HUMAN RIGHTS WATCH

"They Can Arrest You at Any Time"

The Criminalization of Peaceful Expression in Burma

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Summary

> While the country is more open than before, the people's rights are being neglected. They can arrest you at any time under these laws. There is no guarantee.
>
> –Pang Long, attorney, Rangoon, January 2016

The past five years have been a time of liberalization and change in Burma. The abolition of prior censorship and a loosening of licensing requirements has led to a vibrant press, and the shift from formal military rule has emboldened civil society.

The change has not been without conflict, however, and, under President Thein Sein, those who embraced the new freedoms to vocally criticize the government or military too often found themselves arrested and in prison. The backlash against critics was facilitated by a range of overly broad and vaguely worded laws that violate internationally protected rights to expression and peaceful assembly, some dating from the British colonial era, some enacted under successive military juntas, and others the products of reform efforts, or ostensible reform efforts, by the Thein Sein government.

This report examines how Burmese governments have used and abused these laws and the ways in which the laws themselves fall far short of international standards. It sets forth a series of concrete recommendations to the new Burmese government, led by Aung San Suu Kyi's National League for Democracy (NLD), aimed at dismantling the inherited legal infrastructure of repression.

After Thein Sein took office as president in 2011, the government relaxed censorship of the media, released many political prisoners, and passed a series of laws that were presented as steps forward in promoting basic liberties. Among those laws were the "Law Relating to the Right to Peaceful Assembly and Peaceful Procession," which established a legal framework for exercising the right to peaceful assembly, the News Media Law, which ostensibly recognized the media's right to comment on the government's performance, the Printing and Publishing Enterprise Law, which ended prior censorship of the press, and the Telecommunications Law.

Each of these laws turned out to be a double-edged sword that the Thein Sein government used to arrest and prosecute those who spoke out in ways the government or the military found objectionable. As Wai Phyo, chief editor of *Eleven Media Group,* told Human Rights Watch: "Before, in terms of freedom of expression, there was direct control. Now, it is indirect threat by criminal charges." The Thein Sein government also used various colonial-era laws and laws enacted by the military junta to prosecute peaceful speech and assembly.

Laws that impose criminal penalties for peaceful expression are of particular concern because of their broader chilling effect on free speech. As the United Nations special rapporteur on freedom of expression has stated, with such laws in place, "individuals face the constant threat of being arrested, held in pretrial detention, subjected to expensive criminal trials, fines and imprisonment, as well as the social stigma associated with having a criminal record."

The newly installed NLD government moved swiftly to release many of the political prisoners whose stories are related in this report. It should now take immediate steps to repeal or substantially amend the laws that have been used in recent years to restrict and penalize expression and peaceful assembly in violation of international law. Doing so would be consistent with the NLD's commitment, as stated in its 2015 election manifesto, to "revoke legislation that harms the freedom and security that people should have by right." It would also fulfill the commitment that Burma made, in its Universal Periodic Review (UPR) before the UN Human Rights Council on November 6, 2015, to work to ensure that freedom of opinion and expression are protected and that those who exercise these basic rights not be subject to reprisals.

The repeal or amendment of abusive laws that have been used to arrest, harass, and imprison citizens who spoke out or protested about matters of public interest would send a strong signal that genuine change has come to Burma. Than Htaik Thu, editor-in-chief of the *Myanmar Post,* expressed the hope that unlike under the Thein Sein government "there won't be intentional punishment of journalists. We hope that there will be no harassment or punishment of any individual or organization."

Criminalization of Peaceful Protest

The 2012 Law Relating to the Right of Peaceful Assembly and Peaceful Procession ("Peaceful Assembly Law"), and the 2014 amendments to that law, were presented as steps forward in the protection of the right to peaceful assembly. Even as amended, however, the law required government consent to hold an assembly, empowered the authorities to deny that consent or to impose restrictions on where the assembly was held and what could be said, and imposed criminal penalties for violation of its provisions. A new Peaceful Assembly and Peaceful Processions Law was passed by the upper house of the NLD-led Parliament on May 31, 2016, but unfortunately retains many of the flaws of the previous law.

