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U Win Myint, Speaker of the Pyithu Hluttaw
Mahn Win Khaing Than, Speaker of the Amyotha Hluttaw
Yaza Htarni Road
Naypyitaw
Republic of the Union of Myanmar

12 May 2016

Dear Speakers,

OPEN LETTER ON AMENDING THE PEACEFUL ASSEMBLY AND PEACEFUL PROCESSION ACT IN LINE WITH INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

Amnesty International welcomes efforts by Parliament to review the Peaceful Assembly and Peaceful Procession Act (Peaceful Assembly Act). We would like to offer our support and provide recommendations to Parliament to help ensure that such amendments bring the Act into line with international human rights law and standards.

Amnesty International has previously expressed concern about the Act, which has been used to arrest, charge and imprison hundreds of peaceful activists and human rights defenders since it came into force in July 2012.¹ We are encouraged that the new Parliament has chosen to make the revision of this law a priority, as part of its wider efforts to review repressive legislation curtailing the rights to freedom of expression, association and peaceful assembly.

We note that the previous Parliament also made efforts to amend the Peaceful Assembly Act, which resulted in the amended Act being signed into law on 24 June 2014. Unfortunately these revisions did little to halt the pace of arbitrary arrests or to foster an environment where peaceful assembly is respected. We urge the new Parliament to revise the Act so that it respects and protects the rights to freedom of expression and peaceful assembly.

Based on our analysis, the proposed amendments fall far short of bringing the Act into line with international human rights law and standards. As it stands the draft retains restrictions to the rights to freedom of expression and peaceful assembly which breach international human rights law. We are deeply concerned that, if adopted in its current form, peaceful protesters, including human rights defenders and other activists, will remain at risk of arrest and imprisonment simply for the peaceful exercise of their rights.

While international human rights law and standards allow states to impose certain restrictions on the exercise of the right to freedom of peaceful assembly, any such restrictions are only permissible if they are, first, provided by law; second, placed for the purpose of protecting certain public interests (national security or public safety, public order, protection of public health or morals) or the rights and

¹ See for example, Amnesty International, *New expression meets old repression: ending the cycle of political arrests and imprisonment in Myanmar* (Index: ASA 16/3430/2016), 24 March 2016, pp. 34-37.

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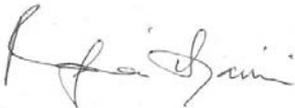
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freedoms of others; and, third, demonstrably necessary for that purpose.² Any restrictions imposed which do not meet all of these elements constitute violations of this right.³

We urge Parliament to make the most of the opportunity that the review of this Act offers to initiate a transparent consultation and discussion process with stakeholders. In this regard, we note that a draft of the revised Act was published in the Myanmar language state media on 6 May 2016. We have obtained an unofficial translation of this document. In addition, it is important that Parliament allows adequate time for the general public; legal experts in both domestic legislation and in international human rights law; ethnic nationality representatives; and other civil society members to make their recommendations. This input could help contribute to ensuring that the Peaceful Assembly Act complies with international human rights law and standards. Failure to do so not only risks more arrests, detention, prosecution and imprisonment of peaceful protesters, it also could undermine wider efforts to reform the country's legal framework in general.

In the Annex below, we highlight some of our key areas of concern with the current draft and make recommendations aimed at ensuring that the Act complies with international human rights law and standards. We would welcome the opportunity to meet with you and provide more information on these recommendations as well as to provide our knowledge and experience to Myanmar's Parliament on amendments to other laws scheduled for review at your convenience.

Yours sincerely,



Rafendi Djamin,
South East Asia and Pacific Director
Amnesty International

Cc: U Tun Aung, Chairman of the Pyithu Hluttaw Bill Committee
U Zaw Min, Chairman of the Amyotha Hluttaw Bill Committee
Dr. Aung Htun Khaing, Chairman of the Pyithu Hluttaw Management of Public Affairs Committee
Thura U Shwe Mann, Chairman of the Commission for the Assessment of Legal Affairs and Special Issues
U Htin Kyaw, President of the Republic of the Union of Myanmar
Daw Aung San Suu Kyi, State Counsellor
U Tun Tun Oo, Attorney General

² See for instance Article 21 of the International Covenant on Civil and Political Rights.

³ See, for example, Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), para. 27. The Committee has clarified that this general comment also provides guidance with regard to elements of the right to freedom of peaceful assembly – see Communication no 1790/2008 *Govsha, Syritsa, and Mezyak v. Belarus*, Views adopted 27 July 2012, para. 9.4.

ANNEX: AMNESTY INTERNATIONAL'S CONCERNS REGARDING AMENDMENTS TO THE PEACEFUL ASSEMBLY AND PEACEFUL PROCESSION ACT

NOTIFICATION:

We welcome the proposed amendments that ensure protest organizers are no longer required to obtain permission or consent to protest and are only required to notify the authorities of intent to protest. International human rights law states that no authorization should be required to assemble peacefully.⁴ However, we would like to highlight that according to international human rights standards a 48 hours' notice should only be required for large assemblies or for those where a certain degree of disruption is anticipated.⁵

We also remain deeply concerned that the law retains criminal penalties for failure to notify the authorities of intent to protest (Section 17). A first offence carries a maximum three months in prison and a 30,000 kyat (US\$30) fine, while a repeat offence carries a maximum one year in prison and a 100,000 kyat (US\$100) fine. International human rights law and standards are clear that failure to notify the authorities must not be subject to criminal sanctions which result in fines or imprisonment.⁶ Parliament should therefore remove Section 17 from the draft, and ensure that the Act is clear that no one is to be held criminally responsible for failure to notify the authorities of a protest or demonstration.

