

# How to Defend the Defenders?

A Report on the Situation of Human Rights Defenders in Burma and  
Appropriate Protection Mechanisms



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Written and published by The Assistance Association for Political Prisoners and Burma Partnership's Progressive Voice Policy Research Project  
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## About Burma Partnership

Burma Partnership (“BP”) is a network of organizations throughout the Asia-Pacific region, advocating for and mobilizing a movement for democracy and human rights in Burma. BP draws its strength from the diversity of its partners, from the multi-ethnic leadership of political and civil society organizations (“CSOs”) both inside Burma and in exile, to its partners and broad-based solidarity organizations throughout the region.

BP envisages a free and democratic Burma, which upholds principles of human rights, equality and justice. It sees a society where all Burma people actively participate in social, economic and political decision-making processes, and collaborate in solidarity with the peoples of the Asia-Pacific region. Burma Partnership is comprised of the following Working Group members:

**Burmese Alliance Organizations:**

Forum for Democracy in Burma  
Nationalities Youth Forum  
Students and Youth Congress of Burma

**Regional Solidarity Networks:**

Alternative ASEAN Network on Burma  
Asian Forum for Human Rights and Development  
Asia Pacific Solidarity Coalition

**National Solidarity Coalitions:**

Solidaritas Indonesia untuk Burma  
Free Burma Coalition-Philippines  
Burma Campaign Korea  
Hong Kong Coalition for a Free Burma  
People’s Forum on Burma (Japan)

Progressive Voice – “Shay Pyay Athan” in Burmese – is a novel and innovative pilot project, initiated from the start of 2015 under the auspices of BP. Progressive Voice’s objective is to conduct rigorous research and to develop creative, solution-oriented and principled policy recommendations. It thereby hopes to engage, assist and inspire key decision- and policy-makers, the youth, grassroots communities and marginalized groups, including ethnic and religious minorities, to achieve real democratic, political and socio-economic change that will benefit all people in Burma.

## About The Assistance Association for Political Prisoners

The Assistance Association for Political Prisoners (“AAPP”) is a non-profit human rights non-governmental organization (“NGO”). AAPP was founded in 2000 by former political prisoners living in exile on the Thailand-Burma border. The organization has since been run by former political prisoners and, in 2012, opened two offices inside Burma, in Rangoon and Mandalay.

AAPP’s key mandate is to advocate for human rights and specifically for the release of all political prisoners in Burma. The organization is a key actor in ongoing advocacy and lobbying efforts to secure the release of all political prisoners, to bring to light the continuing human rights abuses in the country, and to continue to support political activists and human rights defenders (“HRDs”) in Burma. The organization carries out documentation and data-collecting throughout the country, with the aim of playing a key role in transitional justice efforts in the future.

AAPP conducts many activities inside Burma, supporting current and former political prisoners and their families. AAPP’s main areas of focus include the provision of medical and financial support to current political prisoners, health check-ups on their release from prison, and continued support in a wide numbers of areas for both themselves and their families. Vocational trainings in areas such as information technology and finance are provided, as well as the granting of educational scholarships for children and other family members.

Furthermore, the Mental Health Assistance Program trains former political prisoners as mental health counselors, in order to provide the former political prisoner community with professional mental health support.

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# Foreword

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**Former Special Rapporteur on the situation of human rights in Burma**

According to the official history of Myanmar, the main player of the last fifty years has been the military. They took power in 1962 by force and stayed even after the sham elections of 2010, when they tried to reconvert into civilian representatives of a country in transition.

But the other story, the one ignored by the establishment, is that of those who throughout the years fought for the respect of human rights and the restoration of democracy in Myanmar. As the reed that bends but always remains, these men and women resisted the worst ravages of the dictatorship by offering their lives, their freedom and their basic rights.

Through their struggle from exile or staying in the risky territory of Myanmar, these human rights defenders managed to finally pierce the regime's power and thus change the destiny of the country. It seemed to open a new phase, although decades of military rule had created serious conditions that still exist today: first, a national constitution tailored to the military, which among other things, allow them to maintain the control of parliament without legitimate vote. And secondly, the overall management of the state apparatus by a military party forged in military times.

In this context, the epic struggle for the restoration of democracy has not yet been recognized by the State of Myanmar. Although there have been celebrations of milestones such as the 1988 movement, the reality is that there is a pressing need to develop policies of truth and justice after decades of military dictatorship. The victims of the civil war, the thousands who suffered political imprisonment and torture, journalists censored, persecuted social movements and ethnic groups, hundreds of thousands of displaced persons and refugees, the people starved from economic policies of exclusion, and many more who suffered persecution, all demand recognition and justice.

The lack of this types of policies allows abuses to continue or occur again, and this is precisely what is happening at the moment, especially in the context of the upcoming general elections. In fact, this report on the situation of human rights defenders, alerts of the growing trend to constrain and suppress the rights and freedoms of those who work for the observance of human rights in Myanmar.

In political terms, the most dramatic consequence of this recrudescence of persecution is to exclude civil society from the debate about the new political, social and economic framework to be established in Myanmar. The contribution of social movements in building a country emerging from the shadows, is critical, especially to overcome a purely military mindset in the decision-making process. Lessons learnt from history must not be ignored: almost fifty years of military rule left the country at war, impoverished, and isolated from the world. Moreover, all sectors in Myanmar, including human rights defenders, have the right to participate in this historic opportunity that has opened for the people and institutions, to lead the country into a multi-ethnic democratic state that respects human rights, promotes equality, and strengthens national unity. In addition, civil society should be an ally of the Government in protecting natural resources and national economic interests.

For all these reasons, this report on the situation of human rights defenders in Myanmar, thorough in its content, comes out at a suitable timing, as the democratic transition should no longer postpone the essential role that civil society have to play, and the effective mechanisms to protect them. At this point, the international community, to be consistent with its commitment to human rights, should also include the civil society in its agenda of cooperation.

Overall, we must not rest on the facade of a political transition that emerges from decades of military dictatorship. In the midst of the next general elections, we should re-emphasize our ambitions for real and meaningful transformation, because it's time for democracy, it's time for politics, it's time for human rights. And those who defend these values are indispensable.

## Definitions and Acronyms

AAPP	■ Assistance Association for Political Prisoners
Assembly Law	■ Right to Peaceful Assembly and Peaceful Procession Act 2011
Association Law	■ The Association Registration Law 2014
ABFSU	■ All Burma Federation of Student Unions
BP	■ Burma Partnership
Constitution	■ 2008 Constitution of the Republic of the Union of Myanmar
CSO	■ Civil Society Organization
CSRPP	■ Committee for Scrutinizing the Remaining Political Prisoners
Declaration	■ UN Declaration on HRDs
DKBA	■ Democratic Karen Benevolent Army
DVB	■ Democratic Voice of Burma
FGD	■ Focus Group Discussion
HRD	■ Human Rights Defender
ICCPR	■ International Covenant on Civil and Political Rights
INGO	■ International NGO
LGBTIQ	■ Lesbian, Gay, Bisexual, Transsexual, Intersex and Queer
Ma Ba Tha	■ Race and Religion Protection Association
MDCF	■ Movement for Democracy Current Force
MNHRC	■ Myanmar National Human Rights Commission
MNHRC Report	■ <i>“Burma: All the President’s Men: A Report on the Myanmar National Human Rights Commission”</i>
MPC	■ Myanmar Peace Center
NGO	■ Non-Governmental Organization
NLD	■ National League for Democracy
OHCHR	■ UN Office of the High Commissioner for Human Rights
OSA	■ Official Secrets Act 1923
Penal Code	■ Penal Code 1861
PNA	■ Preliminary Needs Assessment
PCAC	■ Prisoners of Conscience Affairs Committee
PPE Law	■ Printing and Publishing Enterprise Law 2014
Progressive Voice	■ BP’s Progressive Voice Policy Research Project
RCSS/SSA	■ Restoration Council of Shan State/Shan State Army - South
Report	■ <i>“How to Defend the Defenders? A Report on the Situation of Human Rights Defenders in Burma and Appropriate Protection Mechanisms”</i>
Shay Pyay Athan	■ Progressive Voice in Burmese language
SNLD	■ Shan Nationalities League for Democracy Party
UAA	■ Unlawful Associations Act 1908
UDHR	■ Universal Declaration of Human Rights
UN	■ United Nations
UNCAT	■ UN Convention Against Torture
UNGA	■ UN General Assembly
Wanbao	■ Myanmar Wanbao Mining Copper Limited
WGAD	■ UN Working Group on Arbitrary Detention

# Map of Burma (New and Old Names)





## Executive Summary



*A student hit by police in Latpadan on 10 March 2015  
Copyright: Sai Zaw / The Irrawaddy*

**Section 1** of the Report – the Introduction – explains the background to the issue of HRDs in Burma, and outlines the current political situation in the country. In brief, since early 2011, when President Thein Sein’s quasi-civilian government came to power, Burma has undergone a series of reforms that gave many hope that the situation of HRDs would improve – in terms of their freedom to pursue their valuable and legitimate human rights work. However, testimony and reports from inside the country paint a very different picture and, as the 2015 national elections draw ever closer, the democratic and civil society space within which HRDs can operate has started to contract alarmingly once again. Those who try to defend human rights now seem to be operating in as dangerous environment as ever.



**Section 2** outlines the objective, scope and methodology of the Report. In particular, the research involved organizing 75 interviews and two focus group discussions (“FGDs”), conducted with a spectrum of HRDs, and across diverse areas within Burma. This broad scope of research allowed AAPP and BP to identify inter- and intra-sectoral trends across a range of human rights work. The objectives of the Report are to outline the specific risks and challenges that HRDs in Burma face in 2015, and to set out some practical protection mechanisms and policy recommendations that might improve the situation of HRDs. The long term aim is an improvement not only in the lives of the HRDs themselves, but also in the human rights situation in Burma as a whole – to the benefit of all those living in Burma.

**Section 3** first highlights the international legal framework intended to protect HRDs and their legitimate work. It then goes on to set out the domestic legislation that poses a threat to the work or lives of HRDs in Burma – or indeed is actively used to target them – while in the process highlighting high profile cases, reported in the media, which demonstrate how the legislation in question is being used. It finishes by analyzing the role of various important Burma institutions, in the context of the current repression of HRDs and the stifling of their work.

**Section 4** sets out and analyzes the findings of the interviews and FGDs, and groups them into thematic areas. Each sub-section focuses initially upon the nature of the various challenges and risks that different types of HRDs face in Burma, identifying trends and patterns of abuse, dangers and threats – whether real or perceived – before going on to highlight existing and potential protection mechanisms.

**Section 5** then captures all of the practical solutions and policy recommendations, addressed to a variety of key actors and stakeholders, which directly draw upon the experiences and perspectives of the HRDs interviewed. It is hoped that these recommendations will in turn improve the situation of HRDs in Burma, and allow them to better conduct their valuable and legitimate human rights work.

**Section 6** – the Conclusion – states that even in 2015, HRDs in Burma are subjected to a whole range of attacks and abuses, and are therefore in dire and urgent need of protection. If the Burma Government were to start protecting HRDs, and respecting their rights and their valuable and legitimate work, the overall human rights situation in Burma would improve – to the benefit of all people in Burma.

# 1. Introduction

“When working on human rights issues, we have to set aside our personal issues. There are negative effects on our personal, financial and family situations. We live in a culture of fear.”

This sentiment, expressed by one of the HRDs interviewed during the course of the research conducted for the Report, provides a flavor of the nature of the landscape for HRDs in Burma in the lead-up to the 2015 national elections.

Since early 2011, when President Thein Sein's quasi-civilian government came to power following 49 years of brutal military dictatorship, Burma has undergone a series of reforms that gave many hope that the human rights situation would improve. Initially, it appeared that the new government was gradually showing a far more tolerant approach to human rights and civil liberties generally, represented by factors such as the increased international presence in the country and the opening up of domestic media. For it was indeed the case that under the previous military regime, HRDs had to operate completely underground in a context of severe and total repression, whereas, after 2011, they discovered that they were able to conduct their activities more openly, enjoying more space to raise human rights issues both domestically and to the international community.

However, things have not turned out to be as rosy as they seemed four years ago. Testimonies and reports from inside the country paint a very different picture to the new tolerant and free Burma that the Burma Government wants the world to see. As

religious intolerance and hate speech has increased, as development and investment projects have proliferated and the spate of land grabs and forced evictions has reached epidemic proportions, and as the 2015 national elections draw ever closer, the democratic and civil society space within which HRDs can operate has started to contract alarmingly once again – if indeed it ever genuinely increased at all. Those who try to defend human rights, or question the power or narrative of the Burma Government – and their military and corporate backers – now seem to be operating in as dangerous environment as ever.

But two questions are often asked regarding HRDs: (1) what exactly is an HRD; and (2) why are they so important? The United Nations (“UN”) Declaration on HRDs (the “Declaration”)<sup>1</sup> – reiterated by the European Union Guidelines on HRDs<sup>2</sup> – defines HRDs as:

*“[P]eople who, individually or with others, take action to promote or protect human rights. [HRDs] are identified above all by what they do, and it is through a description of their actions and of some of the contexts in which they work that the term can best be explained.”*

1. United Nations, General Assembly, *Declaration on Human Rights Defenders*, A/RES/53/144 (1998), available from <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

2. European Union, General Affairs Council of 8 December 2008 *Ensuring Protection-European Guidelines on Human Rights Defenders*, available from <https://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

The Declaration was approved by the UN General Assembly (the “UNGA”) in 1998,<sup>3</sup> 50 years after the Universal Declaration of Human Rights<sup>4</sup> (the “UDHR”) was declared and 20 years after negotiations on a draft declaration on HRDs commenced. The Declaration represents tangible recognition of all the different types of people working to defend human rights across the globe, and the severe risks and challenges that they face during the course of their work and protecting human rights. While HRDs can of course – and often do – defend their own human rights, it is widely accepted that they must also be defending the human rights of others. HRDs are therefore generally deemed to include people such as: human rights and NGO workers; democracy activists; human rights lawyers; trade union leaders; journalists; land rights activists; women’s rights activists; lesbian, gay, bisexual, transgender, intersex and queer (“LGBTIQ”) rights activists; ethnic and religious minority rights activists; and student and youth activists.

In answer to the second question – why are they so important? – it is hoped that the answer is already becoming clear. The Declaration acknowledges

*“the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms” and “the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms”.*

In other words, the best way of promoting and protecting human rights in any given field, context or country, is to protect the HRDs, so that they themselves can carry out their legitimate work of promoting and protecting human rights. As the Declaration emphasizes, it is the duty and responsibility of the State to protect HRDs, and of course it is the role of the international community to hold States to account if they fail to do so.

The objectives and scope of the Report are outlined in more detail in Section 2 below, but for the moment it suffices to say that it is hoped that the Report goes some way towards outlining the specific risks and challenges that HRDs in Burma face in 2015, and towards setting out some practical protection mechanisms and policy recommendations that might improve the situation of HRDs. The long term aim is, of course, an improvement not only in the lives of the HRDs themselves, but also in the overall human rights situation in Burma as a whole – to the benefit of all those living in Burma.

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3. United Nations, General Assembly, *Declaration on Human Rights Defenders*, A/RES/53/144 (1998), available from <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

4. United Nations, General Assembly, *Universal Declaration of Human Rights*, 217/A(III) (10 December 1948), available from <http://www.un.org/en/documents/udhr/>

## 2. Objective, Scope and Methodology

### 2.1 Objective

The immediate objective of the Report is to provide a comprehensive picture of the current situation of HRDs in Burma, including the threats and risks that they face, as well as concrete, practical, research-based, solution-oriented policy recommendations for HRDs, the Burma authorities and any other relevant actors, to enhance HRDs' access to adequate and realistic protection programs, and to strengthen legislative and judicial protection mechanisms for HRDs in Burma. The medium-term objective is to facilitate the emergence of an enabling environment in which HRDs can operate freely, and carry out their valuable and legitimate human rights work. The long-term objective is to realize an improved human rights situation in Burma, whereby human rights are promoted, respected and protected, particularly those of poor, marginalized and vulnerable groups, including religious, ethnic and social minorities, as well as local grassroots communities.

### 2.2 Scope

75 interviews were organized, using both AAPP's and BP's extensive formal and informal networks, which are spread across Burma and across various sectors. The interviews were conducted with a range of HRDs, including: unionists and labor rights activists, political activists, LGBTIQ rights activists, community leaders, human rights workers, ethnic rights/peace activists, land rights activists, women's rights activists, student and youth activists, environmental activists, lawyers and journalists. This broad scope of research allowed AAPP and BP to identify inter- and intra-sectoral trends across

a range of human rights work. In addition to the interviews carried out with HRDs inside Burma, several interviews were conducted with those living and working along the Thailand-Burma border. Speaking with foreign human rights workers also provided a different perspective on HRD issues, and highlighted specific challenges that they might face.

In addition, two FGDs took place – one targeting student and youth activists, and one involving journalists working in Burma.

