and interception of email communications. Under sections 76 and 77 of the Telecommunications Law 2013, the Government has broad powers to enter and inspect telecommunication services for matters relating to national defence and security or public interest, and intercept data in an emergency situation.'[79]

8.4.3 Human Rights Watch and the Freedom House 'Freedom on the Net' report cited a number of arrests and prosecutions for defamation in violation of section 66d of the Telecommunications Law, which occurred during 2015

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[75] Reporters Without Borders, RSF urges Burma to step up investigation into reporter's murder, 20 December 2016, https://rsf.org/en/news/rsf-urges-burma-step-investigation-reporters-murder, accessed 21 February 2017

[76] Reporters Without Borders, RSF calls for probe into reporter's dismissal by Myanmar Times, 26 November 2016, https://rsf.org/en/news/rsf-calls-probe-reporters-dismissal-myanmar-times, accessed 21 February 2017

[77] Reporters Without Borders, RSF calls for release of Eleven Media CEO and chief editor, 23 November 2016, https://rsf.org/en/news/rsf-calls-release-eleven-media-ceo-and-chief-editor, accessed 21 February 2017

[78] Freedom House, Freedom of the Press 2016 - Myanmar, 28 September 2016, available at: http://www.refworld.org/docid/57f361d936.html, date accessed 19 October 2016.

[79] UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Myanmar', paragraph 25, 8 March 2016, A/HRC/31/71, available at: http://www.refworld.org/docid/56ead91d4.html, date accessed 18 October 2016.

and into 2016[80]. The Freedom of the Press report added that 'Several people were arrested or interrogated for satirical social media posts deemed insulting to the government during the year.'[81]

8.4.4 Human Rights Watch specifically highlighted that:

'Patrick Khum Jaa Lee, a humanitarian worker, was sentenced to six months in prison in January 2016 for a Facebook posting deemed insulting to the military commander-in-chief. Chaw Sandi Tun was sentenced to six months in December 2015 for allegedly "defaming" the military by comparing the color of their new uniforms to Aung San Suu Kyi's clothing. Poet Maung Saungkha was charged in November 2015 with violating section 66(d) by posting a poem online that implied that he had a tattoo of the president on his penis. A charge under section 505(b) of the Penal Code was added in December, making him subject to up to five years in prison. He was convicted in May 2016 and sentenced to the time he had already served – six months in prison. The use of the law against offensive or insulting speech has continued despite the change in government. On May 19, Nay Myo Wai was charged under section 66(d) for a Facebook post that allegedly defamed Aung San Suu Kyi, President Htin Kyaw, and the commander-in-chief of the military. His case was pending at the time of writing.'[82]

8.4.5 Human Rights Watch reported in January 2017 that 'Over the past year, Burmese authorities have been particularly aggressive in the use of section 66(d) of the 2013 Telecommunications Act. The law criminalizes defamation on the internet with a penalty of up to three years in prison. Those facing charges under the law are not entitled to bail, and many are detained for months pending trial.'

'According to a civil society group headed by Maung Saungkha – who served six months in prison for allegedly defaming former President Thein Sein in a poem – at least 40 cases have been filed under section 66(d) during the first eight months the new government has been in office, compared with seven during the more than two-year period between the law's enactment and when the new government took over at the beginning of April 2016. Those convicted under the law in recent months have received relatively long prison sentences.'[83]

8.4.6 Amnesty International in its written statement to the UN Human Rights Council in February 2017 noted that 'There has been a surge in the number

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[80] Human Rights Watch, '"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma', pages 62-64, June 2016, http://www.ecoi.net/file_upload/1002_1467545164_burma0616web.pdf; Freedom House, 'Freedom on the Net 2016', 14 November 2016, https://freedomhouse.org/report/freedom-net/2016/myanmar, date accessed 22 November 2016.

[81] Freedom House, Freedom of the Press 2016 - Myanmar, 28 September 2016, available at: http://www.refworld.org/docid/57f361d936.html, date accessed 19 October 2016.