The Peaceful Assembly Law has been used extensively in recent years to detain peaceful protesters speaking out on matters of public interest. According to the Association for the Assistance of Political Prisoners (AAPP), when new members of Parliament were sworn in at the end of February 2016, 166 people were facing trial under the Peaceful Assembly Law for political protests, and at least 22 were serving prison sentences after being convicted under that law. Those arrested or imprisoned included students who protested against the new national education law or the role of the military in government, farmers who protested the confiscation of their land for mines or military barracks, journalists who protested the arrest of other journalists, and even a solo protester who called for national unity.

The majority of those individuals were charged with violating article 18 of the law, which imposed criminal penalties on those who carried out protests without government consent, or article 19, which imposed criminal penalties for violating various restrictions on such assemblies. The sheer number of people who have faced charges under the Peaceful Assembly Law for protests critical of the government or the military is a clear indication of the law's potential for abuse.

Said one journalist, "Because the law is passed, people think they can protest. In reality, a lot of people are in prison because of this law. In a democratic country, there is no need to ask for permission to protest."

While the maximum sentence under article 18 was six months in prison, in reality a single protest could result in a sentence lasting several years. When a procession, however peaceful, passed through more than one of Burma's many small townships, those involved were frequently charged with violating the law in each of the townships through which they passed. Each charge was then tried separately, and the sentences were typically made cumulative rather than concurrent.

Protesters have also faced charges under colonial-era provisions of the Penal Code criminalizing "unlawful assemblies." When the new Parliament was sworn in, at least 101 people were facing charges under those provisions, at least 69 of them held without bail.

Many of those arrested for protests were also charged under section 505(b) of the Penal Code, which criminalizes statements "likely to cause fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquility" and carries a penalty of up to two years in prison. University students Zeyar Lwin, Paing Ye Thu, and Nan Lin, who helped organize a protest in Rangoon on June 30, 2015 calling on the military to relinquish its role in government, were charged in two different townships with violating Peaceful Assembly Law article 18 and Penal Code section 505(b). As a result, they faced up to five years in prison for one peaceful protest on a matter of intense public debate. Charges against them were dropped by the new NLD-led government in April 2016.

The use of Penal Code section 505(b) to enhance the possible sentence for protesters appears to be common practice, with many of those arrested for peaceful protests also facing charges under that provision. According to the AAPP, more than 100 people were facing charges under section 505(b) as of February 29, all but 10 of whom were also facing charges under the Peaceful Assembly Law or the unlawful assembly provisions of the Penal Code. As activist Wai Lu, who has faced charges under article 18 and section 505(b) multiple times, noted, "People risk their lives to tell about their situation. They think the highest risk is article 18. But really article 18 is a cover and the real charge is 505(b)."

The authorities have also increased possible prison terms by charging those under arrest with new offenses based on protests that took place a year or more earlier. For example, Zeyar Lwin and Nan Lin were informed in January 2016 that they were facing additional charges for protests against the national education law that took place in 2014. One of the

positive aspects of the assembly law passed by the Upper House is that it prevents such abuses by requiring that any charges be filed within 15 days of the date of the protest.

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

Laws Restricting Use of the Internet

The use of the Internet has risen exponentially in Burma, and with it government efforts to control Internet content. The most recent tool in this effort is the Telecommunications Act, passed in 2013. Section 66(d) of that act allows the imposition of criminal penalties of up to three years in prison for "extortion of any person, coercion, unlawful restrictions, defamation, interfering, undue influence, or intimidation using a telecommunications network." This law was invoked by the Thein Sein government to prosecute comments on social media deemed "insulting" to the government or the military, and continues to be used to prosecute offensive or "insulting" speech.

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

The Electronic Transactions Act criminalizes a similarly broad range of Internet speech and was frequently used by the government prior to the enactment of the Telecommunications Act. While it was amended in October 2014 to significantly reduce the penalties for violations, a positive achievement of the Thein Sein era, prosecutions for peaceful online activity have now shifted to the Telecommunications Act. The scope of both laws should be significantly narrowed to meet international free expression standards.