Based on a preliminary needs assessment (the "PNA") (see Section 2.3.1 below), AAPP and BP identified differing trends and patterns that have much to do with the location of the HRDs' activities. Thus it proved important also to conduct research across a broad range of states and regions of Burma in order to develop a full picture of the threats that HRDs face, of the protection mechanisms to which they have access, and of the thematic areas in which they work. The range of different regions that AAPP and BP selected also reflected an intention to focus upon two ethnic areas, two Burman regions, as well as the two main cities in the country – Rangoon and Mandalay. Furthermore, the PNA commonly revealed how much safer people considered Rangoon to be than any other geographical area in Burma. Thus, for reasons of safety and security, Rangoon was deemed the best option in terms of gathering a concentration of HRDs together in the same room. The number of different regions has ensured that a meaningful spread of useful data findings has been obtained. The identified areas are:

1. **Irrawaddy Region:** Due to the high incidence of land confiscation and the presence of land rights HRDs fighting for their rights, AAPP and BP predominantly interviewed land rights HRDs, human rights workers and environmental activists in this area;
2. **Magway Region:** Due to the particularly repressive environment for HRDs here, as well as the need to capture the situation in non-urban central Burman areas, AAPP and BP interviewed any HRDs that they could access in this area, but predominantly land rights defenders, journalists, community leaders, student activists and human rights workers;
3. **Kachin State:** Due to the conflict-related human rights abuses and the presence of ethnic Kachin HRDs based in the state capital Myitkyina, AAPP and BP predominantly interviewed ethnic rights/peace activists, environmental rights defenders, women HRDs and lawyers in this area;
4. **Southern Shan State:** The first round of interviews took place in this area – as a pilot trip to test the rigor of the interview questions – and AAPP and BP predominantly interviewed lawyers, environmental rights defenders, human rights workers, youth activists, women HRDs, student activists, political activists and ethnic rights/peace activists;
5. **Rangoon and Mandalay:** Due to the broad range and high concentration of HRDs covering many thematic areas in the two largest cities, AAPP and BP interviewed LGBTIQ rights defenders, political activists, women HRDs, ethnic rights defenders and peace activists, unionists and labor rights defenders, human rights workers, student and youth activists, journalists and lawyers; in addition, some came from several different regions, for example HRDs working in Tenasserim Region (especially Tavoy), as well as those focusing on faith issues in areas such as Arakan State; and
6. **Thailand-Burma border:** When all of the Burma interviews and the FGDs had been completed, AAPP and BP then interviewed Burmese HRDs based in Thailand – as they have a different set of experiences to those who are based solely within the country.

One notable absence from the above list of geographical areas is Arakan State. While acknowledging the grave human rights situation there, the risks to the personal security of both the research team and the HRDs themselves have been very high for the last three years in particular, and no operational strategy could sufficiently mitigate or justify those risks. However, as mentioned in point (5) above, the researchers did conduct interviews in Rangoon with HRDs from Arakan State, as well as from other areas of Burma, such as Tenasserim Region and Karen State.



## 2.3 Methodology

### 2.3.1 The Preliminary Needs Assessment (PNA)

Various *ad hoc* consultations regarding the need for protection mechanisms for HRDs initially took place in 2013. These consultations took place in the form of workshops or informal individual conversations with HRDs conducted by BP and partner organizations. These initial consultations in time gave rise to the Burma Human Rights Defenders Protection Project, conducted by AAPP and BP in 2014-15, of which the Report is the primary output and publication.

The PNA was carried out by two BP staff members between 22-25 November 2014 in Rangoon. The team conducted preliminary interviews with 12 HRDs, who were either the heads or leading staff members of seven different organizations and networks. These 12 HRDs included labor rights defenders, journalists, human rights workers, land rights defenders, youth activists, ethnic rights defenders/peace activists, and women HRDs.

The principal objectives of the PNA were to determine: (1) content – in other words, what kind of report and information HRDs felt would enhance the protection of HRDs in Burma; (2) methodology – in other words, what might be the best ways of conducting the research interviews, including obvious “dos” and “don’ts”; and (3) commitment – in other words, to identify HRDs who would commit to being interviewed for the in-depth research interviews and FGDs, as well as those who would commit to providing logistical support, including mobilizing their

networks to contact further HRDs to take part in the research interviews. The PNA – instrumental in realizing the final research methodology – unearthed a wide range of different expectations and thoughts as to what a report on HRD protection mechanisms might usefully offer, including the following:

#### **Content:**

- **Legal analysis:** the importance of conducting a rigorous legal analysis of the overall legislative framework affecting HRDs, specifically repressive laws used to target HRDs and their work;
- **Definition of HRD:** the importance of determining a definition of HRDs, and, more particularly, identifying the different types of HRDs in the context of Burma – including distinguishing between those who are issue-based and those who work across a variety of issues – as well as the kinds of human rights violations that they face, especially those committed against HRDs in ethnic areas;
- **Assessments:** the importance of assessing the connections between different types of individual HRDs and organizations; of the respective levels and types of risk faced by different HRDs, whether due to the type of human rights work that they carry out or due to geographical area; and of the respective levels and types of risk faced by HRDs before the reform process began in 2011, as well as in its early stages, and more recently in the run-up to the 2015 national

elections, including information as to how many HRDs have been attacked, arrested, sentenced, *etc.*; and

- **Protection mechanisms:** the importance of identifying existing and potential protection mechanisms, for example: the presence of international NGOs (“INGOs”), UN agencies and the media, which could potentially offer a substantial degree of protection to HRDs in Rangoon (although not in other areas); networks and contacts among HRDs, which are currently strong within Rangoon, but weak between Rangoon and more remote areas, not to mention between non-Rangoon areas; and any international and national recognition that an HRD may have received.

### **Methodology:**

- **Data collection and scope of research:** the importance of ensuring that the research is as comprehensive as possible in terms of geographical area, issues and types of HRDs, but also in terms of striking a balance between breadth and depth; of covering not only ethnic areas, but also Burman areas beyond Rangoon and Mandalay, especially rural areas; and of conducting research into any negative impacts upon HRDs’ livelihoods and social positions;
- **Security risk:** the importance of calculating the security risk – areas identified as high risk were: Sagaing Region (particularly the Letpadaung area), Arakan State and Kachin State (due to conflicts and the habitually

negative treatment of HRDs by local authorities);

- **Priority areas:** the importance of ascertaining areas identified as priorities, including Irrawaddy Region and those areas with high risks mentioned above, while Rangoon was noted as the most important area for interviews with labor rights activists and unionists, since industrial zones are concentrated in the Rangoon area;
- **Location for interviews:** the importance of identifying suitable locations for the interviews, for example, HRDs’ offices would be suitable for the FGDs, as that would allow easy access to reference materials, documents and facilities; but of ultimately allowing the HRDs themselves to choose locations for the interviews;
- **Confidentiality:** the importance of keeping the identity of all HRDs taking part in any of the research interviews entirely confidential;
- **Researchers:** the importance of the researchers being Burmese nationals for reasons of security, accessibility and efficiency; and of employing a female researcher for the interviews with women HRDs and LGBTIQ rights defenders so that they feel more comfortable discussing sensitive issues, and of coaching that researcher in asking questions of that nature; and
- **Target audience:** the importance of targeting the Burma Government and the international community in



particular (while some have little faith in the role of the international community, others believe that it is pointless to target the Burma Government since it is flagrantly, intentionally and systematically oppressing HRDs around the country).

### 2.3.2 Research

The research methodology was designed based upon the findings of the PNA outlined above. The research – conducted through January and February 2015 – consisted of 75 one-hour semi-structured interviews with HRDs around the country, across various sectors, including individuals and representatives of civil society organizations and networks. Of the HRDs interviewed, 44 were men, 29 were women, and two identified as “other”. The research also included two thematically-based FGDs.

The research team adopted a more qualitative approach, focusing less on hard statistics or numbers, but rather on patterns identified from people’s experiences and on real or perceived threats. The interviews were therefore semi-structured (See Appendix I for the Interview Questionnaire), with flexibility to delve more deeply into certain issues depending upon the context and the responses given. The two FGDs were by definition even more fluid and flexible, comprising open questions rather than semi-structured questions, albeit with an FGD guide used in the initial stages to guide proceedings (See Appendix II for the FGD Guide). The added value of the FGDs is that they initiated and provoked discussions – and disagreements – about

some key issues, and prompted people to take the lead and justify their answers.

The research team comprised three researchers, all from Burma, one of whom is ethnically Karen and one of whom is female. For certain ethnic areas, having an ethnic nationality researcher was vital due to a likely higher level of trust in a non-Burman researcher. Equally, it was important to have a woman interviewer, not just in terms of women participation in the Report as a whole, but also in order to interview women HRDs, who represented 29 of the total number of HRDs interviewed. Furthermore, while the role of HRDs is to protect the rights of others, they may also be victims of human rights abuses, thus it proved essential to have a female researcher to interview women HRDs, in particular those who work on sensitive issues such as sexual violence, and especially if they have been victims of such violations themselves.

The locations of the interviews were based on input from the interviewees themselves, *i.e.*, where they felt safe and comfortable, whether at an office, someone’s home or in a public place. The first interviews were conducted with two of the research team so as to synergize the interviewing techniques, while the later ones were conducted individually, with different researchers covering different regions. Audio files were shared among the research team so as to synergize their techniques and ensure a consistent standard and level of information.

One further point that should be emphasized is that no HRDs have been named in the Report, because doing so

would only endanger them and their families further given the current political and human rights climate in Burma. So while quotes have been used, they have not been attributed to specific individuals. Furthermore, other than high profile cases cited in the media, the Report has not used identifiable case studies, but has instead analyzed the experiences, activities, threats, and HRD protection mechanisms at a more generic level. Moreover, a comprehensive operational risk analysis was carried out as part of the preparation for the research and the writing of the Report.

In addition to the field research, AAPP and BP have also collated relevant information on HRD issues and protection mechanisms through regular monitoring of a wide range of news media and other publications in the public domain, in both English and Burmese, domestically and internationally, print and digital. Desktop research – including an in-depth analysis of relevant repressive legislative and institutional threats that HRDs face – has been conducted from AAPP's and BP's offices.

As regards the recommendations included in Section 5 below that are legislative in nature – addressed primarily to the Burma Parliament, Burma Government and political parties as actors that are able to instigate legislation – in addition to feeding in the suggestions of the HRDs themselves, AAPP and BP have analyzed the legislative landscape in Burma as it applies to HRDs, and identified areas in which improvements can be made, in other words to what extent legislation might have a positive effect in terms of promoting and

protecting the rights and lives of HRDs in Burma. As regards the non-legislative recommendations – addressed primarily to civil society partners, including NGOs, activists, networks and institutions working in the fields of human rights – AAPP and BP have reviewed and analyzed the findings of the field research and tailored them to that purpose.

Finally, there are organizations based in Burma working towards the development of HRD forums, whereby HRDs are invited to join an HRD network aimed at sharing relevant information and enhancing communication among HRDs, with the objective of increasing physical protection for HRDs. In time, a proactive and reactive HRD protection mechanism and/or fund will be established, so as to provide HRDs with logistical, financial and legal assistance on a case-by-case basis. There are also other civil society and human rights NGOs both international and domestic, working on HRD issues in Burma, with which AAPP and BP collaborate on a regular basis.

### 3. Legislative Framework

This section first highlights the international legal framework that is intended to protect HRDs and their legitimate work. It then goes on to set out the domestic legislation that poses a threat to the work or lives of HRDs in Burma – or indeed is actively used to target them – while in the process highlighting high profile cases, reported in the media, which demonstrate how the legislation in question is being used. It finishes by analyzing the role of the Burma Judiciary, the Burma Parliament, the Myanmar National Human Rights Commission (the “MNHRC”), and the Committee for Scrutinizing the Remaining Political Prisoners (the “CSRPP”) in the context of the current repression of HRDs and the stifling of their work.

#### 3.1 The Declaration

As set out in Section 1 above, the Declaration states (under Article 1): *“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”* Moreover, Article 2 stipulates: *“Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms [...]”*

The Burma Government should therefore be enabling, rather than restricting, the peaceful and legitimate human rights activities of brave, hard-working and principled HRDs. Rather than viewing them as a threat to the country, the Burma Government should see HRDs – and other members of independent

civil society – as a valuable component of the country’s fabric, as a necessary element in the furtherance of Burma’s political or democratic reforms. A country that does not have a vibrant and independent civil society, that restricts civil society space, and which penalizes and criminalizes HRDs and the defense of human rights, is quite simply not on the road to becoming a genuine democracy, and is at odds with international human rights standards and the obligations they place upon the Government.

#### 3.2 Fundamental Freedoms

Article 19 of both the UDHR and the International Covenant on Civil and Political Rights<sup>5</sup> (the “ICCPR”) provide for the right to freedom of opinion and expression for everyone, while Article 20 of the UDHR and Article 22 of the ICCPR provide for the right to freedom of association. Article 20 of the UDHR also provides for freedom of assembly, as does Article 21 of the ICCPR. Article 18 of both the UDHR and the ICCPR provide for freedom of thought, conscience and religion. In addition to the rights to life, liberty and security of person under Article 3 of the UDHR, and the fair trial rights discussed in Section 3.3 below, it is these fundamental freedoms – clearly protected under international human rights law – which HRDs most often see violated during the course of their valuable and legitimate human rights work.

#### 3.3 Fair Trial Rights

Under Article 9 of the UDHR, *“no one shall be subjected to arbitrary arrest, detention or exile.”* Article 9 of the ICCPR expands upon

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5. United Nations, General Assembly, *International Covenant on Civil and Political Rights*, 2200A (XXI) (16 December 1966) available from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

this, saying: “*no one shall be subjected to arbitrary arrest or detention, deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law.*” According to the UN Working Group on Arbitrary Detention (the “WGAD”), UN Resolution 1997/50 considers that deprivation of liberty is not arbitrary if it results from a final decision taken by a domestic judicial instance and which is (a) in accordance with domestic law; and (b) in accordance with other relevant international standards set forth in the UDHR and the relevant international instruments accepted by the States concerned.<sup>6</sup> To enable it to carry out its tasks using sufficiently precise criteria, the WGAD adopted criteria applicable in the consideration of cases submitted to it, drawing on the provisions of the UDHR and the ICCPR as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>7</sup> Consequently, according to the WGAD, deprivation of liberty is arbitrary if a case falls into one of the following three categories:

1. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an applicable amnesty law) (Category I);
2. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by certain articles of the UDHR or, insofar as States parties are concerned, certain articles of the ICCPR (including those

which pertain to the fundamental freedoms) (Category II); or

3. When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the UDHR and the ICCPR, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).<sup>8</sup>

It is beyond the scope of the Report to analyze in any great detail whether any of the HRD cases mentioned in Section 3.4 below would qualify as arbitrary detention, in breach of international law and norms on arbitrary detention. However, given the fact that these case examples generally pertain to instances whereby HRDs are arrested, detained, charged and/or imprisoned for their legitimate exercise of their rights to the fundamental freedoms under the UDHR and ICCPR – particularly the rights to freedom of assembly and expression – it is reasonable to assert that most, if not all, would likely qualify as arbitrary detention under Category II. Furthermore, with respect to cases that have seen grave abuses of fair trial rights – particularly the right to be presumed innocent until proven guilty according to law under Article 11(1) of the UDHR and Article 14(2) of the ICCPR, and the right to a fair and public hearing by an independent and impartial tribunal under Article 10 of the UDHR and Article 14(1) of the ICCPR – it is reasonable to assert that these cases would also likely qualify as arbitrary detention under Category III.

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6. Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, available from <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

7. OHCHR Fact Sheet No. 26.

8. OHCHR Fact Sheet No. 26.

One final judicial consideration is that many HRDs granted amnesty are released conditionally under Article 401 of the Code of Criminal Procedure with outstanding criminal records.<sup>9</sup> This means that they are in a state of limbo and are constantly at risk – and in fear – of being re-arrested and sent straight back to jail without warrant at any time for any violation of existing laws, at the discretion of the executive branch of government, to serve the remainder of their sentences – often exceeding 50 years. Not only is this an abuse of their rights to a fair trial, liberty and to be free from arbitrary arrest or detention, but it also undermines their valuable and legitimate human rights work, as protected by the Declaration (discussed at Section 3.1 above). This in turn creates doubt over the political will of the Burma Government. Many recently released HRDs also face harassment and restrictions of their civil rights, including freedom of movement, such as via the denial of passports. In addition, their lives can be blighted by the negative implications of their status, for example in finding employment.

### 3.4 Repressive Burma Legislation

#### **The Right to Peaceful Assembly and Peaceful Procession Act 2011 (the “Assembly Law”)**

On 14 March 2014, some members of the Burma Parliament and civil society believed that they had succeeded in their campaign to repeal the need for permission to protest

required by the Assembly Law<sup>10</sup> – an illegal restriction on the right to freedom of assembly under Article 20(1) of the UDHR and Article 21 of the ICCPR – in favor of merely notifying the authorities in advance.<sup>11</sup> However, when President Thein Sein signed the amendment on 24 June 2014, only minor, almost cosmetic, amendments had been made.<sup>12</sup>

First, those HRDs who wish to conduct a peaceful assembly or procession must now obtain “*consent*” from the authorities rather than “*permission*”, which makes no difference in practice and is still illegal under international law and norms on the right to freedom of assembly. Second, the notorious Section 18 now imposes a maximum jail sentence of only six months rather than one year for conducting a peaceful assembly or procession without obtaining prior consent from the authorities. Yet, this amendment is of little comfort to those HRDs whose rights – particularly the rights to liberty and not to be subjected to arbitrary arrest or detention – have been violated.

Potentially more significantly though, the amended legislation now removes mention of the authorities’ having the option to deny consent, which would convert the requirement to seek consent into more of a notification requirement, a welcome amendment that would seem to bring the Assembly Law much more in line with international law. Nevertheless, the amended legislation still leaves plenty of scope for the authorities to deny consent, especially as a result of the

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9. *Article 401 of the Code of Criminal Procedure on Suspensions, Remissions and Commutations of Sentences*, available from [http://www.burmalibrary.org/kyawnaing/Laws/Article\\_401\\_of\\_The\\_Code\\_Of\\_Criminal\\_Procedure\(en\).pdf](http://www.burmalibrary.org/kyawnaing/Laws/Article_401_of_The_Code_Of_Criminal_Procedure(en).pdf).

10. *The Right to Peaceful Assembly and Peaceful Procession Act 2011*, available from [http://www.burmalibrary.org/docs15/2011-Peaceful\\_Assembly\\_and\\_Procession\\_Act-en.pdf](http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf).