[82] Human Rights Watch, '"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma', page 61, June 2016, http://www.ecoi.net/file_upload/1002_1467545164_burma0616web.pdf, date accessed 14 October 2016.

[83] Human Rights Watch: Burma: Don't Prosecute Peaceful Speech - Government Failing to Protect Critics from Arrest, Jail, 24 January 2017, https://www.hrw.org/news/2017/01/24/burma-dont-prosecute-peaceful-speech, date accessed 21 February 2017

of people investigated for "online defamation" under the vaguely worded 2013 Telecommunications Law, with individuals being arrested and charged for Facebook posts critical of the authorities. Early efforts to repeal and amend repressive laws appear to have stalled and the law reform process has been marked by a lack of transparency and consultation.'[84]

See also Freedom of political expression.

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9. Freedom of movement

9.1 Legal rights and restrictions

9.1.1 Residents of Burma are legally required to register their name and address with the administrator in their ward or village[85]. In 2012, the Ward or Village Tract Administration Law (the Law) replaced The Village Act and The Towns Act of 1907. As with the 1907 Acts, the new Law requires residents of Burma to register overnight household guests (from outside their ward or village) with their ward or village tract administrator (the administrator). Unlike the 1907 Acts, the Law does not prescribe penalties for non-compliance with guest registration though, according to the NGO Fortify Rights, in practice residents have been issued fines ranging from 500 to 20,000 Kyat (US$0.50 to $20) and subject to periods in detention. The March 2015 report by Fortify Rights stated: 'Section 13(n) of the Ward or Village Tract Administration Law grants vague and sweeping discretionary authority to ward and village tract administrators ... [and] gives administrators almost boundless authority over the physical premises of their wards and village tracts.'[86]

9.1.2 The Fortify Rights report, published in March 2015, gave details about how the application and enforcement of the Law varied from area to area and gave administrators a broad mandate to inspect properties. The report stated that: 'Public holidays or events tend to prompt widespread household inspections when government authorities are typically more sensitive to the prospect of potential protests or civil unrest.' Inspections, often consisting of ten or more individuals including the administrator and police officers, generally take place around midnight but frequency ranged from "at least once a month" to periods of up to two years without an inspection; in some cases, inspections had reportedly stopped completely[87].

9.1.3 The Irrawaddy reported on 27 May 2016 that a bill to amend and repeal sections of the Ward or Village Tract Administration Law was tabled in

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[84] Amnesty International, Myanmar: Urgent action needed to address deteriorating human rights situation, 13 February 2017, https://www.amnesty.org/en/documents/asa16/5683/2017/en/, accessed 21 February 2017

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

[86] Fortify Rights, 'Midnight Intrusions', pages 12 and 18, March 2015, http://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf, date accessed 5 June 2015.

[87] Fortify Rights, 'Midnight Intrusions', March 2015, pages 12 and 18-19, http://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf, date accessed 5 June 2015.

Parliament in May. Whilst NLD legislators argued that the new bill aligned with democratic norms and preserved freedom of movement for citizens, military lawmakers claimed that national security would be in jeopardy if the bill was approved[88].

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10. Entering and exiting Burma

10.1 Points of entry and exit

10.1.1 According to the Ministry of Immigration, as of 28 August 2013, Burmese citizens are permitted to enter/depart from any international entrance/exit of Burma, including: Nay Pyi Taw International Airport; Yangon International Airport; Mandalay International Airport; and at the Thai border gates of Tachilek, Myawaddy, Htee Kee and Kawthoung[89].

10.2 Immigration procedures

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

'Check-in and immigration procedures for Myanmar passport-holders are functionally similar to standard international practices. Airport staff review booking details and check the name in the passport against the name on the reservation. Customs and immigration staff vet baggage and conduct a cursory check that the photograph in the passport matches the bearer of the document. Immigration staff scan the passport document. There is no integration of police and immigration identity systems. Immigration cards record standard information about the person entering the country. Inbound Myanmar nationals are required to provide their father's name on the form; outbound Myanmar nationals are required to list their father's name, their address and their identity card number.'[90]

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10.3 Exit visas

10.3.1 In correspondence with the Country Policy and Information Team, dated 17 January 2017, a lawyer from the law firm DFDL, based in Yangon, stated:

'Exit visas are not required to leave Myanmar.