Criminal Defamation

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

As Toe Zaw Latt, bureau chief for DVB Multimedia Group, put it:

> We no longer have pre-censorship, but we have post-censorship…. They can sue you, make lots of trouble. You can easily get into trouble. If you do an article on cronies and where they get their money, you are at risk. Even if you have hard evidence, they can still bring defamation charges.

Human Rights Watch believes that criminal defamation laws should be abolished, as criminal penalties are always disproportionate punishments for reputational harm and infringe on peaceful expression. Criminal defamation laws are open to easy abuse, resulting in very harsh consequences, including imprisonment. As repeal of criminal defamation laws in an increasing number of countries shows, such laws are not necessary for the purpose of protecting reputations, particularly of government officials.

In March 2014, two journalists from the *Myanmar Post* were charged with criminal defamation under section 500 of the Penal Code. The charges were based on an article the *Post* published in January 2014 reporting alleged comments from Maj. Thein Zaw, a military Member of Parliament (MP), at a regional workshop organized by the United Nations Development Program. Maj. Thein Zaw was quoted as saying, in the context of a discussion on the need to reduce the number of MPs, that the military had to be involved in

Parliament because of low education standards. Other media then reported on the article, with many criticizing the major for his comments. Maj. Thein Zaw then filed a complaint with the police, and Chief Editor Than Htaik Thu and Deputy Chief Reporter San Moe Tun were charged with defamation. After a trial lasting almost a year, they were both convicted and sentenced to two months in prison. They were released from prison in May 2015.

In October 2014, five members of *Eleven Media* were charged with criminal defamation under section 500 after the *Eleven Weekly Journal* published an article alleging that the Ministry of Information had paid more than market price for printing presses. The Information Ministry sent a letter to the newly formed Press Council saying that the article was wrong and that *Eleven Media* should apologize. The paper stood by its story, and was charged with defaming the department in the Information Ministry that purchases the machines. The trial began on October 10, 2014 and was ongoing at the time of writing.

The News Media Law, enacted in March 2014, contains a vaguely worded code of conduct that, among other things, prohibits writing that "deliberately affects the reputation of a person or organization." Violation of this provision can lead to a fine of up to 1 million kyat (US$834) under section 25(b) of the law. This provision was used to prosecute 11 staff members of the *Myanmar Herald,* ranging from the chief editor to members of the distribution staff, for "defaming" President Thein Sein by publishing an interview with a member of the NLD who strongly criticized the president.

Aung Kyaw Min, the current chief editor of the paper, said that the article was a matter of public interest: "Criticism of the government by the opposition is important. People should know the perspective of the opposition on the current government." Instead, after a trial lasting almost eight months, the court convicted chief editor Kyaw Saw Win and the author of the article, Ant Khaung Min, of defamation, noting that "Thein Sein is like our parent. This is like children insulting their parents." Both were sentenced to the maximum permitted fine of 1 million kyat (US$834).

Other Laws Used Against the Media

Defamation was not the only weapon wielded against critical media by the Thein Sein government. Another important instrument was Burma's contempt of court law, enacted in 2013, which defines criminal contempt very broadly, prohibiting anything that may

"disgrace" or lessen public trust in the court, and severely limiting what can be written about the facts of the case before the court has ruled. Violators may receive up to six months in prison or a 100,000 kyat (US$83) fine. These restrictions sharply limit the ability of the media to report on Burma's judicial system.

In June 2015, 17 staff members of *Eleven Daily* were charged with criminal contempt of court for publishing an article quoting testimony in the ongoing defamation trial of *Eleven Media Group* staff. Five months later 14 were convicted and fined 30,000 kyat (US$25), while charges against the remaining three were dismissed on technicalities. Wai Phyo, chief editor of *Eleven Media,* believes that it was only due to pressure from international organizations that the 14 were not given prison sentences. The authorities, he said, were "finding reasons to put us in jail."