11. ARTICLE 19, 14 March 2014. “*Myanmar: Need for Permission Dropped from Assembly Law*”. available from <https://www.article19.org/resources.php/resource/37484/en/myanmar:-need-for-permission-dropped-in-assembly-amendment>

12. ARTICLE 19, 27 June 2014. “*Myanmar: Disappointment surrounds amendment to assembly law*”, available from <http://www.article19.org/resources.php/resource/37606/en/myanmar:-disappointment-surrounds-amendment-to-assembly-law>.



requirement that applicants must submit “*in accordance with the rules for consent*”. Furthermore, if the authorities had genuinely wanted to reduce the requirement to one of notification, they would have amended “*permission*” to “*notification*” rather than “*consent*”.

However, regardless of the above considerations, the Burma authorities have continued to use the Assembly Law throughout 2014 and into 2015 to silence HRDs, in violation of international law and norms on the rights to freedom of assembly and expression. One recent and prominent case is that of Nandar Sit Aung, leader of All Burma Federation of Student Unions (ABFSU) who has been charged with 47 counts of Section 18 of the Assembly Law, with a total of 56 charges being levied at him, following his role in the Letpadan student crackdown on 10 March 2015.<sup>13</sup>

Furthermore, in a farcical new development, last year a lone protestor was arrested for protesting in favor of national unity in the capital Naypyidaw.<sup>14</sup> In no way can a lone protestor be described as an “assembly” or “procession”, which must by definition entail a group of people; even the Assembly Law itself defines both an “assembly” and a “procession” as involving “*more than one person*”.

The Burma Government’s reluctance to make necessary amendments to the

Assembly Law in line with international human rights standards and norms, such as the ICCPR, undermines the supposed benevolence and legitimacy of President Thein Sein’s 30 December 2014 amnesty for all HRDs held on Section 18 charges, as well as the integrity of government promises and the “political reforms” thus far. Furthermore, the fact that the Assembly Law is now in force will only serve to legitimize and increase restrictions on the fundamental rights of HRDs to freedom of assembly and expression, in violation of international human rights laws, standards and norms.

### **The Unlawful Associations Act 1908 (the “UAA”)<sup>15</sup>**

The new Association Registration Law 2014 (the “Association Law”)<sup>16</sup> was enacted by the Union Parliament on 25 June 2014; reviewed and amended by President Thein Sein on 9 July 2014; reviewed and endorsed by the Union Parliament on 16 July 2014; and signed by President Thein Sein and officially “gazetted” (*i.e.*, published in an official newspaper) on 20 July 2014. With the enactment of the Association Law, the draconian Law Relating to Formation of Organizations 1988 has been repealed.<sup>17</sup>

Despite the enactment of the Association Law, Section 17(1) of the colonial-era and repressive UAA has continued to be used to subjugate HRDs, most often in the case of ethnic minority groups. Of the current political

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13. AAPP, 2015. *personal conversation*. Nandar Sit Aung

14. *Eleven Myanmar*. Man Arrested for Calling for National Unity on International Peace Day. 22 September 2014. (Online) available from [http://elevenmyanmar.com/index.php?option=com\\_content&view=article&id=7637:man-arrested-for-calling-for-national-unity-on-international-peace-day&catid=44:national&Itemid=384](http://elevenmyanmar.com/index.php?option=com_content&view=article&id=7637:man-arrested-for-calling-for-national-unity-on-international-peace-day&catid=44:national&Itemid=384).

15. *The Unlawful Associations Act 1908*. available from [http://www.burmalibrary.org/docs09/UNLAWFUL\\_ASSOCIATIONS\\_ACT.pdf](http://www.burmalibrary.org/docs09/UNLAWFUL_ASSOCIATIONS_ACT.pdf).

16. *The Registration of Organizations Law (Draft) 2013*. available from [http://www.burmalibrary.org/docs18/2013-Bill\\_on\\_Organization\\_Registration-en.pdf](http://www.burmalibrary.org/docs18/2013-Bill_on_Organization_Registration-en.pdf).

17. The International Center for Not-for-Profit Law, 5 November 2014. *NGO Law Monitor: Myanmar (Burma)*. available from <http://www.icnl.org/research/monitor/Myanmar.html>.

prisoner number, there are three Kachin men imprisoned since 2013 and facing between 5 and 7 years each under Section 17 (1). Their detention and imprisonment exemplifies the way in which Section 17 (1) is used. There are in total 13 political prisoners currently detained under Section 17 (1), serving sentences ranging through 7 years, 56 years and life imprisonment.<sup>18</sup>

### **The Printing and Publishing Enterprise Law 2014 (the “PPE Law”) and draft Public Service Media Law**

In March of 2014, two media laws were enacted: the PPE Law, which was drafted by the Ministry of Information, and the Media Law, which was drafted by the somewhat-independent Interim Press Council.<sup>19</sup> Before its enactment, some welcome amendments were made to the PPE Law, such as abolishing prison sentences, reducing financial penalties for infringements, and removing the prohibitions on criticisms of the military-drafted 2008 Constitution of the Republic of the Union of Myanmar (the “Constitution”) and personal attacks intended to discredit an individual.<sup>20</sup> Furthermore, the general consensus among journalists, HRDs, and political and legal experts, is that the PPE Law represents a huge improvement on the draconian, junta-era 1962 Printers and Publishers Registration Act. In particular, the new legislation is now considered to be

relatively well-drafted, more representative of democratic principles, and most importantly of all, the notorious censorship board has been disbanded.

However, there is still a long way to go, with the Burma Government still maintaining executive control over the press: under the PPE Law, the Ministry of Information will still retain total discretion over the issuance of licenses, as well as the revocation of the license of any publication that it finds has taken any of a number of broadly-defined actions, such as insulting religion, disturbing the rule of law, or harming ethnic unity.<sup>21</sup> Given that any individual or media outlet printing or publishing without registering will be subject to sanctions, the vague law could intimidate journalists and members of the media – particularly editors – to curtail investigative journalism and reporting on sensitive topics such as corruption and abuses of power.<sup>22</sup> This has prompted journalists to criticize the legislation for ushering in a new, subtler form of censorship.<sup>23</sup> Coupled with the requirement for submission of publications to the newly-instituted Copyright and Registration Division for post-publication review, there is real potential for abuse by authorities to curb media independence and freedom,<sup>24</sup> in violation of international law and norms regarding the right to freedom of expression, in particular as

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18. AAPP, political prisoner data 2015. *Political Prisoner Data*. (Online) available at <http://aappb.org/political-prisoner-data/>.

19. *The Irrawaddy*. Burma's Parliament Approves 'Parallel' Media Laws. 5 March 2014. (Online) available from <http://www.irrawaddy.org/burma/burmas-parliament-approves-parallel-media-laws.html>.

20. *Democratic Voice of Burma*. Burma amends controversial publishing law. 13 November 2013. (Online) available from <http://www.dvb.no/news/burma-amends-controversial-publishing-law/34369>.

21. Human Rights Watch, 2014. *Burma: Repression Marks Press Freedom Day*. Press release, 3 May 2014. available from <http://www.hrw.org/news/2014/05/03/burma-repression-marks-press-freedom-day>.

22. Human Rights Watch 2014.

23. Human Rights Watch 2014.

24. The Copyright and Registration Division was instituted after the dissolution of the press censorship board previously known as the Press Scrutiny and Registration Division.





*Unity Weekly Journal Staff  
Copyright: Amnesty International*

protected by Articles 19 of the UDHR and the ICCPR.

First praised as one of the most significant areas of progress in reformist Burma, media freedom has slowed down and backtracked dramatically on reforms made since 2012. Beyond the immediate threat that the enactment of the PPE Law represents, media freedom is facing many challenges and concerns,<sup>25</sup> many of which were mentioned in interviews conducted by BP with journalists,

reporters and staff members working for media outlets in Burma in 2014.

They include: (1) questioning and harassment of journalists by the security agencies in order to intimidate them from publishing reports or articles on certain issues; (2) arrests of journalists under other laws, such as the Penal Code 1861 (the “Penal Code”) and the Official Secrets Act 1923 (the “OSA”) (see below for more detail), or lawsuits against publications, intended to set an example and

25. Burma Partnership, 10 January 2014. *Journalists and Freedom of Speech Under Threat in Burma*. (Online) available from <http://www.burmapartnership.org/2014/01/weekly-highlights-journalists-and-freedom-of-speech-under-threat-in-burma/>

sow fear throughout the industry; (3) increased visa restrictions on foreign journalists, thereby limiting foreign reporting on the country; (4) professional ethics, competence and responsible journalism; (5) the co-option of the previously journalist-comprised Interim Press Council by the Office of President Thein Sein, by means of government appointments, quotas and donations;<sup>26</sup> and (6) self-censorship by some publications, including a tendency to shy away from sensitive topics – for example religious violence, human rights abuses committed by the Burma Army, illegal land evictions and confiscation, and corrupt business interests – and to focus more on uncontroversial issues, such as business or lifestyle.

The Burma Government should undertake to enact a comprehensive media law, which, *inter alia*: (1) fully promotes, protects and respects the right to freedom of expression and a free press in line with international human rights law and norms; (2) issues and revokes licenses on the basis of professionalism, competence and responsible journalism rather than the sensitivity of issues covered; and (3) criminalizes the harassment, intimidation and detention of HRDs and

journalists for conducting their legitimate work. Finally, foreign journalists should not be unfairly targeted with visa restrictions for doing their job and reporting transparently on relevant issues affecting Burma.

## The OSA

The OSA, which makes it unlawful for any person to possess classified information belonging to the state, has been used to judicially harass, detain, sentence and imprison journalists.<sup>27</sup> Indeed, four journalists from *Unity Weekly* journal and the Chief Executive Officer were arrested on 30-31 January 2014 for publishing an article on 25 January 2014 alleging that the Burma Government was using a military facility in Pauk Township, Magway Region, to secretly produce chemical weapons.<sup>28</sup> They were then charged with trespass and releasing state secrets under Section 3/1(a) of the OSA,<sup>29</sup> and sentenced to ten years imprisonment with hard labor on 10 July 2014.<sup>30</sup> Following the defense counsel's appeal on 28 August 2014, the sentences were reduced to seven years on grounds of mitigation, on 2 October 2014.<sup>31</sup> The Supreme Court then rejected their final appeal on 26 November 2014.<sup>32</sup> Such abuses

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26. *Eleven Myanmar*. Press Council (Interim) and Me. 19 August 2014. (Online) available from [http://www.elevenmyanmar.com/index.php?option=com\\_content&view=article&id=7253:press-council-interim-and-me&catid=38&Itemid=361](http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=7253:press-council-interim-and-me&catid=38&Itemid=361).

27. Asian Human Rights Commission, 19 July 201 *Burma: identifying and freeing remaining political prisoners* (Online) available from <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-135-2013>.

28. *Democratic Voice of Burma*. Unity Weekly journalists in court for 'disclosing state secret. 17 February 2014. (Online) available from <http://www.dvb.no/news/unity-weekly-journalists-in-court-for-disclosing-state-secrets-burma-myanmar/37331>.

29. *Democratic Voice of Burma* 2014

30. *The Irrawaddy*. Unity Journalists Sentenced to 10 Years Imprisonment with Hard Labor. 10 July 2014. (Online) available from <http://www.irrawaddy.org/burma/unity-journalists-sentenced-10-years-imprisonment-hard-labor.html>.

31. Burma Partnership, 2 September 2014. *Draconian Sentences of Unity Weekly Journalists Must at the Very Least be Drastically Reduced*. (Online) available from <http://www.burmapartnership.org/2014/09/25-august-31-august-draconian-sentences-of-unity-weekly-journalists-must-at-the-very-least-be-drastically-reduced/>.

32. *The Irrawaddy*. Supreme Court Rejects Appeal of Unity Journalists. 27 November 2014. (Online) available from <http://www.irrawaddy.org/burma/supreme-court-rejects-appeal-unity-journalists.html>.



*Naw Ohn Hla, leading member of the women's wing of the National League for Democracy (NLD) and organizer and participant of the "Tuesday Prayer Group"*  
 Copyright: Steve Tickner / The Irrawaddy

are in violation of international human rights law and norms, specifically HRDs' right to freedom of expression as protected by Articles 19 of the UDHR and the ICCPR, as well as their right not to be subjected to arbitrary arrest and detention under Article 9 of the UDHR, and the right to a fair and public hearing under Article 10 of the UDHR and Article 14 of the ICCPR.

Based on this case, and the severity of the sentences, it seems that the Burma Government may be using the enactment of the new media laws to garner favor with the international community, while still repressing

and severely punishing HRDs under other repressive, colonial-era legislation. Such legislation should be repealed or amended immediately, though a recent proposal to amend it has been rejected and dismissed out of hand, betraying the lack of political will to bring legislation in line with international human rights law and norms.<sup>33</sup>

### **The Penal Code**

Section 505(b) of the Penal Code,<sup>34</sup> which prohibits the inducement of crimes against the state or against public order by means of any statement, rumor or report, is often used in

33. *The Myanmar Times*. Proposal to reform State Secrets Act rejected. 29 September 2014. (Online) available from <http://www.mmtimes.com/index.php/national-news/11798-proposal-to-reform-state-secrets-act-rejected.html>.

34. The Penal Code 1861. available from <http://www.burmalibrary.org/show.php?cat=1860>.



conjunction with Section 18 of the Assembly Law to target HRDs who are legitimately exercising their fundamental rights to freedom of assembly and expression as protected by the UDHR and the ICCPR.

Naw Ohn Hla is one of many HRDs who have been charged under both laws simultaneously. She has been arrested four times for protesting against the notorious Chinese-backed Letpadaung copper mine in Salingyi Township, Sagaing Region, and for organizing prayers for National League for Democracy (“NLD”) leader Aung San Suu Kyi. She was last arrested on 30 December 2014 for leading a protest outside the Chinese Embassy in Dagon Township, Rangoon, against the killing of Khin Win, a 56-year-old female farmer (see Section 4 below).<sup>35</sup> Naw Ohn Hla was charged under Section 505(b) of the Penal Code and Section 18 of the Assembly Law (along with Article 353 of the Penal Code).<sup>36</sup> On 2 April 2015, she was sentenced to four months’ imprisonment under Section 18 of the Assembly Law, for a protest calling for the release of HRDs, including student Phyu Hnin Htwe (see below for more details).<sup>37</sup> Additionally, on 15 May 2015, she was sentenced to four years and four months’ imprisonment under Sections 147, 353, 505(b) of the Penal Code and Section 18 of the Assembly Law, and is currently

detained in Insein central prison, Rangoon, where she faces further charges under Section 18 of the Assembly Law.<sup>38</sup>

The “relentless persecution”<sup>39</sup> of Htin Kyaw under Section 505(b) through 2014 illustrates the urgent need for legislative reform. Htin Kyaw – a beneficiary of the presidential amnesty in December 2013 – is the leader of the Movement for Democracy Current Force (the “MDCF”), a community-based organization that has focused on advocating against land confiscation and in favor of democratization, and the leader of the Myanmar Development Committee. He was also an NLD youth member, but was forced to resign due to pressure from his former employer. Between April and May 2014, he delivered speeches, distributed leaflets, canvassing a total of 11 townships around the city, and held a candlelight vigil in Rangoon on 18 April 2014 calling on the Burma Government to resign.<sup>40</sup> On 5 May 2014, he was arrested by South Okkalapa’s Police Station Commander and Township Director while delivering a speech at Nanduan Market in South Okkalapa Township. According to Zeya Lin of the MDCF, Htin Kyaw was detained in Insein Prison without bail.<sup>41</sup> Since 2007, Htin Kyaw has been arrested eight times, and sentences to a total of 25 years and seven months. Since May 2014 alone, he has been

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35. FIDH, 19 May 2015. *Burma/Myanmar: Arbitrary detention and sentencing of six human rights defenders*. (Online) available from <https://www.fidh.org/International-Federation-for-Human-Rights/asia/burma/burma-myanmar-arbitrary-detention-and-sentencing-of-six-human-rights>.

36. FIDH 2015.

37. FIDH 2015.

38. FIDH 2015.

39. Amnesty International, 10 September 2014. *Myanmar: Authorities must end ‘relentless persecution’ of activist*. (Online) available from <http://www.amnesty.org/en/for-media/press-releases/myanmar-authorities-must-end-relentless-persecution-activist-2014-09-10>.

40. Amnesty International 2015.

41. *Eleven Myanmar*. MDCF Activist Detained for Government Protest. 6 May 2014. (Online) available at [http://elevenmyanmar.com/index.php?option=com\\_content&view=article&id=5984:mdcf-activist-detained-for-anti-government-protest&catid=32:politics&Itemid=354](http://elevenmyanmar.com/index.php?option=com_content&view=article&id=5984:mdcf-activist-detained-for-anti-government-protest&catid=32:politics&Itemid=354).



*Ko Htin Kyaw, leader of the Movement for Democracy Current Force  
Copyright: Robert San Aung*

sentenced to a total of ten-and-a-half-years' imprisonment with hard labor under Section 505(b) of the Penal Code. In addition, he was sentenced to 10 months' imprisonment under Section 18 of the Assembly Law, and is now serving an 11-year-and-four-months' sentence with hard labor in Insein Prison.<sup>42</sup>

Another high profile case involving Section 505(b) of the Penal Code involved five journalists. On 7 July 2014, the *Bi Midday Sun* published a statement by the MDCF that claimed that NLD leader Aung San Suu Kyi and ethnic leaders had been elected as an

interim government.<sup>43</sup> On 7 and 8 July 2014, Special Branch police arrested Kyaw Zaw Hein, Win Tin and Thura Aung in Rangoon, and they were held without access to a lawyer or to their families, before being indicted under Section 505(b) of the Penal Code.<sup>44</sup> On 16 July 2014, Yin Min Htun and Kyaw Min Khaing, as well as Kyaw Min Khaing's wife, were then arrested in the Thai border town of Mae Sot by Thai authorities, and handed over to the Burma authorities. Kyaw Min Khaing's wife was later released due to a lack of evidence against her.<sup>45</sup> Although originally charged

42. *The Myanmar Times*. Jail Time Builds Up for Outspoken Activist. (Online) 12 September 2014. available at <http://www.mmmtimes.com/index.php/national-news/11625-jail-terms-near-10-years-for-activist.html>.