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

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[88] The Irrawaddy, 'Debate Over Burma's Household Guest Registration Law Intensifies', 27 May 2016, http://www.irrawaddy.com/news/burma/debate-burmas-household-guest-registration-law-intensifies.html, date accessed 25 October 2016.
[89] Ministry of Immigration, 'Permission of Entry into and Departure from Myanmar – Thai Border Gates', undated, http://www.mip.gov.mm/portfolio/permission-of-entry-into-and-departure-from-myanmar-thai-border-gates/, date accessed 9 June 2015.
[90] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Myanmar', (paragraph 5.39), 10 January 2017. Available on request.

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

'Myanmar citizens may legally exit Myanmar with a valid passport issued by the Myanmar Passport Issuing Board under the Ministry of Home Affairs, and subject to possessing a valid visa to enter the intended country as issued by the relevant Embassy. Myanmar citizens may exit Myanmar via international entrances or exits - such as Yangon International Airport, Mandalay International Airport and Naypyitaw International Airport, Tachilek, Myawaddy, Htee Kee and Kawthoung.'[91]

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10.4 Entering Burma

10.4.1 U Gambira, also known as Nyi Nyi Lwin, was arrested on 19 January 2016 for allegedly crossing the Thai-Burma border illegally. In November 2007, U Gambira was arrested for his role in leading mass anti-government protests in August and September of that year. He was given a 68-year sentence but was released in a presidential amnesty on 13 January 2012[92]. On 26 April 2016, a court sentenced U Gambira to 6 months imprisonment for contravening Section 13.1 of the Burma Immigration Act[93].

10.4.2 DFAT reported in its January 2017 Country Information Report for Burma that:

'Former political prisoners and exiled activists are now typically able to return safely to Myanmar. In preparation for this report, DFAT spoke with a number of political and human rights activists who had been imprisoned or exiled from Myanmar during the period of military rule; these people had been able to freely return to Myanmar in recent years, and have remained politically active. People who are known to have actively and openly criticised the military may face a higher level of scrutiny than other political activists such as LGBTI or democracy activists.'[94] (See also Political affiliation)

10.4.3 The lawyer from DFDL stated that:

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

'The Myanmar Passport Rules provides that "subject to the provisions hereinafter contained no person proceeding from any place outside the

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[91] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.
[92] Amnesty International, 'Urgent Action: Former prisoner of conscience arrested', 20 January 2016, available at http://www.ecoi.net/file_upload/1226_1453363789_asa1632442016english.pdf, date accessed 27October 2016.
[93] The Irrawaddy, 'Ex-Monk U Gambira Gets Six Months in Prison on Immigration Charge', 26 April 2016, http://www.irrawaddy.com/news/burma/ex-monk-u-gambira-gets-six-months-in-prison-on-immigration-charge.html, date accessed 27 October 2016.
[94] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Myanmar', (paragraph 5.34), 10 January 2017. Available on request.

Union of Myanmar shall enter the Union of Burma by sea or by land unless he is in possession of a passport".

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

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

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

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

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

'Under the Myanmar Passport Act, the President of the Union may enact rules requiring that persons entering the Union of Myanmar must be in possession of a passport, and for all matters incidental to that purpose. Under these powers, the President of the Union may prohibit any person not in possession of a passport from entering the Union of Myanmar.'[95]

10.4.4 The lawyer concluded that 'In light of the above, a Myanmar national who is returned to Myanmar without a passport or a certificate issued by the competent authority could face imprisonment under the Myanmar Immigration Act and Myanmar Passport Act.'[96]

10.4.5 DFAT noted that 'Returnees to Myanmar who departed the country illegally are technically subject to up to five years imprisonment for having illegally crossed a border. DFAT understands that this provision has not been enforced in recent years.'[97] (See also Exit visas).