The overly broad Official Secrets Act, which dates from 1923, has also been invoked against media undertaking investigative journalism. On November 25, 2014, the *Unity Journal* published a front-page article about a military facility that had been built in Pauk township on land confiscated from local farmers. The article included photographs of the facility, and alleged that it was a chemical weapons factory. The government denied the report, and charged four journalists and the chief executive officer of *Unity* with violating section 3(1)(a) of the Official Secrets Act, which provides penalties of up to 14 years in prison for anyone who approaches or enters a "prohibited place." Despite testimony that the journalists had photographed the site while researching a story on the land confiscations and that no signs were posted at the time indicating the factory was off limits, all five were convicted and sentenced to 10 years in prison, later reduced on appeal to seven years.

Finally, the Printing and Publishing Enterprise Law, while a significant improvement on its predecessor, still imposes broadly worded content regulations on publishers and was used in 2015 to prosecute five men who printed a calendar that stated that the largely stateless Rohingya minority have historical roots in Burma. The five were convicted and fined 1 million kyat (US$834) each under the law. They were subsequently rearrested on charges of violating section 505(b) of the Penal Code (the public "alarm" law described above).

Laws Against "Insulting" Religion

Several provisions in the colonial-era Penal Code criminalize speech that "insults" religion or "wounds" religious feelings. Penal Code section 295A imposes criminal penalties of up to two years in prison for insulting or attempting to insult the religious feelings of any class of persons "with deliberate and malicious intent." Penal Code section 298 imposes criminal penalties of up to one year in prison for "wounding the religious feelings" of any person. One impact of the rise of religious extremism in Burma has been the increased use of these laws on behalf of powerful groups of monks against individuals claimed to have insulted the majority Buddhist population.

Writer and former NLD information officer Htin Lin Oo served more than a year in prison before being released as part of the prisoner amnesties ordered by the new NLD-led government in April 2016. He had been serving a two-year sentence at hard labor after being found guilty of violating section 295A. The charge was based on a literary talk he gave in October 2014 in which he criticized the racist rhetoric of some monks, saying it was not consistent with Buddhist teaching. The court denied Htin Lin Oo bail under pressure from a militant Buddhist group, The Committee for Protection of Nationality and Religion, commonly known as Ma Ba Tha, and the trial was conducted in an atmosphere of intimidation.

Pressure from monks' organizations played a similar role in the prosecution of New Zealander Philip Blackwood, the general manager of the VGastro Bar in Rangoon, and his two Burmese partners, Tun Thurein and Hut Ko Ko Lwin. In December 2014, they placed an advertisement on the bar's Facebook page that depicted Buddha wearing headphones. Although the image was quickly taken down and an apology issued, police arrested the three after militant Buddhist groups complained. All three men were convicted and, in March 2015, sentenced to two-and-a-half years in prison at hard labor. Blackwood was released in a presidential amnesty on January 22, 2016, but his two co-defendants were believed to still be in prison at the time of writing.

Prosecutorial Practices Compound the Harm

The impact of laws criminalizing free expression has been compounded in Burma by prosecutorial practices such as filing charges in multiple jurisdictions for the same protest, and then seeking the imposition of consecutive sentences. While such practices are not

unique to political cases, they can result in absurdly long sentences for a single act of protest. The case of Htin Kyaw, leader of the Movement for Democratic Current Force, demonstrates the abusive possibilities of the practice. Htin Kyaw was charged in 12 separate townships for the same peaceful procession in May 2014. Because the sentences were made consecutive and not concurrent, he was ultimately sentenced to 13 years and six months in prison for a single protest. He was granted amnesty and released by the new government in April 2016, after having served almost two years in prison. The Peaceful Assembly Law passed by the Upper House limits the charges that can be filed for an assembly or procession to the township in which the protest started.

In many of the cases examined by Human Rights Watch, the trial process was extremely and, in the views of the defendants, purposefully prolonged, making the process itself punitive. In January 2016, student activist Min Thwe Thit estimated that he would be on trial for the next 20 years given the rate at which his trial was proceeding. According to Min Thwe Thit, who was being held without bail, the government planned to call 43 witnesses, and the examination of the first witness took 10 months. The new NLD-led government dropped the charges against him and released him from prison in April 2016.