43. International Federation of Journalists, 14 July 2014. *Nine Journalists Imprisoned and Detained in Myanmar*. (Press release) available from <http://www.ifj.org/nc/news-single-view/backpid/51/article/nine-journalists-imprisoned-and-detained-in-myanmar/>.

44. *Radio Free Asia*. Myanmar Sentences Five Reporters to Two Five Year Jail Terms. 16 September 2014. (Online) available from <http://www.rfa.org/english/news/myanmar/sentences-10162014190705.html>.

45. *The Irrawaddy*. Thailand Arrests 3 in Burma Newspaper Trial. 21 July 2014. (Online) available from <http://www.irrawaddy.org/burma/thai-arrest-hand-3-burma-newspaper-trial.html>.

under Section 5(j) and (d) of the Emergency Provisions Act, on 4 August 2014 they were charged under Section 505(b) of the Penal Code.<sup>46</sup> On 16 October 2014, the five were sentenced to two years' imprisonment at Pabedan Township Court and are currently detained in Insein Prison.<sup>47</sup>

Although the release of HRDs is always an event to be celebrated, this cycle of arrest, detention and release of HRDs on conditional presidential amnesties fails to address the underlying conditions that lead to their incrimination. Furthermore, this cycle illustrates the inadequacy of the current legislative and judicial system to protect HRDs' fundamental rights to freedom of expression and assembly in Burma. In order to break this cycle, and enter a period in which HRDs are free to express themselves without fear of government reprisal, reform of the Penal Code in line with international law and norms is urgently required. In particular, Section 505(b) should be repealed on the grounds of the potential for abuse posed by dangerously vague terms such as "*crimes against the state*" and "*public order*", as well as for its violation of the rights to freedom of assembly, association and expression as provided for by the UDHR and the ICCPR.

Section 500 stipulates a prison sentence for criminal defamation, in contravention of

international law and norms on the right to freedom of expression, as protected by Articles 19 of the UDHR and the ICCPR. Moreover, General Comment 34 of the Human Rights Committee (CCPR/C/GC/34)<sup>48</sup> calls for the decriminalization of defamation, as does the report of the UN Special Rapporteur on promotion and protection of the right to freedom of opinion and expression (A/HRC/20/17).<sup>49</sup> Nevertheless, in late 2013, Eleven Media Group journalist, Naw Khine Khine Aye Cho, also known as Ma Khine, was sentenced to three months in prison under charges of defamation (as well as trespass and abusive language) for investigating a story on the illegal trade in pirate video rentals. Subsequently, a protest against her detention was held by Myanmar Journalists Network in Rangoon.<sup>50</sup>

Furthermore, other standard criminal charges under the Penal Code, such as trespass (Article 447), vandalism (Article 427), and kidnapping and abduction (Articles 359-368), are increasingly being used to target HRDs. Despite having been released in the December 2013 presidential amnesty, land rights activist Thaw Zin was arrested on 11 February 2014 and charged on 24 March 2014 for trespass under Article 447 of the Penal Code.<sup>51</sup> In addition to being tortured in custody, Thaw Zin was sentenced to 15 months' imprisonment in total, including three months' imprisonment for trespass. His "crime" was

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46. AAPP, 2014. Political Prisoner Profile: BI-Midday Sun Journal. (Online) available from <http://aappb.org/wp-content/uploads/2014/05/Bi-Mid-Day-Sun-Journal-Case.pdf>.

47. AAPP 2014.

48. United Nations, Human Rights Committee, General Comment No.34: *Article 19: Freedoms of Opinion and Expression*, 102nd session (12 September 2011), available from <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

49. United Nations, General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/24/17 (4 June 2012), available from [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17_en.pdf).

50. *Eleven Myanmar*. Journalists Stage Protest Against Ma Khine Prison Sentence. 8 January 2013. (Online) available from [http://www.elevenmyanmar.com/index.php?option=com\\_content&view=article&id=4665:journalists-stage-protest-against-ma-khine-prison-sentence&catid=44&Itemid=384](http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=4665:journalists-stage-protest-against-ma-khine-prison-sentence&catid=44&Itemid=384).

51. *Democratic Voice of Burma*. Letpadaung activist Thaw Zin detained. 11 February 2014. (Online) available from <https://www.dvb.no/news/politics-news/latpadaung-activist-thaw-zin-detained-burma-myanmar/37099>.

to help local villagers defend their land rights and protest against the Letpadaung copper mine.<sup>52</sup>

Land confiscation issues have not gone away, nor are they even showing signs of abating. In fact, as investment in Burma increases, they are only getting worse. The relationship between the Burma Government and private companies is such that the rights of farmers and villagers who reside on the land are considered secondary to the need for investment and development in Burma. The old military and government ties to big business have resulted in an endemic, country-wide scourge of illegal forced land evictions and confiscations in favor of use by foreign investment companies or the Burma Army. The extent of this problem is outside of the scope of the Report, but is an important factor in the ever-increasing number of land rights defenders being arrested and imprisoned: those who protest against land rights abuses – often for re-plowing their confiscated land or for causing damage to fences and barriers preventing them from entering their farmland – frequently feel the full force of the law. The above-mentioned charges account for a large number of those land rights defenders arrested, sentenced and imprisoned.

Even being associated with supporting land rights defenders and their families has caused problems for individuals. In another recent case, Phyu Hnin Htwe, a student activist and female member of the All Burma Federation of Student Unions (the “ABFSU”) was arrested on 13 September 2014 on trumped-up charges of kidnapping and abduction, relating to an incident that took place on 18 May 2014.<sup>53</sup> Phyu Hnin Htwe was charged along with six others for the kidnapping of the two Chinese employees of the Myanmar Wanbao Mining Copper Limited (“Wanbao”), the main investor in the Letpadaung copper mine project.<sup>54</sup> She was charged under Section 364 of the Penal Code (Kidnapping), Section 368 of the Penal Code (Aiding and Abetting a Kidnapping), and Section 512 of the Code of Criminal Procedure (Evidence Submitted Resulting from a Failure to Appear in Court) and sent to Monywa Prison.<sup>55</sup> She was then released on 15 October 2014, with all charges against her dropped after a hearing on 13 October 2014.<sup>56</sup>

This judicial harassment was a direct result of her legitimate human rights work. In other words, simply by being a prominent member of the ABFSU and being willing to support and provide assistance to farmers and their families who have been displaced by the copper mine project, she was subjected to

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52. FIDH, 17 October 2014. Burma: Release of Mr. Thaw Zin. (Online) available from <https://www.fidh.org/International-Federation-for-Human-Rights/asia/burma/16261-burma-release-of-mr-thaw-zin>.

53. *The Irrawaddy*. Villagers, Activists Claim Innocence of Student Charged in Chinese Workers’ Kidnapping. 22 September 2014 (Online) available from <http://www.irrawaddy.org/burma/villagers-activists-claim-innocence-student-charged-chinese-workers-kidnapping.html>.

54. *The Irrawaddy* 2014.

55. FIDH, 20 October 2014. *Burma: Release of Ms. Phyu Hnin Htwe*. (Online) available from <https://www.fidh.org/International-Federation-for-Human-Rights/asia/burma/16267-burma-release-of-ms-phyu-hnin-htwe>.

56. FIDH 2014.





Protest against the Letpadaung copper mine project  
Copyright: Burma Partnership

unjust and prejudiced charges, and illegal and arbitrary detention,<sup>57</sup> which fundamentally undermined her ability to conduct her legitimate and valuable human rights work.

Existing repressive laws – including those listed above, as well as others highlighted by Tomas Ojea Quintana, the former Special Rapporteur on the Situation of Human Rights in Burma (A/HRC/22/58),<sup>58</sup> such as the Electronic Transactions Law 2004, the Emergency Provisions Act 1950, and the State Protection Act 1975 – should be reviewed, amended or repealed to ensure that all laws

in Burma that negatively affect HRDs and their work are in full compliance with international human rights law and norms, particularly the UDHR and the ICCPR.

### 3.5 Institutional Reform

#### The Burma Judiciary

The Burma Judiciary is politically pliable and lacks independence, competence, and transparency. As such, there is a worrying lack of effective and accessible redress mechanisms, judicial or otherwise, within

57. Burma Partnership, 23 September 2014. *Arrest of Student on Trumped-up Charges is a Damning Indictment of Justice in Burma*. (Online) available from <http://www.burmapartnership.org/2014/09/arrest-of-student-on-trumped-up-charges-is-a-damning-indictment-of-justice-in-burma/>.

58. United Nations, Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana, A/HRC/22/58* (6 March 2016) available from [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.58\\_AUV.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.58_AUV.pdf).

Burma, as seen from the various cases of judicial harassment and arbitrary detention of HRDs highlighted throughout the Report. Victims have little to no meaningful means of seeking redress for the human rights violations that they have suffered, and the Burma Judiciary is increasingly used as a tool to silence HRDs and to stifle civil society and democratic space in Burma.

It is important to note that, as well as using overtly “political” charges under controversial and repressive legislation, such as Section 18 of the Assembly Law, and Article 505(b) of the Penal Code, the Burma authorities have started employing a different tactic to implement their strategy of repression and restriction of people’s basic rights. Increasingly, the authorities are using fabricated, trumped-up charges under standard criminal provisions in the Penal Code. In so doing, it can re-label HRDs “criminals”, in the hope of avoiding the condemnation of the international community.

However, such a tactic relies upon a compliant and corrupt judiciary. As the laws themselves improve, albeit very slowly, and as the authorities increasingly shy away from using more controversial, repressive legislation, it will be more important to the Burma Government to ensure that the Judiciary will do its bidding. In doing so, the Judiciary is conspicuously failing to uphold international human rights law and norms, especially as regards the fundamental freedoms and fair trial rights, particularly the right not to be subjected to arbitrary detention, as well as the right to be presumed innocent until proven guilty, and the right to a fair and public hearing by an independent and impartial tribunal, as protected by the UDHR and the ICCPR.

## **The Burma Parliament**

Despite the much publicized political reforms, including the establishment of the Burma Parliament in 2011, Burma continues to enact legislation that is not consistent with international human rights law and norms, particularly as regards the fundamental freedoms, and fails to repeal repressive laws that remain on the statute books. Moreover, there has been very little movement towards signing and ratifying the raft of international human rights covenants – including the ICCPR and its Optional Protocols – which would incorporate international human rights principles into domestic law, and thereby provide sorely-needed protection for HRDs and their families.

It is beyond the scope of the Report to conduct a thorough analysis of the workings of the Burma Parliament, but it is revealing to dwell once again on the process concerning the amendments to the notorious and repressive Assembly Law, as discussed at Section 3.4 above: despite the fact that some Members of Parliament believed in March 2014 that they had succeeded in amending the Assembly Law, it turned out that the final version enacted in June 2014 had retained the substance of the provision, thereby entirely undermining the parliamentary process. Suffice it to say then that the Burma Parliament still has a long way to go in terms of competence, transparency and independence.

However, as argued above, as the Parliament finds its feet, matures, and enacts legislation that is more consistent with international human rights standards, the Burma Government is likely to prefer the use

of the judiciary – rather than the legislature – as a tool of repression to target HRDs.

Thus, both the legislature and judiciary are sorely in need of urgent and drastic reforms, so that they can function independently of the executive, and reflect not only the principle of the separation of the three branches of government, but also the full range of human rights principles, as protected by international law and norms. The international community must continue to apply pressure on the Burma Government, so that these reforms are made, to the benefit of HRDs and all peoples and communities in Burma.

### **The Myanmar National Human Rights Commission (MNHRC)**

The MNHRC has so far failed to fill the judicial gap and offer an alternative means for people to access justice. The objective of the MNHRC, established on 5 September 2011, was to promote and safeguard the fundamental rights of citizens in accordance with the Constitution. However, Win Mra, Chairman of the MNHRC, clearly stated in an interview that the MNHRC would not investigate human rights abuses in ethnic conflict areas.<sup>59</sup> Moreover, it would not have the mandate to investigate abuses committed before its establishment, while it could not

undertake complaints of cases of human rights abuse that were already being investigated by the police.<sup>60</sup> Above all, with so many of the MNHRC Commissioners government-appointed or government-aligned, in no way can the MNHRC be said to be an independent or effective mechanism, in line with the UN “Paris Principles” – the international standards for national human rights institutions.<sup>61</sup> Given that the MNHRC has thus far failed to produce satisfactory results in the investigations they have undertaken, fears are proving to be well-founded that the body will have little to no effect on the human rights situation.<sup>62</sup> An effective MNHRC would act as a fundamental deterrent to those parties perpetrating human rights abuses against HRDs in Burma, so the outlook is therefore increasingly gloomy as regards judicial reform and access to justice in Burma.

### **The Committee for Scrutinizing the Remaining Political Prisoners (CSRPP)**

President Thein Sein announced the creation of the CSRPP on 7 February 2013.<sup>63</sup> On 15 July 2013, he then gave a verbal commitment to British Prime Minister David Cameron that, with the CSRPP’s help, all political prisoners in Burma would be released by the end of 2013.<sup>64</sup> Following releases of

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59. Burma Partnership, 2015. *MNHRC Monitor*. (Online) available from <http://www.burmapartnership.org/issues/nhrc-monitor/>.

60. Burma Partnership 2015.

61. General Assembly Resolution 48/134, *national institutions for the promotion and protection of human rights*, A/RES/48/134 (20 December 1993), available from <http://www.un.org/documents/ga/res/48/a48r134.htm>.

62. For a recent and more detailed review of the MNHRC and its flaws, see: “Burma: All the President’s Men” (the “MNHRC Report”), Burma Partnership and Equality Myanmar, September 2014, <http://www.burmapartnership.org/wp-content/uploads/2014/09/All-the-Presidents-Men1.pdf>, as well as: “NGOs Slam Performance of National Human Rights Commission”, The Irrawaddy, 25 September 2014, <http://www.irrawaddy.org/burma/ngos-slam-performance-national-human-rights-commission.html>, for a brief analysis of the announcement of President Thein Sein’s Office – on the same day as the launch of the MNHRC Report – that it had replaced several members of the Commission – without consultation with civil society.

63. *The Global New Light of Myanmar*. Committee to be Formed to Grant Liberty to Remaining Political Prisoners. 7 February 2013. (Online) available from <http://www.networkmyanmar.org/images/stories/PDF13/NLM-070213.pdf>.

64. *Democratic Voice of Burma*. Thein Sein pledges to free all political prisoners by end of year. 16 July 2013. (Online) available from <http://www.dvb.no/news/politics-news/thein-sein-pledges-to-free-all-political-prisoners-by-end-of-year/> 29926.

political prisoners throughout 2013 – culminating in two “final” releases on 11 December (41 freed)<sup>65</sup> and 31 December (16 freed),<sup>66</sup> and a Presidential Pardon Order Number 51/2013, issued on 30 December 2013, which pardoned those imprisoned, charged or under investigation for a variety of controversial “political” offenses<sup>67</sup> – the Burma Government claimed that all political prisoners in Burma had been released.<sup>68</sup>

The international community took these actions as a demonstration of President Thein Sein’s commitment to ensuring political freedom, respecting human rights and the role of HRDs, and establishing the rule of law in Burma. However, the process was hampered at the outset by a failure to reach a uniform agreement or ratification as regards a definition of “political prisoner”, which allowed the Burma Government significant leeway in terms of detaining people whom it claims are not “political prisoners”. Furthermore, dialogue between civil society and government representatives within the committee broke down dramatically in 2014. By the time it was reconstituted in January 2015, the CSRPP had failed to achieve the goals set for it on its inception. The failure of this process can be traced back to a lack of government will to genuinely commit to the CSRPP’s aims, and betrays the fact that it represented nothing more than a smokescreen and political tool to garner international favor.

The newly constituted Prisoner of Conscience Affairs Committee (the “PCAC”) has not yet even held its first meeting or established its organizational mandate, and the issues that undermined the CSRPP look set to hamper this new process from the start. Without an improved attitude from the Burma Government, and some substantive, systemic changes being made, the PCAC will stall and fail to achieve its aims. Furthermore, the involvement of civil society is crucial to ensuring that human rights and the fundamental freedoms are respected. Finally, the PCAC requires much closer scrutiny by the international community, which is still demonstrating a worrying degree of faith in the Burma Government’s statement as regards the issue of political prisoners. The same lack of scrutiny and interest was evident when the CSRPP was disbanded and reconstituted in its current form. Without an effective and independent PCAC, there will be no mechanism to fight for the freedom of HRDs in Burma, or to protect and preserve the wider democratic and civil society space in the country. The ongoing arrest, detention, charging and imprisoning of HRDs further supports this conclusion.

Another criticism of the Burma Government’s policy towards political prisoners is that it releases some, while arresting others. This “revolving door” policy ensures that Burma’s jails are in no danger of being put out of business: a revolving door policy is not the same as opening the doors.

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65. *The Irrawaddy*. Burma Releases 41 More Political Prisoners. 11 December 2013. (Online) available from <https://www.dvb.no/news/burmese-president-pardons-all-remaining-political-prisoners-burma-myanmar/35635>.

66. *Democratic Voice of Burma*. Burmese president pardons all remaining political prisoners. 31 December 2013. (Online) available from <https://www.dvb.no/news/burmese-president-pardons-all-remaining-political-prisoners-burma-myanmar/35635>.

67. The Republic of the Union of Myanmar, President Office, 30 December 2013. (*Order No. 51/2013*) available from <http://myanmarpresidentoffice.info/en/?q=briefing-room/news/2014/01/02/id-3129>.