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10.5 Blacklist

10.5.1 The lawyer from DFDL stated that:

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[95] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.
[96] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.
[97] Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Myanmar', (paragraph 5.36), 10 January 2017. Available on request.

'The former military government of Myanmar created a blacklist of persons who were deemed to be political dissidents or a threat to the regime. People in Myanmar who were on the blacklist were prohibited from obtaining passports to travel outside the country, and those people outside the country faced difficulties in returning.'[98]

10.5.2 On 3 August 2016, Radio Free Asia (RFA) reported that the names of 619 people, including 248 citizens and 371 foreigners, had been removed from the country's "blacklist", which restricted exit and entry into Burma for those deemed to be political threats. The report added that in May, the Ministry of Foreign Affairs announced that it would 'allow those exiled under previous governments whose names were on the blacklist to return to Myanmar.'[99]

10.5.3 The UN Special Rapporteur, in her report dated 29 August 2016, was concerned to hear that '[S]everal civil society actors were currently facing visa restrictions on their entry to Myanmar or had, once again, been placed on the "blacklist".'[100]

10.5.4 The lawyer from DFDL stated that:

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

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

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

'In summary, a person who is politically active in the UK and possesses a Myanmar passport, or a foreign passport with a duly issued visa, faces no risks in terms of violating the immigration law upon the person's return to Myanmar.'[101]

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[98] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.
[99] Radio Free Asia, 'Myanmar Government Removes More Than 600 Names From Official Blacklist', 3 August 2016, http://www.rfa.org/english/news/myanmar/myanmar-government-removes-more-than-600-names-from-official-blacklist-08032016154050.html, date accessed 27 October 2016.
[100] UN General Assembly: Situation of human rights in Myanmar [A/71/361], (paragraph 39), 29 August 2016 (available at ecoi.net) http://www.ecoi.net/file_upload/1226_1478087528_n1627260.pdf, date accessed 2 February 2017.
[101] DFDL, correspondence with Country Policy and Information Team, 17 January 2017. Annex A.

Annex A

17 January 2017

UK Home Office
[redacted]
Country Policy and Information Team
Immigration and Border Policy Directorate
[redacted]

E-mail: [redacted]

Re: Political Activist Advice Letter

Dear [redacted]

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

1. Background

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

1. Are exit visas still required in order to leave Burma (Myanmar)?
2. Would a Burmese national returned to Burma without a passport face imprisonment?
3. Would a person who is politically active in the UK, (e.g. critical of the Burmese government) be at risk upon their return to Burma?

2. Legal References

1. The Myanmar Passport Act, 1920;
2. The Myanmar Passport Rules, 1948; and

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

3. Legal Advice

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

Exit visas are not required to leave Myanmar.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Qualifications

Our advice is subject to the following qualifications:

(a) While there is a substantial body of law based on the ‘Burma Code’ of laws and regulations enacted and implemented under British colonial rule until 1947, much of which is still in force in Myanmar, successive changes of government of different political hues have led to an inconsistent approach to law-making in Myanmar since that time. The laws and regulations of Myanmar have in the recent past 5

often been: (i) poorly drafted, and (ii) supplemented or otherwise modified by undocumented practices, policies adopted and applied as law in a non-transparent way, discretionary decisions of government agencies and authorities and the exercise of powers which have not been granted to the exercise or in accordance with the provisions of prevailing laws and regulations. Such practices, policies, decisions and exercises of powers may:

i. not have been published or announced; or

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

iii. be subject to change without notice; or

iv. be applied inconsistently.

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

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

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

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

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

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

5. Reliance

This advice:

[redacted]

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

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

Yours faithfully,

DFDL

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Version Control and Contacts

Contacts

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

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

Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **14 March 2017**

Changes from last version of this note

Name change – version 1.0 known as “Opposition to the Government”. Departure from Country Guidance caselaw TS and HM. Updated country information.

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