Even for those who are granted bail, the prolonged trial process can have severe consequences. Shwe Hmone's trial for violating article 19 of the Peaceful Assembly Law lasted for nine months. "Trial was once a week. I could not do any work on those days. The court would say to be there at 9 a.m. but it would always take all day…. I am the chief reporter for my journal. If there is a press conference in Naypyidaw, I would have to check with the court, and often they would say I could not go. There was psychological impact as well."

Key Recommendations

To the President and the Newly Elected Government of Burma

- Develop a clear plan and timetable for the repeal or amendment of laws as recommended at the end of this report and, where legislation is to be amended, consult fully and transparently with the Myanmar National Human Rights Commission and civil society groups.
- Immediately and unconditionally release any individuals detained, facing charges, or imprisoned for exercising their rights to freedom of expression, association, and peaceful assembly who have not already been released in prisoner amnesties.
- Instruct all police departments that participation in peaceful assemblies should never be the basis for charges under Penal Code sections 143, 145, or 147, section 18 or 19 of the 2012 Peaceful Assembly and Peaceful Processions Law, or section 17 or 18 of the 2016 Peaceful Assembly and Peaceful Processions Law.
- Direct all police departments to facilitate peaceful assemblies, not hinder them, and appropriately protect the safety of all participants. Persons and groups organizing assemblies or rallies should not be prevented from holding their events within sight and sound of their intended audience.

Methodology

Research for this report began in May 2014 and continued until just prior to this publication. It is based primarily on in-depth analysis of Burma's laws used to restrict freedom of expression and assembly and on interviews in Burma in January 2016. The report also draws on court judgments and news reports concerning criminal proceedings in relevant cases, and public statements by the Thein Sein government.

For this report, Human Rights Watch interviewed 29 lawyers, journalists, students, activists, and members of civil society organizations. Email correspondence continued until the time of publication. Most interviews were conducted in Burmese, using an interpreter. All of those interviewed were told of the purpose of the interviews and given a choice regarding whether or not to be quoted in the public report. No incentives were offered or provided to interviewees.

Where possible Human Rights Watch used official translations of Burmese laws. However, there are no "official" English translations for many of the recently enacted laws. For these laws, Human Rights Watch used translations by reputable organizations. In some cases, Human Rights Watch used external translators. Given the vague language used in some of the laws and the difficulties in translating from Burmese to English, some of the legal provisions can be translated using slightly different words or sentence structures. We do not believe that these differences significantly affect the analysis of any of the laws offered here.

This report is not meant to offer a comprehensive examination of all laws that criminalize free speech in Burma, but instead to focus on laws that have proven to be most prone to misuse.

I. Background

Burma established its independence from British colonial rule in 1948. In March 1962, after only 14 years of democratic civilian rule, Gen. Ne Win seized power in a military coup.[1] From the time of that initial coup until the recent elections, Burma was run by a series of military or military backed rulers who repressed freedom of speech, association, and assembly using various methods, including the use of overly broad and vaguely worded laws.

Ne Win dissolved parliament and state legislatures, arrested political leaders, and effectively suspended the 1947 Constitution. He proclaimed for himself "supreme legislative, executive, and judicial authority" and created a Revolutionary Council consisting of military officers to oversee its administration. The new ruling council revoked habeas corpus and other legal rights, and dismantled the judicial system in favor of a Chief Court that lacked independence from the executive.[2]

With parliament suspended, Ne Win and the Revolutionary Council ruled through decree.[3] At the outset, the junta cracked down on freedom of expression and association to repress anti-coup sentiment, particularly prevalent on university campuses. In July 1962, students held a mass meeting in the assembly hall of the Rangoon University student union building. As the meeting came to a conclusion, riot police appeared and took over the building. A melee resulted, and soldiers entered the campus. In the ensuing violence government security forces killed over 100 students, and soldiers blew up the student union building, which was closely associated with Burma's nationalist struggle and Gen. Aung San, the father of Burmese independence. The authorities subsequently closed the university for four months.[4]

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[1] Eric Pace, "Ne Win, Ex-Burmese Military Strongman, Dies at 81," *New York Times*, December 6, 2002, http://www.nytimes.com/2002/12/06/world/ne-win-ex-burmese-military-strongman-dies-at-81.html?pagewanted=all (accessed March 31, 2016).