68. *The Irrawaddy*. Remaining Political Prisoners Committed Other Crimes: Govt. 3 November 2015. (Online) available from <http://www.irrawaddy.org/burma/remaining-political-prisoners-committed-crimes-govt.html>.



Indeed, since the end of 2013 amnesties, with the eyes of the world no longer so focused on the political prisoner issue, and with this year's landmark national elections now only a few months away, the "revolving door" policy has been re-activated with a vengeance.

President Thein Sein's statement that no more political prisoners remained at the end of 2013<sup>69</sup> did little to improve government relationships with civil society or the public. Nor did it encourage the idea that the Burma Government was fully committed to the release of all political prisoners, or to people's enjoyment of the fundamental freedoms –

especially civil and political rights – given that there was ample evidence to the contrary. At the time of President Thein Sein's statement, AAPP held records of 30 political prisoners still imprisoned, a number that steadily increased throughout 2014.<sup>70</sup> Furthermore, as of 18 June 2015, at least 164 political prisoners have now been sentenced and are languishing in jail.<sup>71</sup> Furthermore, in 2015 alone, 210 have been arrested and detained, and 64 sentenced for conducting legitimate political and HRD activities, or for standing up against social and economic injustice, with around another 438 awaiting trial on various charges, 121 from a prison cell.<sup>72</sup>

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69. The Irrawaddy 2015.

70. The Irrawaddy 2015.

71. Latest political prisoner numbers available at: <http://aappb.org/political-prisoner-data/>

72. Latest political prisoner numbers available at: <http://aappb.org/political-prisoner-data/>

## 4. Research Findings and Analysis

This section sets out and analyzes the findings of the interviews and FGDs conducted, and groups them into thematic areas. Each sub-section focuses initially upon the nature of the various challenges and risks that different types of HRDs face in Burma, identifying trends and patterns of abuse, dangers and threats – whether real or perceived – before going on to highlight existing and potential protection mechanisms. The experiences and perspectives of the interviewees recorded here then directly feed into the main policy recommendations proposed in Section 5 below. It is hoped that these recommendations will in turn improve the situation of HRDs in Burma, and allow them to better conduct their legitimate and valuable human rights work – as protected by international human rights laws and norms.

### 4.1 Judicial and Legislative Harassment

The laws generally used to target, arrest, detain, imprison and silence HRDs have been discussed in greater detail at Section 3.4 above. The Burma Government uses repressive legislation as tools of oppression and control, failing to reflect basic international standards regarding the fundamental rights to freedom of expression, association, or peaceful assembly. Any positive, human rights compliant legislation tends to suffer from problems of enforcement and implementation.

According to many HRDs interviewed, the key to ensuring a safe environment for HRDs in Burma is a complete overhaul of the structure and operation of the judicial and legislative systems. Reform of the judiciary and the MNHRC, the repealing of laws used

to arrest HRDs, and the enactment and enforcement of a set of laws aimed at defending the rights of HRDs themselves, are all key changes which were explicitly desired by the HRDs interviewed and which were stated to constitute the main requirement to effect real, substantive democratic change in Burma. As one HRD commented:



*As things are, it is practically impossible to depend on the [Burma] Parliament and [MNHRC]. Human rights have to be protected by laws that comply with international standards. Instead, even journalists are beaten in this country. Therefore, the protection of human rights needs to be enshrined in law. For now, it is almost impossible, since many of the MPs have themselves violated human rights: they are afraid that they will be punished.*



The majority of HRDs interviewed considered the Assembly Law to be oppressive to their basic human rights, and said that they viewed such legislation as a government tool to control and subdue the people. One Tavoyan HRD working on land rights issues described the process of applying to protest:

*“Farmers, laborers and students are allowed to organize themselves, but only under government control,*

*which is not what we want. We can stage protests, however we need to receive permission. Therefore, the [Burma] Government is still in total control despite the changes to the law.”*

Although most HRDs stated that they do not fear jail, they recognize that it is an unfortunate reality. Many were aware of friends and colleagues being detained under Section 18 of the Assembly Law and 505(b) of the Penal Code. Most HRDs who had already been imprisoned emphasized how prepared they felt to return there – an indictment of the degree to which they experience the threat of arrest and how imminent and real that possibility is for them. Any such judicial and/or legislative harassment is a direct violation of HRDs’ right not to be subjected to arbitrary arrest or detention under Article 9 of the UDHR.

Land rights defenders have suffered disproportionately from judicial and legislative harassment, and they generally pointed the finger at the Burma Army’s prominent role in most land confiscations and forced evictions for reasons of expanding their territory. However, some of the most egregious human rights violations – including widespread arrests, extrajudicial killings and other violence – have been perpetrated against HRDs when the Burma Army, police and security forces have been deployed on behalf of large foreign investment companies to quell protests against land confiscations and forced evictions.

During the FGD involving journalists, many highlighted the continuing threat of arbitrary arrests from various areas of

authority, including the Myanmar Peace Center (the “MPC”):

*“We were threatened by the MPC: they took pictures of us talking to ethnic leaders and ‘joked’ that we could be arrested under [Section] 17(1) [of the UAA]. But we know it’s not a joke. When we started working with the MPC, getting information from them, they took mug shot style pictures of us, and we quarreled with them.”*

The lack of any legal protection from judicial harassment is a real problem, as highlighted by one journalist:

*“By law, we’re allowed legal representation if something happens. Some journalists like those in the Unity [Weekly] or Bi [Midday Sun] cases, even though they were allowed legal representation, that’s it. Other than getting lawyers, they couldn’t do anything. The authorities do whatever they want. That is the situation, the degree of legal protection we have right now.”*

In addition to implementing personal security measures, many HRDs view their own informal networks and social media as the best protection against judicial and legislative harassment, as it allows them the possibility of exposing any arrests, thereby attracting the attention of the international community and furthering campaigns for the freedom of those



arrested, detained or imprisoned. One HRD reflected:

*“Even though I am doing my work officially or openly, the [Burma] Government might arrest me on some kind of set-up. If something happens to me, my local friends and networks will know and they will raise awareness. I believe that this is the best way to spread the word, and to protect each other through networks and sharing information.”*

Engaging in civil society forums is an excellent way to build relationships and overcome the mistrust and insecurity that was raised in most interviews. In addition, information sharing and support networks can be useful tools in protecting people, particularly regarding arbitrary arrests and unlawful detention.

## 4.2 Legal Aid and Access to Justice

Legal aid is a particularly serious issue, and any denial thereof violates the fundamental right of any HRD (or indeed anyone) to “*an effective remedy by a competent national tribunal for acts violating the fundamental rights granted by the constitution or law*” under Article 8 of the UDHR. Without professional legal support, it is difficult for HRDs to take significant steps towards asserting their rights. One HRD working in Shan State said:

*“There should be legal support because the majority of [land rights defenders] do not know anything about legal issues.*

*Someone should teach us about rights, legal issues and regulations. It's better for us if we receive trainings about protection. We have no danger regarding our lives, but we do need to deal with legal issues.”*

However, this legal support is not so easy to provide, particularly as the lawyers who undertake HRD cases face similar persecution from the Burma Government and authorities to the HRDs who are under threat of legal action and whom they are defending – such as land rights defenders, LGBTIQ rights defenders and women HRDs, students, union leaders, journalists, and so on. In other words, such lawyers must also be seen as HRDs, since they are defending other HRDs’ right to a fair and public hearing by an independent and impartial tribunal under Article 10 of the UDHR and Article 14 of the ICCPR, and therefore also indirectly defending a plethora of other human rights. Several lawyers, who work on a diverse range of issues with HRDs all around Burma, were interviewed as part of the research process.

One lawyer working in Kachin State said that although he has political protection, there is little to no legal or judicial protection available, so that others who do not have his political connections face a much greater risk in trying to represent HRDs:

*“To my mind, even in criminal cases, the law barely provides any protection, let alone in politically-motivated cases. I truly doubt that the judges follow due process or observe fair trial rights in politically-motivated cases. Where there*

*is protection, it is political rather than legal. They know that I'm a lawyer who has a political background, and that I have experience of youth community work, plus I have political and CSO connections behind me, so they are careful."*

The lack of respect for fair trial rights that lawyers have to operate under places a great psychological and financial strain on them, with the cost of mounting a defense in a human rights case often far beyond the reach of the HRD in question, especially when, as is often the case, long expensive trials are held in courts far removed from the home of the HRD. The costs therefore fall mostly upon the lawyers and their networks, as one lawyer HRD describes:

*"Sometimes I provide [free] legal aid for [HRDs] as they can't face lengthy trials due to financial constraints, can't go to courts far away from where they live, or can't cope with the situation. In particular, they can't earn money to survive if they have to attend numerous trials. In that case, I feel really sorry for them and feel frustrated about the situation."*

The reality of the situation is that lawyers are working within a highly corrupt and unjust judicial system, and nearly all lawyers interviewed declared having no trust in it. Severe challenges and abuses – such as harassment, removal of licenses and imprisonment – all derive from this corrupt, politically-compliant system. If lawyers are ever to operate freely and defend basic human

rights, then it will be as a result of a much broader overhaul of the entire judicial system. One senior lawyer who has defended several high profile HRD cases gave the following verdict on the current state of the judiciary:

“

*Only 0.01 per cent [of cases] are free. The whole judicial system is under the control of the [Burma] Government. The recent events at the Letpadan court indicate that there is no rule of law. Students were summoned at night instead of during official working hours. It is clear how corrupt the judicial system is. People not only dislike the system, they actively hate it. People don't receive any protection from the laws, and the judges ignore them in court.*

”

Those interviewed stated that the most significant obstacle to their work was the fact that there is no independent judiciary, no rule of law, with the authorities free to harass, arrest and imprison anyone they so wish with total impunity. Burma is quite simply not a safe environment for HRDs to work in, despite government assertions that the country is steadily moving towards a free, open and democratic society. When asked how they feel about the current situation in the country for HRDs, most interviewees were of the opinion that some changes were made after 2011, but that they have mostly turned out to be disingenuous, with the reality being that HRDs still work in very dangerous conditions.

Protection mechanisms and safety precautions are designed to provide HRDs with as much security as possible during the

course of their work. The reason that these processes need to be implemented, however, is that the complete lack of rule of law in Burma ensures that they are afforded absolutely no legal protection whatsoever. Of the 75 individuals conducted, 98 percent of them stated that they had little to no faith in the judicial system, with the only interviewee who answered this question positively having repeatedly evaded arrest and at the time of speaking on the run from the security forces!

The fact that those in positions of power are perpetrating all manner of human rights abuses on all types of HRDs, especially land rights and environmental rights defenders, and especially in rural areas, is a damning indictment of the degree of protection afforded to HRDs in Burma. HRDs generally have no recourse to justice, and moreover are unable to establish consistent support in their communities because of prejudices encouraged by the local authorities (see below for more detail). While rule of law and judicial reform is a wider issue pertaining to all areas of human rights in Burma, a more vocal and physical international presence in these rural areas is seen as a short-term solution to providing HRDs with increased personal security while they conduct their legitimate human rights work.

The overriding opinion of the HRDs interviewed is that they are not protected by the courts of Burma, and that the judiciary is part of a biased and corrupt system. The complete lack of rule of law and the urgent need for reforms is apparent throughout the interviews, with 71 percent of HRDs recognizing that without total reform of the judiciary, and the genuine establishment of the rule of law, whereby perpetrators of human rights abuses are held accountable, there will

not be substantive and lasting change in Burma.

Many HRDs revealed that they would like to see mechanisms and bodies that protect the basic rights of Burma's people. The MNHRC has so far conducted several supposedly independent investigations into human rights violations, with the results being hugely unsatisfactory. It has done little to answer the demands of people for an independent body to investigate human rights abuses, as described by a Kachin-based lawyer:

*"We are thinking about asking the very bodies committing heinous human rights violations to support human rights work or to respect human rights? No way. The MNHRC should be a genuinely independent body, and work for the people not for the [Burma] Government."*

Any reform of the MNHRC will need a reconstitution of its membership, as pointed out by several HRDs:

*"The vice-chairman of MNHRC, Sitt Myaing, is from the former military regime. It will be better if the MNHRC is independent rather than always having people from the former military regime in new institutions. Otherwise it is difficult to trust these bodies. The [Burma] Government should allow them to be independent and also empower them."*

A truly independent national human rights commission, which complies with the UN Paris Principles and which has real clout and authority, and which is able to investigate human rights violations perpetrated across Burma, without limitations, would be a hugely positive step. However, it remains to be seen exactly how such a body would go about sanctioning the perpetrators. The key point made by almost every HRD interviewed is that overall judicial reform is a key step towards protecting HRDs and ending human rights abuses.

### 4.3 Threats to Personal Security: Extrajudicial Killings, Disappearances and Violence

The risk of extrajudicial killings – the most severe human rights violation – is something that all HRDs in Burma have to contend with. Many HRDs highlighted extrajudicial killings, exacerbated by almost total impunity, as a grave risk that is part of a wider strategic attack on HRDs.

The murder of journalist and HRD Aung Kyaw Naing (a.k.a. Par Gyi) while in custody of the Burma Army in Mon State, on 4 October 2014, is a salient case in point. Par Gyi was in Mon State to cover a story about fighting between the Democratic Karen Benevolent Army (the “DKBA”) and the Burma Army, and was detained in Shwewachaung Village,

Kyaikmayaw Township, on 30 September 2014 by local police and then transferred to the custody of Burma Army Light Infantry Battalion 208.<sup>73</sup> He was accused of being a member of the Klohtoobaw Karen Organization, the political wing of the DKBA. The Burma Army later claimed that he was shot while trying to escape, however the injuries found on his body during the autopsy contradicted that version of events.<sup>74</sup> Prior to working as a freelance journalist, Par Gyi was a political activist and a member of Aung San Suu Kyi’s personal security during the 1988 national democratic uprising and the ensuing election campaign in 1990. A military court acquitted the two soldiers accused of Par Gyi’s murder on 8 May 2015, and the transfer of the case to a civilian court ended with no one found culpable for his murder.<sup>75</sup>

The fatal shooting of land rights defender Khin Win, at the site of the Letpadaung copper mine on 22 December 2014, is another example. She was killed during a protest in Hse Tae Village against the copper mine on 22 December 2014, when the police opened fire at the crowd after villagers threw stones at the authorities.<sup>76</sup> The MNHRC investigated and did in fact find the police to be at fault for her killing.<sup>77</sup> Even so, it is clear, both from these cases and the testimony that follows, that HRDs in Burma currently operate in a climate of fear, with such killings intended to strike fear

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73. *The Irrawaddy*. Missing Reporter Killed in Custody of Burma Army: Report. 24 October 2014. (Online) available from <http://www.irrawaddy.org/burma/missing-reporter-killed-custody-burma-army-report.html>.

74. *The Irrawaddy* 2014.

75. *The Irrawaddy*. Case Closed in Par Gyi Inquiry, Widow Vows to Appeal. 23 June 2015. (Online) available from <http://www.irrawaddy.org/burma/case-closed-in-par-gyi-inquiry-widow-vows-to-appeal.html>.

76. *The Irrawaddy*. Police Kill Villager in Copper Mine Standoff. 22 December 2014. (Online) available from <http://www.irrawaddy.org/burma/police-kill-villager-copper-mine-standoff.html>.

77. *The Irrawaddy*. Human Rights Commission Faults Police Over Copper Mine Shooting. 15 January 2015. (Online) available from <http://www.irrawaddy.org/burma/human-rights-commission-faults-police-copper-mine-shooting.html>.





Ma Than Dar, the wife of Aung Kyaw Naing (aka. Ko Par Gyi) , freelance journalist and photo reporter, who was tortured and killed while in custody of the Burma Army, holds his photo in her hand  
Copyright: Steve Tickner / The Irrawaddy

into HRDs and thereby scaring them into abandoning their legitimate human rights work.

The dangers of defending land rights in remote rural and/or ethnic areas pose particularly severe risks. Many commented that in remote areas people just disappear. An HRD working in Shan State outlined the dangers that face him and his colleagues:

*"When I travel, I let my family and friends know where I go. It's not safe to travel because in our remote areas, anything can happen. We are working on environmental issues and land issues. The businesses are multimillion dollar*

*investments and they only need to use one hundred thousand, perhaps five hundred thousand [kyat] to kill someone. In northern Shan State, someone who monitored land and environmental issues was killed. In southern Shan State, an NLD township Chairperson was killed, but no culprit was found. It is that easy to kill us..."*

In areas with a high military presence, extrajudicial killings and disappearances are almost commonplace. "It is not expensive to kill someone," said one HRD. Furthermore, a land rights defender working in Kachin State



highlighted how these killings and disappearances negatively affect the viability of conducting human rights work, which in turn has a chilling effect on human rights in general:

*“There used to be village chiefs in Kachin State. But now, due to Article 17/1 [of the UAA], under which many chiefs were imprisoned, and the insecurity highlighted by some village chiefs being killed, no one wants to be a village chief anymore. However, it is hard for us to organize trainings and workshops without the help of village chiefs.”*

But it is not just violence at the hands of the Burma Army with which HRDs have to contend: an HRD working in Magway Region spoke of his fear of physical violence perpetrated by gangsters, who many suppose are operating under the instruction and pay of local authorities:

*“Yes, I am worried because I can be arrested or poisoned anytime. Also, I can be executed. I can be attacked by paid gangsters. In particular, I really have to watch out for physical attacks such as car or motorbike smashes at night. Therefore, I am living a very cautious life.”*

Several HRDs working on environmental and clean water access, working as they do in rural areas, have suffered particular problems, including being subjected to violent actions and severe harassment, both from local authorities and members of the relevant

water committees operating in the regions in question. One HRD working on clean water advocacy in Magway Region said that:

*“The Chairman of the Water Committee tried to hit me with his car. The husband of another woman working for land grabbing cases had a similar experience. Daw Aout, who is more than 80 years old, was actually hit. The Chairman mocks us and verbally abuses us whenever he sees us. He also threatens to ‘stomp us to powder’ [a Burmese expression meaning to destroy someone’s life].”*

There is very little in the way of satisfactory personal security for HRDs, with many just accepting the risks that they have to take in order to do their work effectively. Many HRDs are aware of the risk of physical harm, with some reporting knowledge of people following them at night. Lack of secure transport is a particular concern, albeit varying in severity from region to region. A legal aid worker in Kachin State reported:

“

Because of the civil war in Kachin State and related transportation problems, sometimes we aren’t allowed to travel to certain areas. Sometimes people have disappeared or been killed. Sometimes people are threatened and their phones or cameras are seized.