We also note that the current draft retains the requirement that organizers submit to the authorities the following information ahead of a protest (Section 4):⁷

- the slogans and chants to be used (Sections (a) and (b))
- the names and contact details of all the speakers and leaders (Section (c))
- the agenda for the demonstration (Section (d))
- organizational documents (Section (e)).

These provisions restrict freedom of expression and peaceful assembly through unnecessary and excessive administrative requirements for protest organizers. Moreover, we are concerned that the draft Act potentially restricts organizations that are not registered from protesting. The Act should be amended to remove these requirements.

We also note that the draft Act remains silent on holding spontaneous assemblies. We urge Parliament to insert specific provisions allowing for spontaneous assemblies, making clear that they are exempt from prior notification requirements, as recommended by international experts.⁸

RULES AND REGULATIONS:

The draft law lists rules and regulations, which people who participate in a peaceful assembly must abide by (Chapter 5). They include restrictions on holding demonstrations in a location different from the one indicated in the notification (Sections 7 and 8); restriction on using flags, posters, and signboards other than the ones mentioned in the notification; making speeches or acting in a way that could "affect the country or the Union, race, or religion, human dignity and moral principles"; spreading rumours or incorrect information; and using loudspeakers or singing chants other than those approved in advance (Section 9). According to the draft law, failure to comply with these rules and regulations is subject to criminal penalties that can extend to three months' imprisonment and a 30,000 kyat (US\$30) fine (Section 18).

⁴ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai*, UN Doc. A/HRC/23/39, 24 April 2013, (Special Rapporteur, Report to the UN Human Rights Council, 2013), para. 51.

⁵ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc A/HRC/20/27, 21 May 2012 (Special Rapporteur Report to the UN Human Rights Council, 2012), para. 28.

⁶ Special Rapporteur, Report to the Human Rights Council, 2012, para. 52.

⁷ Special Rapporteur Report to the UN Human Rights Council, 2012, para. 28.

⁸ Special Rapporteur, Report to the Human Rights Council, 2012, para. 29.

The fact that peaceful demonstrations can be dispersed (Section 10), and people could be jailed and their rights denied on such broad and vague grounds violates the rights to freedom of expression, association and peaceful assembly under international human rights law and standards. We urge Parliament to substantially revise or else remove the rules in Chapter 4, and to remove Section 18 in its entirety.

DISPERSAL AND POLICING OF ASSEMBLIES:

The draft Act grants police officers and local township authorities excessively broad discretionary powers to prevent and disperse peaceful assemblies (Chapter 6). According to the draft Act, assemblies, however peaceful they may be, could nevertheless be dispersed if the organizers fail to adhere to the above referenced rules (Section 10) or for failing to fulfil the notification requirements (Section 15). International human rights standards allow for dispersal of an assembly only as a measure of last resort, and in response to an imminent threat of violence.

The process that township police and administration officials must undertake (Sections 12-15) in deciding when to prevent or disperse an assembly also grants them broad discretionary powers, opening the law up to both arbitrary and discriminatory application.

We therefore strongly urge Parliament to substantively amend Sections 10 and Chapter 6 in order to limit police and local authority powers to prevent, halt and disperse peaceful assemblies. In addition, we encourage Parliament to insert specific provisions allowing for the right to an effective remedy through the creation of an open and transparent appeal mechanism against a decision to prevent or disperse an assembly.

Moreover, while we note that the draft Act provides for the police to “give necessary protection” to peaceful protesters (Section 11), it does not explicitly reference the positive obligation on the State, including law enforcement officials, to create an enabling environment for people to enjoy the right to peacefully assemble. The draft is also silent on the use of force by law enforcement officials, particularly concerning the use of unnecessary or excessive force and firearms. Such unnecessary or excessive force could lead to injuries or fatalities, for instance by the Myanmar security forces resorting to the use of firearms.

In this regard we request that Parliament add provisions to the Act which require law enforcement officers to apply non-violent means and refrain, unless absolutely necessary, from using any force. When unavoidable, law enforcement officers must use a range of means allowing for a differentiated and proportionate use of force. Firearms may not be used against any person except in self-defence or defence of others against the imminent threat of death or serious injury or to prevent a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger, and only when less extreme means are insufficient to achieve these objectives. Intentional lethal use of firearms may only be made when strictly unavoidable to protect life.⁹

NON-CITIZENS RIGHT TO PEACEFUL ASSEMBLY:

Finally, our reading of the draft Act indicates that it applies only to Myanmar citizens, meaning that non-citizens do not have the same rights and protections as those with citizenship. Under international human rights law, with the exception of a limited number of rights such as the right to vote, human rights protections under domestic legislation must apply to all persons within the state’s territory and jurisdiction irrespective of citizenship status. We therefore urge Parliament to amend Section 3 of the Act so that its protections extend to both citizens and non-citizens on an equal basis.

⁹ As provided in Principles 2 and 4 of the UN Basic Principles on the Use of Force and Firearms.