[2] Donald Seekins, *The Disorder in Order: The Army-State in Burma since 1962* (Bangkok, Thailand: White Lotus Press, 2002), p. 39.

[3] Ibid., p. 39.

[4] Christina Fink, *Living Silence in Burma* (London: Zed Books, 2009) p. 26; Michael Charney, *A History of Modern Burma* (Cambridge, UK: Cambridge University Press, 2009), p. 116.

In concert with shutting down protests on university campuses, the Revolutionary Council also took aim at press freedom. In 1962, the Revolutionary Council passed the Printers and Publishers Registration Act—a law that remained in effect until 2014, when parliament replaced it with a new Printing and Publishing Enterprise Law.[5] The act required all printers and publishers to register with the Ministry of Information every year and provide copies of every publication for approval. The authorities used the law to pressure publications to restrict critical content and to include pro-junta editorials.[6]

In addition to taking control over news content distribution via News Agency Burma (NAB), throughout the 1960s the Revolutionary Council banned or nationalized most private news and book publications in Burma. The Revolutionary Council's increasing use of permit requirements for public talks made the exchange of ideas more difficult.[7] The junta announced that associations had to register with the government or face closure if their public discussions criticized the junta.[8]

The Revolutionary Council limited freedom of expression among the religious class to rein in the political influence of Buddhist monks, who had a history of public protest.[9] In 1962, monks were ordered to register with the government.[10] In 1965, the junta created a state-sponsored organization of monks, the Sangha Maha Nayaka. The government arrested all monks who refused to register and closed down any monasteries that fostered anti-government dissent.[11] Within a year, the government had arrested 900 monks on charges of engaging in anti-government activity.[12]

In 1971, in the midst of a protracted economic downturn, Ne Win retired from the military and oversaw the transition from the military-led Revolutionary Council to a nominally civilian-led government run by the Burma Socialist Programme Party (BSPP), of which he

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[5] "Myanmar: Printing and Publishing Law," article 19 (Nov. 11, 2014), https://www.article19.org/resources.php/resource/37765/en/myanmar:-printing-and-publishing-law (accessed June 3, 2016).

[6] Fink, *Living Silence in Burma*, p. 211.

[7] Michael Charney, *A History of Modern Burma*, (Cambridge, UK: Cambridge University Press, 2009) p. 116.

[8] Fink, *Living Silence in Burma*, p.29.

[9] See generally, Donald E. Smith, *Religion and Politics in Burma* (Princeton: Princeton University Press, 1965).

[10] Derek Jones, *Censorship: A World Encyclopedia* (London: Fitzroy Dearborn Publishers, 2001), p. 380.

[11] Fink, *Living Silence in Burma*, p.36.

[12] Charney, *A History of Modern Burma*, p. 116.

was the head.[13] The BSPP began drafting a new constitution at the end of 1972.[14] While the government claimed to engage in public consultation, security forces arrested leaders of ethnic minorities, particularly ethnic Chin, who called for the adoption of federalism and a multiparty system.[15]

After a strictly controlled public vote, the new Constitution went into effect at the beginning of 1974. Ne Win became president of the country.[16] Although the 1974 constitution provided for freedom of speech "not contrary to the interests of the working people and of socialism"[17] and for freedom of assembly and association,[18] repression of those rights continued throughout the 1970s and 1980s.

In 1974, former United Nations Secretary-General U Thant, a symbol of Burma's pre-1962 independence, passed away, prompting students to once again protest for political reform. On December 8, students and monks covered U Thant's body in a UN flag and led a procession honoring him. The military responded several days later with over 1,000 soldiers and police raiding the university campus, retaking U Thant's body, arresting over 4,000 students, and shutting down both Mandalay and Rangoon Universities for over five months. The military then imposed martial law over Rangoon, which remained in place until September 1976.[19] During this period the BSPP employed wide-scale surveillance efforts to crack down on student leaders, who comprised the base of anti-regime dissent.[20]

In 1975, the BSPP enacted the State Protection Law, which allowed authorities to detain anyone who committed or was about to commit an act that constituted an "infringement of the sovereignty and security of the Union of Burma," or was a "threat to the peace of the

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[13] Josef Silverstein, "Historical Introduction: Burma 1945-1992," in Weller, ed. *Democracy and Politics in Burma* (Manerplaw, Burma: Govt. Print. Office of the National Coalition Govt. of the Union of Burma, 1993), pp. 3-4.