”

The journalists who took part in the FGD discussed their experiences of physical

violence inflicted on them while carrying out their work. The crackdown on the student protests at Letpadan on 10 March 2015 is the most recent example of the dangers to which press workers in Burma expose themselves during the course of their reporting. One journalist reported:

*“As a photo journalist, I faced threats during the Letpadan crackdown. I know it’s an occupational hazard: we might get injured accidentally during crackdowns. But [in this case], the media was actually warned to leave the scene, and when we didn’t leave, we were actively targeted. We were beaten and attacked. The worst thing is that the state media used the photos we took. It’s ethically wrong and our rights were severely violated.”*

It is remarkable and admirable that so many HRDs in Burma continue to take such risks to defend the human rights of themselves, their families, their communities, and the broader population of Burma. Any violence or attacks against them, particularly killings and disappearances, are a grave violation of their fundamental right to life, liberty and security of person, as enshrined in Article 3 of the UDHR. The Burma Government should therefore immediately start doing all that it can – using all the machinery and institutions of the state – to ensure that HRDs’ human rights are properly protected and respected, and that they are able to freely and safely conduct their legitimate human rights activities, as protected by the Declaration. Furthermore, it should ensure that the Burma

Judiciary and the MNHRC fully and properly investigate all crimes of physical violence against HRDs to establish a proper deterrent against future crimes.

In the meantime, while such crimes continue to be perpetrated with impunity, HRDs are evidently doing all that they can to minimize the risks and threats to the safety of themselves and their families, while refusing to be frightened into abandoning their human rights work. It is hoped that they will avail themselves of all available and appropriate tools, resources, tactics, networks and safety precautions, in order to mitigate the dangers that they and their families confront on a daily basis.

The prevailing position among the majority of HRDs is that there are no appropriate protection mechanisms in place, and that there is a great deal of disillusionment with the mechanisms that are already in place. HRDs do not see genuine reform or any commitment by the Burma Government to protect human rights, as proven by a damning assessment by one HRD of the complete lack of accountability for those who killed Khin Win and Par Gyi:

“

If there is a protection mechanism, people will recognize and respect it. Now, have a look at the situation here: Ko Par Gyi is dead, Daw Khin Win is dead, but what can we do? Nothing.

”

Many HRDs interviewed did outline some of the informal security measures that they had put in place. A long-serving HRD interviewed in Rangoon describes the level of intimidation

and fear that some HRDs are living under in Burma, and the measures that they are implementing in order to ensure their own personal security:

*"I always prepare for my safety first. I always remind myself [...] don't travel alone, don't drink or eat from strangers. I don't know whether people invite me because they are genuinely being welcoming and taking care of me. People look at me when I go out in public because they've seen me in the media. I smile, shake people's hands when they come up to introduce themselves to me, but inside I am suspicious, because I don't know who is who, whether they are friend or foe. The community is very divided, now no one knows who is who: who is an extremist, who is a nationalist, who is an HRD, who is a government spy."*

#### 4.4 Sexual Violence and Gender Discrimination

Around 45 percent of women HRDs – whether working on women's rights specifically or on human rights generally (and just happen to be female) – have reported experiences of sexual harassment and intimidation, with some reporting actual sexual or physical abuse. Women HRDs pointed to local communities, the military and ethnic armed and political groups as being culprits when it comes to committing abuses and restricting their human rights work. The

women HRDs interviewed were all aware of the threat of rape and sexual abuse that they work under, with one based in Tenasserim Region saying:

*"I have never experienced physical abuse; I'm just threatened, and many [women HRDs] in the community are subjected to sexual harassment by the authorities. Sometimes I'm threatened with rape, or warned not to go out at night, because they are watching my every movement."*

In some areas, women HRDs said that they had little option but to travel at night in order to safely conduct their human rights work, despite knowing the risks and having previously received threats of physical harm. One young woman HRD working in Rangoon said:

*"They are watching me and threatening to use illegitimate laws against me. I haven't been violently attacked, although I have been sexually assaulted. What's more, when the intelligence services investigated, they insulted me and verbally harassed me."*

Moreover, some women HRDs reported a fundamental lack of understanding of the suffering caused by rape and the exact nature of this abuse. Such human rights abuses are exacerbated by the fact that communities themselves often do not understand and are not supportive of women HRDs, with several stating that in many cases even their family members are reluctant to support the right of women to occupy positions of influence or

power, or to defend human rights. This attitude – that women should not participate in political or public affairs – is particularly common in rural areas. One Tavoyan HRD said:

*“Being a woman, I face a lot of challenges, both physically and mentally. Tradition doesn’t allow women to take the lead. Therefore, I have been challenged, oppressed and affected mentally, and I endure many challenges and insults...”*

Another HRD reported more subversive tactics:

*“They don’t dare to harass me sexually directly. However, they violated two of our union members’ children and they verbally harassed our women, contacting them by phone. They talk behind our backs and indirectly slander us, saying to our farmers that we aren’t good women.”*

Furthermore, a degree of racial discrimination was also reported by one HRD working on women’s rights in a range of areas including Kachin, Karen and Chin States:

*“The military treats different ethnic minority groups differently, so we face discrimination, inequality and oppression when we go to these regions. This is the first challenge.”*

“

*I haven’t been violently attacked, although I have been sexually assaulted. What’s more, when the intelligence services investigated, they insulted me and verbally harassed me.*

”

Such tactics on the part of authorities and communities are a direct violation of a range of fundamental human rights, including the rights: (1) to be free of discrimination under Articles 2 and 7 of the UDHR; (2) to security of person under Article 3; (3) not to be subjected to degrading treatment under Article 5; (4) not to be subjected to arbitrary interference with his or her privacy, family or home, nor to attacks on honor or reputation under Article 12; (5)

and to freedom of movement under Article 13. All attacks, discrimination and other human rights violations place a severe physical and mental strain on women HRDs, which is highly detrimental to both their well-being and their ability to continue their legitimate human rights work.

Unfortunately, it is difficult to bring perpetrators of abuse to justice, especially since they are often not easily identifiable. However, in terms of personal security for women HRDs and women’s groups, there is much that could and should be done to educate them as to how to create a stronger support network. The need for training sessions, capacity building and the strengthening of civil society networks through an education of women’s rights and techniques for greater personal security was expressed by 72 percent of all women HRDs interviewed. Yet, it is not always an easy road, as one woman HRD reported:

*“When I first started working on women’s issues, I attended some training sessions. Some people criticized them for being*

*unnecessary in rural areas such as ours, and in some villages, we've had a hard time convincing the village leader to allow training sessions to be held in the village. We've also had problems actually giving the training to women, since it's new to them and they're not really interested... So we've had to find ways to attract their attention."*

Educational programs based within rural communities can be aimed at supporting women HRDs, many of whom said that they were part of a network of activists, with many colleagues also working on the same issues. Community-based forums, which seek to educate women about their rights and provide an opportunity to discuss their experiences, can help provide a form of counseling in an informal setting. Women HRDs may therefore be able to expand their support networks and through these programs aim to change attitudes towards sexual violence, discrimination and the role of women in human rights work.

Furthermore, Burma urgently needs to ensure that there are mechanisms that are properly equipped to handle cases of sexual violence, including training the Burma Judiciary and the MNHRC, and providing medical support for physical or mental rehabilitation. Until the Burma Government rectifies its failure to protect women by not providing such mechanisms, women HRDs will continue to be at risk, which consequently threatens human rights in Burma more generally, and especially women's rights.

## 4.5 LGBTIQ Violence and Discrimination

HRDs working on LGBTIQ rights – and identifying as LGBTIQ – face constant threats, abuse, discrimination and violence, predominantly from their own communities. One Mandalay-based HRD working on LGBTIQ rights described her car being attacked:

“

In 2014, a group of young men attacked me and smashed my car windows, mocking me as a 'flat ball' *[an expression used in Burma to torment lesbians and/or tomboys]*.

”

LGBTIQ rights defenders also reported being subjected to vicious and invasive personal attacks on social media, with some describing online campaigns to discredit them and ruin their reputation:

*"I have mainly been attacked on social media, for example people have set up Facebook pages using my photos and identity. I have also been disturbed via my phone, and been sent letters and images containing sexual content. I haven't been able to continue my work."*

These campaigns of abuse carried out against LGBTIQ rights defenders are, however, symptomatic of prejudices that exist within the broader culture in much of Burma, prejudices that are then actively stoked by the authorities



so as to harass, intimidate and discredit these HRDs and scare them into submission and silence. Although not a universal position, several spoke of their insecurity within their own communities and even of a lack of support from their families due to the nature of their work.

Another LGBTIQ rights defender commented that:

*“Being an [LGBTIQ] person, we don’t have protection. We receive more attention and become easy targets for harassment – whether physically, mentally and sexually – but there are no laws to protect us. The lack of protective laws makes it very easy to target [LGBTIQ] HRDs with judicial harassment, so we have to be very careful of what we do as we live under a lot of pressure. [LGBTIQ] status does sometimes allow us to go undercover because people tend to think we are makeup artists, but when they realize we’re activists, we become more vulnerable.”*

Again, such tactics on the part of authorities and communities are a direct violation of the same range of fundamental human rights mentioned above in connection with women HRDs. All attacks, discrimination and other human rights violations place a severe physical and mental strain on LGBTIQ rights defenders, which is highly detrimental to both their well-being and their ability to continue their legitimate human rights work. In fact, of all the interviews, LGBTIQ rights

defenders reported some of the most personal and cruel verbal abuse. In a country where mental health programs are still a relatively new phenomenon, the psychological harm, trauma and depression that such abuse causes often goes unrecorded.

In the LGBTIQ field there is perhaps more of a dearth of support than in other areas of human rights work, both among civil society and in local communities. As one LGBTIQ rights defender pointed out, civil society in Burma does not boast “*good communication or cooperation to protect groups and people working for LGBTIQ rights.*” Civil society and HRDs working on LGBTIQ rights should rally together, raise awareness of LGBTIQ rights and the difficulties that LGBTIQ rights defenders face, organize workshops and training sessions, and create a strong civil society network of support for one another, an LGBTIQ network that INGOs can support through education on basic human rights and fostering safe networks of communication. It is vital that education on LGBTIQ rights and the harm that LGBTIQ-based discrimination and prejudice causes both HRDs and victims is provided to authorities, enforcement agents and communities in order to allow LGBTIQ rights defenders to continue their valuable work. Finally it is important that relevant laws outlawing LGBTIQ discrimination are enacted by the Burma Parliament and properly enforced by the relevant authorities and enforcement agencies.

#### 4.6 Religious and Inter-Faith Discrimination

HRDs working on faith and religious issues reported some of the worst difficulties as regards local communities. They are

forced to confront not only government bodies and local authorities, but also leaders and members of local communities, as well as civil society groups. By using religious leaders and extremist nationalist groups as their proxies, the authorities seem to be actively encouraging prejudice, hostility and aggression against these HRDs, making it very difficult for them to work in safety to establish stronger inter-faith networks.

Thus such HRDs have to work in difficult circumstances, amid a climate of fear and hostility. A Christian activist discussed her fears of speaking with monks in public as well as the threats that her organization has received for working on inter-faith issues. One woman Rohingya HRD who has been working on inter-faith community issues described her experiences:

*“My community is considered the most isolated not only in Burma, but also in the whole world, so I am familiar with the challenges and risks of discrimination.”*

Furthermore, discord between religious interests and women’s rights has caused many women HRDs who work on both inter-faith issues and women’s rights to suffer abuse, harassment and, in some cases, physical assault, as local communities are often influenced by slanderous comments about these HRDs posted in local areas. The difficulties that HRDs face when working with groups of different faiths was highlighted by the experiences of a Rangoon-based woman HRD:

*“We have vulnerabilities, and sometimes I have to work on*

*jobs that religion states are not appropriate for women. It’s difficult to get some communities in Burma to accept such roles.”*

Another Rangoon-based woman HRD, who defends women’s rights and works across faiths, said:

*“The situation was getting a bit better two years ago, but after the interfaith marriage law came out, it got worse again and affected us a lot. For instance, if we celebrate International Women’s Day, [the authorities] come and take pictures, record us and ask us about it. And they announce that we are against the interfaith marriage law. They give the wrong message to people; they pin up and distribute our names, pictures and phone numbers around the townships.”*

Another woman HRD working on women’s rights in several different states in Burma declared:

*“The conservative religious leaders get angry when we talk about women’s rights. Some authoritarian religious leaders demand blind obedience, which is very dangerous for our country and for our religion. The danger arises from the collusion between oppressive government and religious extremism. Moreover, some*

## CASE STUDY ONE

### *Collusion Between Monks and Local Authorities*

One disturbing example concerns a monastery in Hpa-an Township, Karen State. In October 2014, posters of six prominent HRDs taken from social media were seen displayed in a monastery with a caption describing them as “those who are sympathizers of Muslims or those who are traitors of the nation.” The HRDs are known activists working on women’s rights, civil and political rights, LGBTIQ rights, or fighting against religious discrimination, among other issues.

The head monk of the monastery explained that the posters were displayed to protect the nation and religion, and that religious leaders would stand against anyone who claims to be an human rights activist but who is actually selling the country out to foreigners. He said that he had asked local authorities for help to tackle “religious problems”, but they claimed to already be doing all that they can. The authorities said that monks, as religious and community

leaders, should deal with those human rights activists to help protect the nation and religion. All six of the HRDs have faced varying levels of abuse, some of which was of a sexual nature, from telephone calls to intimidation on social media, including physical threats to one woman. This complicity between the authorities and nationalist monks is a recipe for a very dangerous partnership.

*of my [HRD] friends are on the blacklist of the extremist religious leaders and have been harassed.”*

Even those who are taking a neutral stance as regards inter-faith issues have come under attack simply for defending the rights of Muslim defendants for actions that the authorities had deemed to be religiously motivated and terrorist in nature. Lawyers defend such people because they are entitled to the right to a fair trial just as any other defendant is – regardless of offense, ethnic background or religious beliefs – as one lawyer testified:

*“I sometimes provide legal aid to Muslims. People say that these cases are religious or terrorist cases, but I see things*

*differently: they are political. What’s more, I’m not motivated to secure defendants’ release or imprisonment, or to establish them as guilty or not guilty, but to respect their fundamental right to a fair trial.”*

A male Muslim HRD working on inter-faith issues pinpointed his fears as deriving not from what the authorities do but what his community does. He has faced resistance and has expressed his concerns about the role that the authorities play in encouraging inter-community discord and violence, particularly in troubled Arakan State. With the increase in nationalist and religious extremist rhetoric – propagated especially by the extremist Buddhist nationalist group 969, the Ma Ba Tha movement and the extremist

Buddhist monk U Wirathu – and the recent development of the Protection of Race and Religion Bills, the tension and divisions between different religious, faiths and communities in Burma have never been more obvious or more worrying.

So long as the Burma Government, local authorities, and religious and nationalist leaders are able to splinter civil society so effectively, it will continue to be difficult to establish a unified and principled opposition to such religious and community-based discrimination, and to encourage dialogue and cooperation between faiths. The inter-faith issues in Burma are already a source of great tension, and the abuse and harassment of HRDs attempting to bring different groups together will only create a higher state of fear, disunity and communal and religious violence, resulting in more serious and more widespread abuses of people's rights.

Again, such tactics on the part of authorities and communities are a direct violation of the same range of fundamental human rights mentioned above in connection with women HRDs and LGBTIQ rights defenders. All attacks, discrimination and other human rights violations place a severe physical and mental strain on inter-faith HRDs, which is highly detrimental to both their well-being and ability to continue their legitimate human rights work. Furthermore, legislation should be enacted that specifically outlaws and penalizes hate speech, extremist religious rhetoric, and religious-based or race-based discrimination.

## 4.7 Division and Alienation of Communities

By insisting on keeping close tabs on HRDs' movements, military intelligence and Special Branch Police foster an atmosphere of fear, ensuring that HRDs become increasingly ostracized within their own communities. One HRD said:

“

Since I've been involved in these issues, my family and I have faced social exclusion. People are afraid to deal with us since we've been on the intelligence watch list.

”

Many HRDs spoke of being outcasts in their communities, often accusing the local authorities and government agents of deliberately ensuring that they are unable to live comfortably and securely enough to enable them to continue carrying out their human rights work. Many HRDs mentioned that they could no longer find work and earn money due to fear and mistrust within their communities. One woman HRD from Shan State confirmed:

*“I used to be a private tutor, but now I can't continue because parents are afraid to hire me to teach their children, maybe because of pressure from the authorities.”*

Others spoke of the difficulties that they encountered working within communities who do not agree with or understand what they are trying to achieve. Another HRD from Shan State said:

*“We live in a small conservative town, so the community doesn’t want to deal with us if we work on human rights issues. Many think that because we are all Shan, we should only talk about the good aspects of the Shan people.”*

Since President Thein Sein’s quasi-civilian government took power in 2011, it has vociferously championed its political reforms as indicative of a Burma steadily progressing towards an open democratic society. Yet the views of those HRDs interviewed paint a very different picture: they reveal how tactics and systems of abuse have changed form, but are still very much in existence. For example, as mentioned in the section on Religious and Inter-Faith Discrimination above, many HRDs now face harassment and abuse not only from the authorities, but also from government affiliates such as religious leaders and nationalist movements, and – in a recent development – through campaigns of defamation and slander within their own communities. The Burma Government’s underlying strategy therefore is to ensure that it sows discord within civil society and thereby prevents HRDs from receiving the full backing of communities, particularly in rural areas. In other words, the Burma Government does not need to attack HRDs openly, but instead relies upon encouraging others to do its dirty work in discrediting HRDs and activists.