[14] Ibid., pp. 3-4.

[15] Fink, *Living Silence in Burma*, p.31.

[16] Silverstein, "Historical Introduction: Burma 1945-1992," p. 3-4. On the day of the vote, officials monitored voting and "encouraged" those who voted against the Constitution to vote again. Benedict Rogers, *Burma: A Nation at a Crossroads* (London: Rider, 2012), p. 15.

[17] Constitution of Burma (1974), art. 157, http://web.archive.org/web/20061207132545/http://english.dvb.no/e_docs/521974_con.htm (accessed June 3, 2016).

[18] Constitution of Burma (1974), art. 158, http://web.archive.org/web/20061207132545/http://english.dvb.no/e_docs/521974_con.htm (accessed June 3, 2016).

[19] Charney, *A History of Modern Burma*, p. 139.

[20] Fink, *Living Silence in Burma*, p. 211.

people."[21] While providing that the government would restrict fundamental rights only when "necessary," the law, which was repealed by the new NLD-led government, did not define what constitutes a "necessary" restriction, or who should make that determination.[22]

Ne Win formally retired as president in 1981, but continued to effectively run the country through his role as head of the BSPP.

1988 Uprising and Repression

A demonetization program in 1988 wiped out the savings of much of Burma's population, with a particularly devastating effect on students, and led to a series of mass protests. Ne Win resigned under pressure in July 1988 but the protests continued, culminating in mass street protests on August 8, 1988 calling for a transition to democracy and an end to military rule.[23] Riot police and military, now under the direction of Gen. Saw Maung, acted with extreme force, killing at least 3,000 protesters and shutting down universities for months.[24] Many of the student activists fled the country rather than risk arrest, with many spending years in exile or hiding out near the borders. On September 18, the military declared martial law under the leadership of an 18-member State Law and Order Restoration Council (SLORC).[25]

It was during this period that Daw Aung San Suu Kyi, daughter of independence figure Gen. Aung San, gained national prominence as a pro-democracy leader.[26] She gave her first public speech at Shwedagon Pagoda in Rangoon on August 26, 1988,[27] and helped to found the National League for Democracy (NLD) on September 27. Over the next six months, membership in the NLD soared and Suu Kyi spoke out repeatedly against the junta. In July 1989, the military raided her house and placed her under house arrest on

[21] State Protection Law of 1975, preamble.

[22] *Report on repressive laws in Burma*, Info Birmanie, October 2015, http://www.info-birmanie.org/wp-content/uploads/REPORT-ON-REPRESSIVE-LAWS-2015-FINAL1.pdf (accessed May 29, 2016).

[23] Philippa Fogarty, "Was Burma's 1988 uprising worth it?," *BBC News*, Aug. 6, 2008 (accessed February 16, 2016), http://news.bbc.co.uk/2/hi/7543347.stm (accessed June 3, 2016).

[24] Ibid.

[25] Fink, *Living Silence in Burma* , pp. 58-9.

[26] Peter Popham, *The Lady and the Peacock* (New York: Experiment 2012), p. 221.