The overarching issue is that the Burma Government, local authorities and community leaders are colluding to ruin reputations and opportunities within local communities. They make it very difficult for HRDs to maintain a normal life and to improve respect for human rights in their communities and in Burma as a

whole at the same time. Protection must be granted to these groups to ensure that they have some measure of security for themselves and their families.

## 4.8 Disruption to Lives and Livelihoods

As discussed above, as a result of their work, HRDs tend to be seen as outsiders by their own communities. This hostility in turn means that they often cannot rely upon their communities for support. As a result, many HRDs have to travel elsewhere for work. An HRD working in Magway Region describes the hardships that he and his family must confront:

*“Since I started my HRD work, I haven’t been able to do anything for my family. I have been active whenever the HRD issue comes up, plus I’ve also tried to improve myself by attending some training sessions. I have invested myself physically and financially in this work, so I can’t really conduct any business for my family or save any money from work.”*

The problem is not, however, confined to Burma itself: those HRDs who continue to be based outside of Burma, mostly along the Thailand-Burma border, express similar difficulties to those brought up by HRDs working inside the country. This interviewee, who has worked for nine years outside Burma, said:

*“Even though my HRD network is inside [Burma], I still have to conduct most of my activities outside the country, as the*



[political and security] *situation doesn't allow me to work effectively inside the country. However, even though I live outside the country, my family and my parents still receive threats from the [Burma] authorities."*

Throughout the research process, interviewees continually voiced concerns about the detrimental effect that conducting human rights work has had on both their livelihoods and the lives of their families, especially fear of abuses committed against family members, having enough time with their families, establishing a secure family unit, maintaining family businesses, generating sufficient income and having access to education and social welfare. The simple fact is that in carrying out this human rights work, activists are greatly restricting their access to earning opportunities and their ability to provide for their families. As one HRD stated:

*"Family issues come first. When I work on [HRD] issues, I cannot focus so well on family issues. The second concern is financial constraints: I don't have much time to focus on my earnings."*

In some cases, NGOs and CSOs have stepped up to assist with the provision of educational support and basic living costs for relatives of deceased HRDs, though on a very limited scale. Such assistance is simply not sufficient to account for the shortfall in earning opportunities that people who carry out human rights work face, especially in the event that something untoward befalls them.

Furthermore, the emotional and psychological impact that human rights work has on both the HRDs themselves and their families is severe. The lack of income and financial security that stems from their activities imposes a particular strain on family life. In addition, the stigma attached to being an HRD in rural and/or ethnic areas often results in financial and social difficulties, with 56 percent of HRDs mentioning the personal, financial and social difficulties that they face, and the long-lasting detrimental effects on their families and communities. The lack of income and earning opportunities is of great concern as it impacts on the ability of the children to attend school and for other dependents to afford medical care and maintain a reasonable standard of living. An activist working on women's issues in Kachin State said:

*"I can't give time to my family. Being an activist, my family is always worried about me. My mother is not in good health so I feel guilty that it might be because of me. I don't have any regular income because I don't do business."*

Several HRDs discussed the ongoing prejudice and abuse leveled at them by the authorities after they have been released from prison. A land rights defender in Magway Region described how his family were harassed and lost their source of income as a result of his human rights work:

*"It has affected my family business. We had a photocopy shop that we rented from a district project manager who then pressured my wife to move the shop immediately*



*Students protest against the National Education Law between Bago and Magwe Region  
Copyright: Kaung Myat Min / The Irrawaddy*

*after I was released from prison. Actually, it was the [Burma] Government's plan to cause my family trouble."*

So it is clear that the disruption of lives and livelihoods is yet another tactic that the Burma Government and local authorities employ to put pressure on HRDs to end their legitimate human rights work. It is also another serious risk and challenge that the vast majority of HRDs in Burma have to negotiate, in order that they might continue with their human rights work.

#### 4.9 Surveillance and General Harassment

The FGD involving student activists was particularly revealing as regards subversive harassment employed by the Burma Government and its agents. Surveillance was widely seen as a general problem for all HRDs, although the student groups interviewed seemed to suffer particular harassment, both in person and through social media:

*"Special Branch police follow us, call us in and question us in person. They also visit our homes and question family members. Police pay poor people like trishaw workers, or*



*Phyoe Phyoe Aung, general secretary of the All-Burma Federation of Student Unions*  
Copyright: James Mackay / enigmaimages.net

*people who run illegal two-digit or three-digit lottery outfits near our house or office, to work as informers. They also have people around embassies in Rangoon to monitor visitors. Special Branch and informers also engage in online monitoring, hacking Facebook accounts, joining shared groups such as journalist networks and youth networks to monitor information shared by participants.”*

Their account is particularly telling given the rapidly increasing use of Facebook as a tool to disclose and raise awareness of human

rights abuses. During the well-documented March 2015 student protests against the National Education Law, Facebook became the communication and organizational tool of choice, particularly during the violent crackdown at Letpadan, Bago Region, on 10 March 2015. The fact that student activists are quite aware that the Burma Government uses online surveillance proves the flagrant nature of the invasions of privacy and harassment which students face on a regular basis.

Furthermore, the majority of HRDs reported facing challenges emanating not only from various levels of government, but also from local administrative bodies in areas controlled by ethnic armed organizations.



Several – especially women HRDs – stated that they have no real support in such communities and that, consequently, they do not feel secure working within such communities. For example, HRDs interviewed in Shan State, 72 percent of whom work on land rights, have stated that they can only attend training sessions if they take place in Taunggyi, the state capital. This is a stretch of their resources and very much restricts HRDs in rural ethnic regions from improving their knowledge and skills. One HRD interviewed in Kachin State recognizes the difficulties that they face in not being based in Rangoon:

*“In Rangoon, if you work on something, that’s fine. But here, that’s a challenge because of the security situation. I was almost arrested and I couldn’t go home; I had to stay at a friend’s house for about three days in hiding. Sometimes, we need to avoid direct confrontation since we are in a dangerous zone.”*

In addition, there have been reports of HRDs being threatened directly by government ministers, as well as by the MPC who use the threat of arrest as a tool to prevent HRDs from talking to the international community, as well as domestic and global media. HRDs have also reported being banned from attending local authority meetings.

Another HRD reported:

*“We faced local authorities who wouldn’t let us use the name ‘training’ or hold meetings. We were under surveillance, and*

*they came and watched for the entire time that we provided the trainings. We have lots of challenges.”*

During the FGD involving the journalists, all those present underlined the fact that harassment and pressure by both the central government and local authorities made it too difficult for them to continue doing their work. One journalist commented:

*“The photo exhibition on the Letpadan student crackdown was not allowed to be held at People’s Park, so a private gallery was lined up instead. But when authorities found out, they put pressure on the owner of the gallery, who then had to cancel the exhibition...”*

Another described how police sometimes interfere with their work:

*“In Chin State, two journalists took pictures of police asking for money from buses and vehicles passing through a check-point. The police told them to stop taking pictures. When the journalists returned to the guest house that they had booked for the night, the owner refused to let them stay, because the police had put pressure on him.”*

Such tactics on the part of authorities and communities are a direct violation of a range of fundamental human rights, including the right of an HRD not to be subjected to arbitrary interference with his or her privacy, family or home, nor to attacks on his or her honor or

reputation under Article 12 of the UDHR, and the right to freedom of movement under Article 13 of the same.

Press freedoms and general security simply do not exist, with no protection afforded to journalists attempting to report on government activities, sensitive issues or human rights abuses. The harassment of journalists in Burma is carried out directly against the person and also indirectly, in other words aimed at preventing them safely continuing their work. Preventing journalists from working, perhaps by turning communities against them, is as damaging to their work as direct harassment, and prevents them from reporting continuing human rights violations taking place all around Burma.

#### 4.10 Inadequate Civil Society Coordination, Cooperation and Capacity

Many HRDs pointed out the difficulties in uniting HRDs, saying that such disunity represents a real stumbling block to achieving genuine progress in terms of respect for human rights:

*“We have issues, we’re not really united, not strategically coordinated. Everyone is working separately, only working for or defending themselves.”*

One HRD pointed out that HRDs do not always help each other enough, that camaraderie, collaboration and unity are all still relatively weak:

*“What’s more, not all activists are genuine: there are some*

*so-called activists. They organize people to take to the streets, but when people are killed, they don’t take any responsibility. We need to understand the reality.”*

Many recognize the many benefits which closer cooperation and collaboration among HRDs would entail, and how it would benefit everybody involved:

*“Through networks, we can help each other. There are experts in different fields such as legal aid, mining laws, and so on. But it’s getting harder to use networks since those networks are increasingly being infiltrated. Before, it was clear who is who, but now it’s not so clear.”*

Providing HRDs with some skills and knowledge as to how to protect themselves, their information and their networks will almost certainly lead to a stronger more unified network of HRDs and CSOs. There would also be a greater opportunity to increase the capacity of these individuals and organizations with respect to security of information and the use of technology with which they are as yet unfamiliar.

In the face of a deteriorating human rights situation, an opinion held by the majority of HRDs interviewed was that bridging these gaps and fostering strong communication would be invaluable to the improvement of human rights work in Burma:





I see that there is still lack of cooperation [...]. People's fundamental rights are ignored, and people are oppressed. Therefore, it is very important to empower those people *[standing up for those rights]* by bringing them together to form a strong force in the community.



Informal local protection networks and mechanisms are essential to carrying out human rights work when there is clearly no support from the local authorities. Local knowledge and basic common sense techniques seem to be the prevailing tactics used to ensure the safety of HRDs:

*"I manage to be safe. Before I go somewhere, I always think about the places where I should or shouldn't go. I don't have any security or safety plan yet and want to learn good techniques."*

Some HRDs highlighted the fragmentation, disunity and mistrust within some factions of the HRD community. There is much that needs to be done in terms of encouraging the development of vital HRD networks, so as to foster cooperation and the exchange of information, which many HRDs deem essential to their success. Local community engagement appears to be one of the most challenging issues that HRDs face, particularly when working in more rural and/or ethnic areas. The following account comes from an HRD working in Kachin State:

*"The habit of helping each other that we had in 1988 has*

*disappeared. Today, even your friends can be your enemies and threaten you tomorrow. Therefore, I need to be very careful with every single thing and not trust people easily. Society has changed, and thus so has our behavior. It's not good, it's not healthy."*

Training sessions in basic security techniques would certainly improve essential security measures. The use of social media and information technology is becoming more and more standard for HRDs to spread information and gather support. However the majority of interviewees expressed no knowledge of or formal training in such measures.

#### 4.11 Ineffective Donor and INGO Strategies

Some HRDs commented upon the problems that they encounter as a direct result of donor and INGO strategies. One activist working in Mandalay on a wide range of issues including inter-faith and community engagement projects, discussed a distinct lack of interest and commitment on the part of INGOs to areas, projects and issues outside of Rangoon:

*"[Donor strategy] is still weak. For example, Mandalay does not receive as many opportunities as Rangoon. Some INGOs do come to Mandalay, but they come with their own staff and projects, while the people in Mandalay are busy with their own work and*

*issues, so that things are not really connected. These INGOs do not want to disappoint the [Burma] Government by working directly with us. I have met many INGOs but I really feel that they are visitors, that perhaps they want to know something, so they meet us once, but they don't come back. The only group coming back again and again is the election watch group."*

In fact, the lack of an international presence outside of Rangoon was bemoaned by many HRDs, with the majority stating that they would welcome more input and support from INGOs. A large number of those interviewed highlighted this issue as instrumental to their feelings of fear and intimidation, and said that they believed that building stronger networks and engaging with INGOs would help them gain stronger footholds in rural areas. The development of networks throughout different regions and across ethnic boundaries is important to strengthening civil society in Burma, and ensuring that opportunities are provided outside of Rangoon is a key responsibility of INGOs. The central message was that INGOs should help HRDs to come together, share information – especially ideas for effective protection mechanisms – and support each other's activities, in order to increase the overall success of their human rights work.

Yet it is difficult to determine who exactly needs what kind of assistance. Some CSOs, including AAPP, have made provisions to certain groups in need, such as political prisoners and their dependents. However, it

would be a difficult and unrealistic process for INGOs to simply provide necessary assistance to HRDs who have suffered both in their social and economic status, with their livelihoods often under threat due to their human rights work.

Furthermore, the protection that INGOs can provide as regards the inter-communal, inter-faith issues in Arakan State is highly questionable, with one interviewee from a western INGO working on land rights issues discussing the challenges, threats and abuses that humanitarian aid workers received from local communities because they were working for INGOs:

*"About two years ago, a Burmese Muslim friend who is based in Rangoon and who works in humanitarian aid was assaulted in Sittwe [Arakan State], left in a coma and hospitalized for five days. Another Rakhine friend was forced to leave Sittwe because he received death threats for refusing to quit his job at a humanitarian NGO. Attacks and threats came from local residents."*

These kinds of issues within communities cannot be solved simply through the presence of INGOs, and it is important to focus upon how relationships and trust can be built between NGOs, CSOs and the communities themselves. As one HRD stated:

*"[The international community] might not be able to do what they want to do in Burma since there are many restrictions*

*and hidden irregularities which restrict them. The problem here is that we can't really even trust each other, so trusting someone from outside is even harder. [INGOs] need to initiate the trust-building first."*

In addition to negative and suspicious local attitudes towards outside influence, there is the problem that all INGOs face, namely how much they can afford to engage with civil society without jeopardizing their working relationship with the Burma Government and local authorities. One HRD gave this opinion on the international community's responsibility to engage with civil society:

*"There are many [INGOs], but they have so many rules and regulations and they really don't dare disappoint the [Burma] Government, or to work with issues or organizations that the [Burma] Government doesn't like. So the real work is done by local NGOs rather than by the INGOs. They should cooperate with local, grassroots [CSOs], rather than just pay lip service or tick boxes."*

The influence of INGOs in these regions may be limited unless they do as the HRDs interviewed suggest and commit sustained time and resources to aiding community-

“

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”

building efforts and fostering stronger networks. Furthermore, the practical and logistical difficulties for INGOs working in more rural areas of Burma will be an ongoing issue. Although undoubtedly a lengthy process, it is however preferable to engaging too quickly with communities that are mistrustful of outside influence.

According to several interviewees, INGOs that have come to rural areas generally do so with a predetermined set of ideas. A key criticism is that they often do not commit to the region in question, and are simply visiting or staying for a short time, without properly engaging with local HRDs and communities. If they are to operate effectively in these

regions, then they must first engage with local civil society to assess and determine HRDs' needs, and then establish networks and programs that reflect these needs, which many HRDs, especially in rural areas, have stated to be lacking.

More generally, the potential positive influence of the international community is tempered by the many restraints, limitations and deficiencies from which INGOs in Burma suffer. Interviewees in many ethnic areas, and from cities and regions outside Rangoon, highlighted the continuing issues that they face when engaging with INGOs. Training sessions, workshops and efforts to establish CSO networks appear to happen mainly in Rangoon, with little to no experience of these

opportunities afforded to many interviewees in other areas. Though there are sometimes obvious restrictions on safe travel to some areas, many interviewees expressed the view that training sessions and workshops are often held in the same place with the same attendees. Making these kinds of training sessions as inclusive as possible would not only create stronger relationships with a wider range of HRDs, but also help to take these learning opportunities to areas that have not previously been afforded this access or opportunities. The impression given in the interviews was that the ethnic areas, and particularly areas involving land confiscations, could be better served by holding training sessions and workshops that directly involve local communities. Educating HRDs in these areas on basic human rights and human rights principles, as well as on appropriate protection mechanisms, would ensure these skills are not predominately available only in Rangoon (and, in some cases, in Mandalay).

One HRD from southern Shan State commented that the UN tends to spoil local people; in other words, when UN agencies come to the area for workshops, training sessions, and so on, they provide attendees with a *per diem* allowance, transportation costs, and other expenses. So when other local or regional NGOs, which do not have the same financial muscle as the UN come to the area for similar purposes, people ask them how much *per diem* allowance and transportation expenses they will be receiving. When those organizations cannot pay the same amount, people are then reluctant to come to the workshops and training sessions. So it is hard for local NGOs to do their work in the wake of the UN.

The role of INGOs in protecting HRDs was also widely discussed throughout the interviews, with a common suggestion being that they could adopt the role of observer and provider of training sessions, as well as a source of necessary funding. It was suggested that the international community can play an important role when an HRD is arrested, helping raise awareness of their detention, putting pressure on the Burma Government, and campaigning for their release. Some INGOs already take some measures, though they are currently very limited. One HRD suggested that:

*“Some of the [INGOs] have biographies of each person in this field, so they know about us. If I’m arrested, my wife or colleague can then inform my organization and other networks, so that they can protect me if I’m in prison. If this kind of thing is more available, it will be beneficial.”*

INGOs were also viewed as being able to bring together many different groups from all kinds of human rights work and locations, something which one international HRD based in Rangoon discussed as a good potential option for providing more security for human rights work generally:

*“I think the most important thing is to try to develop some ideas for activities. The biggest challenge for us is to get good, accurate information. And to find better ways to get information about trials, arrests and harassment for organizations to share. That*

## CASE STUDY TWO

### *The Full Spectrum: a Particularly Damning Case*

By way of summarizing the various challenges and risks that HRDs in Burma face, it is worth listening to the experiences of an HRD who has been working on political issues, land rights and agricultural issues for over 20 years, and who discussed the full gamut of human rights abuses, challenges, risks and suffering – including severe torture – that she and her family faced after her release from prison:

*“Since I started working in the political field, I have lost my beauty salon business. Some of my family, who were government officers, were not promoted due to my activities, and instead were arrested, interrogated, tortured and forced to confess my activities. I began to irritate my family and they asked me to leave the NLD. Finally, I started to be neglected by them. I divorced my husband in 1997, and left my two children to go to*

*Rangoon, where I remarried. Later, I was imprisoned, which compromised my sons’ education. Even though I was released from jail, I carried on doing political work. My elder son was then arrested and sent to be interrogated, and forced to give information about me. He was tortured very violently until his teeth were knocked out of place, and he got depressed. It took almost two years for him to recover from his depression. I was blamed for not being able to take care of my family and children and for being heartless in not prioritizing my sons and instead doing my work passionately.”*

This HRD not only suffered personally at the hands of the authorities, but her sons were subjected to serious physical abuse and torture, and suffered long-lasting damage as a result. In attempting to continue her

political work, she was reviled by her own community and could find little support from the people around her. She also lost her sole means of income as a result of her human rights and political work.

This woman’s testimony of abuses, sacrifices, discrimination and economic and social loss, only serves to underscore both the hostile and dangerous environment in which many HRDs in Burma operate, and therefore the valuable nature of the work that they do in promoting and protecting a genuine respect for human rights in Burma. That should be the role of the Burma Government; instead, it is brave individuals up and down the country who take it upon themselves to defend the rights of their families and communities, in the face of hostility and harassment by the very people who should be protecting them.

*would be the best thing. Because many people are doing different things and we don’t always know what’s going on.”*

One suggestion put forward is a regular consultation between non-state actors, state actors, INGOs, embassies, think tanks, CSOs and NGOs which work on human rights in Burma, so that they can come together and discuss appropriate protection mechanisms:

*“A consultation with human rights groups, [HRDs], human rights institutions and trainers*

*is direly needed. From that consultation, a mechanism will follow. Initially, a human rights forum needs to be held with the MNHRC, local NGOs and [INGOs] such as Amnesty International and Human Rights Watch, so that the [Burma] Government can also benefit. That could break the political prisoner cycle, whereby the government release political prisoners on special memorial days and then arrest more political prisoners days later.”*



Numerous HRDs discussed the relationships that they have with other organizations, with many highlighting the increasing ease of information-sharing that goes on between different groups. While the vast majority of networks are informal, those which do operate under one banner boast a greater understanding of the importance of such links. They provide not only secure networks of dedicated colleagues, but also greater opportunities for presenting a united front against national problems such as land confiscations. There is a clear desire for networks involving national and international HRDs, as one HRD based in Rangoon summed up:



Sharing knowledge between local and international HRDs on how to systematically protect ourselves is a good idea: it will help me know how to protect myself.



Furthermore, INGOs who understand both the costs concerned and the amount of time that it takes for a lawyer to adequately represent a HRD, could begin to engage with law firms and individual lawyers who take on HRD cases. It is important to bear in mind the extensive travel required, and how it is a drain on financial resources and on the time that lawyers can dedicate to other cases from which they can actually make a living. By making provisions for legal aid to lawyers who take on HRD cases, INGOs would be ensuring that those who suffer human rights abuses, including arbitrary arrest and detention, receive vital legal representation, as prescribed by Article 11(1) of the UDHR.

It was also suggested in the FGD involving student activists that the international community could assist by providing social welfare and assistance to families of HRDs:

*“Social welfare and assistance to the family is another method of protection. Much of the time, when we’re in hiding or in prison, it puts a great burden on our families. Sometimes we’re reluctant to take risks as a result.”*

## 5. Conclusion

As the Report shows, even in 2015, HRDs in Burma are subjected to the traditional range of attacks and abuses, including extrajudicial killings and violence, sexual violence and all kinds of discrimination, surveillance and general harassment, legislative and judicial harassment, arbitrary arrest and detention, all of which continued unabated. Indeed, the number of cases of arbitrary arrest and detention of HRDs is still very high, and has even started increasing once again. According to AAPP's records, as of 18 June 2015, 164 political prisoners remain in jail, many of whom are HRDs, with 438 awaiting trial.<sup>78</sup>

Furthermore, HRDs are also now targeted with a range of new and underhand tactics. Poor, marginalized and vulnerable communities, including ethnic, religious and social minorities, as well as local grassroots communities, are especially at risk from the targeting of HRDs, because they tend to suffer disproportionately from human rights abuses in the first place, particularly as a result of land rights and other human rights abuses in ethnic areas of the country.

Thus HRDs are clearly in dire and urgent need of a wide range of protection – legislative, judicial, physical, financial, and otherwise – and the experiences of a range of different HRDs around the country are invaluable in terms of ascertaining the overall human rights situation in Burma. While not exhaustive, the below recommendations, addressed to various key actors, are drawn primarily from the experiences, opinions, needs and

concerns of the HRDs interviewed for the Report. It is hoped that the Report will assist HRDs and others to make concrete practical changes that will increase their security and therefore the effectiveness of their work. This Report will also put real pressure on the Burma Government and other key actors, in the hope of improving the situation of HRDs in Burma and further allowing them to carry out their valuable and legitimate work.

The obvious intention on the part of the Burma Government is currently to quash dissent, stifle voices of opposition, and thereby stop democratic reform in Burma in its tracks. It seems that the powers-that-be were initially willing to embrace democratic reform up to a certain point – or perhaps give the appearance of doing so – in order to achieve clear and specific geopolitical and economic objectives, but are now in the process of attempting to force the genie back into the bottle.

Yet, if HRDs were better protected by the Burma Government, and their rights were respected and promoted, then they would be better able to conduct their legitimate human rights work, and in turn the overall human rights situation in Burma would improve – to the benefit of all people in Burma. If the Burma Government were to embrace such a vision, and initiate and implement such positive policies, it would soon see the benefits for all. Such an approach would also represent just the approach in the lead-up to the 2015 national elections that the people of Burma want to see.

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78. Latest political prisoner figures available at: <http://aappb.org/political-prisoner-data/>

## 6. Recommendations

### Burma Government:

- Instigate all measures recommended to the Burma Parliament, Judiciary and Security Sector below;
- Immediately cease the targeting, oppressing, stifling, controlling and silencing of HRDs thus far achieved by the criminalization of their legitimate human rights activities via repressive legislation and trumped-up criminal charges, and ensure that fundamental rights to assembly, association and expression are respected, promoted and protected at all times;
- Immediately stop the practices of arbitrary arrest and detention of HRDs, and all other forms of threats, harassment, surveillance and intimidation of HRDs by local or national authorities;
- Release all HRDs and political prisoners unconditionally, and drop all charges against those HRDs facing trial;
- Resolve any discrepancies regarding the number detained by ensuring a thorough investigation by an independent review panel composed of competent domestic and international experts, including former political prisoners and UN representatives;
- Establish the rule of law in Burma and undertake urgent judicial reforms to ensure the independence, competence, impartiality and accountability of judges, lawyers and prosecutors, so that they are free from any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason, and to draw on the assistance of the UN and other international organizations in this regard;
- Ensure that all HRDs are provided with proper legal aid, that such legal aid is fully covered by the national budget and operated by an independent non-governmental body, and that human rights lawyers are able to carry out their legitimate defense of HRDs without any harassment, interference or restrictions;
- Initiate and conduct full, transparent and independent investigations into all serious human rights abuses – including disappearances, extrajudicial killings, torture, instances of physical violence, and instances of sexual violence, abuse, harassment, intimidation and discrimination – perpetrated against HRDs in Burma, and ensure that all such perpetrators – even if members of powerful corporations or the Burma Army – are brought to justice and held fully accountable;
- Reform the MNHRC into a body that fully complies with the UN Paris Principles, meaning that it is independent, transparent and effective, investigates all human rights abuses without limitations and with real clout and authority, and protects and promotes human rights, particularly in relation to cases of judicial harassment and arbitrary arrest and detention;
- Facilitate any UN Special Rapporteur visits, as requested by the UN;

- Immediately agree to the establishment of a Burma country office of the UN Office of the High Commissioner for Human Rights (“OHCHR”) with a full investigation and monitoring mandate under item four of the UN Human Rights Council;
- Organize and hold training sessions, education programs, workshops and forums for national institutions, local authorities, law enforcement agencies and communities on: basic human rights standards and principles, as well as international human rights laws and practices, including educating them in women’s and LGBTIQ rights and discrimination; and sexual violence, abuse, harassment and intimidation; and
- Cease the sponsoring of religious and community divisions, and punish all instances of inter-faith violence, hate speech, extremist religious rhetoric, and religious or racial discrimination.

### Government Reform of the Judiciary and Security Sector:

- Ensure that all perpetrators of serious human rights abuses – including all abuses listed in the Burma Government recommendations – are brought to justice and held fully accountable;
- Observe all fair trial rights as prescribed in the UDHR and the ICCPR during the course of any hearings against HRDs in Burma, including ensuring that they have full and proper access to independent and competent lawyers and legal aid, that they are presumed innocent until found guilty, and that all judicial and legislative harassment, including arbitrary arrest and detention, must itself be penalized as a waste of valuable court time and resources;
- Observe all applicable international human rights law, including the fundamental rights to freedom of assembly, association and expression as prescribed by the UDHR and the ICCPR, during the conduct of any hearings in court; and
- Ensure that all judges, lawyers, prosecutors and judicial employees are competent, well-trained, independent and free from any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason, and to draw on the assistance of the UN and other international organizations in this regard.

### Burma Parliament:

- Immediately review, amend or repeal existing repressive laws – including the Assembly Law, the Penal Code, the UAA, the Association Law, the OSA, the media laws, and others highlighted by Tomás Ojea Quintana, the former Special Rapporteur on the Situation of Human Rights in Burma (A/HRC/22/58) – to ensure that all laws that negatively affect HRDs and their work are in full compliance with international human rights law and norms, including but not limited to the UDHR and the ICCPR, and uphold rather than restrict HRDs’ rights to the fundamental freedoms;
- Enact a raft of legislation that provides protection from judicial harassment; that actively protects the rights of HRDs and enables them to carry out their work; that is in line with

international human rights law and norms; that involves civil society, HRDs and communities affected by human rights abuses in a transparent and inclusive process as regards its discussion, formulation and enactment; and that is fully and properly implemented and enforced;

- Enact legislation that protects the rights of vulnerable groups and HRDs – such as women, LGBTIQ and religious and ethnic minorities – and outlaws discrimination against such groups, in particular repealing the Protection of Race and Religion Bills;
- Ratify all core international human rights treaties – in particular the ICCPR and its two Optional Protocols – and align domestic laws with the ICCPR and the Optional Protocols;
- Implement the Declaration, and accede to the UN Convention Against Torture (UNCAT) and the ICCPR; and
- Honor the commitment made to sign and ratify the UNCAT and implement the measures within this convention to end the systematic torture of people in Burma.

### Political Parties:

- Apply appropriate democratic pressure on the Burma Government to immediately abide by all of the recommendations made to the Burma Government above;
- Instigate all necessary measures recommended to the Burma Parliament above;
- Push for judicial reform and MNHRC enabling law amendment and reform;
- Push for the signing of UNCAT;
- Act as a watchdog against further human rights violations against HRDs in Burma;
- Provide HRDs who are detained and imprisoned for their activities with all available assistance and raise awareness of their cases and actively campaign for their release; and
- Make public their own human rights policies and party political platforms, and ensure explicit commitments to the protection of HRDs and their work.

### UN:

- Take all possible measures to arrange for the UN Special Rapporteur on Protection of Human Rights Defenders, UNSR on Freedom of Expression and Assembly to undertake a field mission to Burma and to collaborate closely with the UN Special Rapporteur on the Situation of Human Rights in Burma to ensure more joined-up and effective advocacy as regards the protection of HRDs in Burma;
- Maintain a UNGA resolution on Burma to highlight the failure of the Burma Government to implement the recommendations from UNGA Resolution 69/248, adopted on 29 December 2014, especially those failures which relate to the situation of HRDs on the ground in Burma;
- Continue taking all possible measures to establish a Burma country office of the OHCHR with a full monitoring mandate under item four of the UN Human Rights Council; and
- Provide all necessary human rights assistance that the Burma Government may require to improve the situation for HRDs in Burma.



## International Governments and Embassies:

- Urge the Burma Government both to immediately abide by all of the above recommendations made to them and to ensure that the above recommendations made to the Burma Parliament and the Burma Judiciary are implemented by those respective institutions;
- Consider appropriate and concerted international political and/or economic measures should the Burma Government continue to fail to protect – and actively target – HRDs working in Burma and carrying out their legitimate HRD activities;
- Support the recommendations made by the UN Special Rapporteur on the Situation of Human Rights in Burma and pressure the Burma Government to adopt them;
- Act as a watchdog against human rights violations against HRDs in Burma; and
- Provide HRDs who are detained and imprisoned for their activities with an international profile, provide social welfare and assistance to their families, and actively campaign for HRDs' release.

## International NGOs and Donors

- Recognize the difficulties that HRDs outside of Rangoon face, engage properly with grassroots CSOs/NGOs and local/rural communities, foster stronger HRD networks, engage in trust-building initiatives, and commit sustained time and resources to aiding community-building efforts;
- Be more strategic and comprehensive in terms of funding and implementing human rights programs, including: establishing the needs of local CSOs and HRDs; prioritizing security, the dissemination of practical information, advice and support; funding and implementing such programs in the areas that most need them; and supporting HRD forums and training sessions;
- Introduce new ideas and initiatives regarding HRD protection mechanisms, and coordinate regional and international consultations with a view to increasing protection for HRDs;
- Register Burma HRDs in order to raise their profile, helping raise awareness of any arrests and detentions, putting pressure on the Burma Government, and campaigning for the HRDs' release;
- Accurately document the challenges, abuses and harassment that HRDs face, and actively lobby the international community and the Burma Government to protect HRDs working in Burma;
- Translate all relevant HRD manuals, such as those by Protection International, into Burmese;
- Establish an HRD hotline for all HRDs to contact should they be in any sort of trouble; and
- Establish a both pro active and reactive HRD fund and mechanism that can provide immediate case-by-case assistance to HRDs in Burma, dependent upon their needs, whether legal, logistical, financial, advocacy, technological, security or otherwise.

## HRDs and Burma Civil Society:

- Aim to accurately understand and assess all realistic threats and risks, take reasonable precautions and preventative measures, observe relevant protocols, and establish effective emergency plans and concrete strategies when carrying out HRD work;
- Adopt all appropriate IT security measures, to increase security in communications;
- Establish local, regional and national HRD networks – including LGBTIQ and women’s networks – to share information and contact details, collaborate and support each other, foster strong communication and security techniques, and raise awareness of risks, threats and tactics;
- Attend any HRD Forums that are being held in Rangoon, and any other appropriate forums that may be implemented in other regions;
- Organize and participate in any relevant and useful workshops and training sessions on HRD work, risks and challenges, protection mechanisms, and human rights generally;
- Ensure full access to any HRD fund and/or hotline that is established in Burma;
- Obtain access to relevant HRD protection manuals, *e.g.* those by Protection International; and
- Ensure as much access as possible to media outlets, lawyers, human rights organizations, and so on, to increase HRD profiles and chances of assistance when required.

# Appendix 1: Interview Questionnaire

## ***Background information:***

1. Name and age?
2. What is your ethnic nationality?

## ***Activities:***

3. What issue(s) are you working on? And In which location(s)?
4. What activities do you conduct (regarding those issues)?
5. Do you work individually, and/or as part of a network, and/or as a member of an organization?
6. Would you consider yourself to be a human rights defender? What do you consider to be a human rights defender?
7. How long have you been working in the field?

## ***Risks/Threats/Challenges:***

8. Are there any challenges to your work, and if so, what are they?
9. Have you or anyone else you know ever experienced any physical attacks, restrictions, discrimination, threats, intimidations, judicial harassment, sexual harassment or violence, arrests or punishments? From where did those come from, what is the source of these?
10. Regarding the work you do, are you afraid of anything?
11. What would you say your vulnerabilities are?
12. Do you feel that you are under any kind of surveillance, either physical or technological?

## ***Protection Mechanisms:***

13. Do you have access to any protection mechanisms?
14. What strategy do you have to deal with challenges, risks and threats? Do you have a security plan?
15. What communications devices do you use? Do you use the internet during the course of your work? Do you feel that these communications channels are secure?
16. Do you have access to secure transportation?
17. Do you have access to a safe house or other safe place?
18. Do you have faith or trust in the judicial system? Do you feel protected by laws?
19. Are you able to share or receive information with other HRDs or activists?
20. Have you ever received training or assistance from human rights or civil society organizations, whether domestic or international?

***Needs/Recommendations:***

21. How can civil society organizations or networks or individuals support each other's work?
22. How can the international community support your work or the work of other HRDs?
23. What do you want state institutions such as the government, parliament, judiciary, police, national human rights commission, *etc.* to do to help protect HRDs and promote their work?

***Concluding Questions:***

24. Have you noticed any recent changes in the treatment and working environment of HRDs?
25. How does undertaking HRD work affect yours and your family's social position, health or livelihood opportunities?

## **Appendix 2: Focus Group Discussion Guide**

### ***Background questions:***

- Do you work individually or as part of an organization?
- What issue are you working on?
- Where do you currently work?
- What kind of work do you or your organization do?

### ***Experience:***

- What are the biggest challenges you currently face in carrying out HRD work?
- In what way have attacks, restrictions, discriminations, threats, intimidations, or punishments affected your ability to undertake human rights work?
- Where/who have these threats come from?
- What kind of support do you receive i.e. as part of a network?
- What are you or your organization most afraid of?

### ***How to resolve these issues:***

- What in your opinion should be done to improve the situation for HRDs?
- What role do you think NGOs and INGOs should take in facilitating human rights work?
- What role, if any, should the government play in assisting human rights work?
- What kind of protection mechanisms are currently in place and what mechanisms would you like to see implemented in the future?

### ***Any further comments:***



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