[27] Bertil Lintner, "Aung San Suu Kyi: A Symbol of Defiance," September 28, 2009, http://www.amnesty.org.au/features/comments/21411/ (accessed April 4, 2016).

spurious charges that she was being manipulated by another political party and was involved in an international conspiracy.[28]

Under pressure both domestically and abroad, the junta called a general election in 1990. In the run-up to the election it imposed numerous rules intended to thwart campaigning by the opposition, including prohibiting large meetings and assemblies, forbidding opposing parties from distributing party literature unless cleared by the Home Ministry, preventing parties from holding public talks, and denying parties access to television airtime until the final three months of the election. Despite the restrictions, the NLD scored an overwhelming electoral victory in 1990, winning 392 out of 485 parliamentary seats, including all 59 seats in the Rangoon Division.[29] The military-backed National Unity Party won only 10 seats. However, rather than hand over power, the SLORC annulled the election and rounded up and arrested many NLD leaders, party activists and others.[30]

In 1997, the SLORC was dissolved and replaced by the State Peace and Development Council (SPDC),[31] but the repression of speech and other rights continued apace. In the ensuing years, the SPDC oversaw a proliferation of laws restricting freedom of expression in new media, including the Internet Law (2000), which imposed regulations on postings deemed detrimental to the country, its policies, or its security,[32] and the Electronic Transactions Law (2004), which criminalized electronic transactions that compromised state security, the economy, national solidarity, culture, or community peace and tranquility.[33]

Aung San Suu Kyi was released from house arrest in 2002 and went on a speaking tour around the country. On May 30, members of the pro-government Union Solidarity Development Association (USDA) viciously attacked her motorcade in Depayin in upper Burma, killing as many as 70 of her supporters in a possible attempted murder of the

[28] Fink, *Living Silence in Burma*, p. 64.

[29] Many other seats went to ethnic-based parties that supported the NLD.

[30] Fink, *Living Silence in Burma*, p. 64.

[31] Charney, *A History of Modern Burma,* p. 179.

[32] Asian Communication Handbook 2009, ed. Indrajit Banerjee Stephen Logan 326 (2008).

[33] Electronic Transactions Law (2004), available online at http://www.wipo.int/wipolex/en/text.jsp?file_id=244521 (accessed June 3, 2016).

opposition leader.[34] In the wake of the attack, authorities arrested Suu Kyi and sent her to the notorious Insein Prison, before placing her under house arrest.[35]

Facing international condemnation, the SPDC announced its "Seven Step Roadmap to Democracy," starting with a reconvening of the National Convention in late 2004. But the reconvened National Convention was no more representative than the original body, particularly since the NLD delegates had been expelled in 1995 after the party announced its boycott of the process.[36]

In August 2007, a massive increase in fuel prices sparked protests that the government quickly suppressed. In September, after decades of frustration over a faltering economy and without any prospect of democratic change, monks began protesting in large numbers in what became known as the "Saffron Revolution."[37] The protests grew until, on September 26, a violent crackdown began. Security forces shot into crowds using live ammunition and rubber bullets, beat marchers and monks before dragging them onto trucks, and arbitrarily detained thousands of people in official and unofficial places of detention. Many monks, students, and others were killed.[38]

The authorities arrested many activists, who were sentenced to long prison terms after unfair trials. At least 14 members of the 88 Generation Student Group, an activist group founded by students involved in the 1988 uprising, were sentenced to up to 65 years in prison under the Electronic Transactions Act, section 505(b) of the Penal Code, the Printing and Publishing Registration Law, the Video Act, and other repressive laws restricting freedom of expression.

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[34] David Scott Mathieson, "The lady's not for turning," *The New Statesman*, May 19, 2009 (accessed March 14, 2016) http://www.newstatesman.com/asia/2009/05/suu-kyi-military-rule-burmal; Burma Campaign UK, A Biography of Aung San Suu Kyi (accessed March 1, 2016), http://burmacampaign.org.uk/about-burma/a-biography-of-aung-san-suu-kyi/ (accessed May 16, 2016).

[35] David Scott Mathieson, "The lady's not for turning," *The New Statesman*, May 19, 2009, http://www.newstatesman.com/asia/2009/05/suu-kyi-military-rule-burma (accessed March 14, 2016).

[36] Human Rights Watch, *Vote to Nowhere: The May 2008 Constitutional Referendum in Burma* (New York: Human Rights Watch, 2008), p.6.

[37] Charney, *A History of Modern Burma*, p. 186.

[38] "Burma: Crackdown Bloodier Than Government Admits," Human Rights Watch news release, December 7, 2007.

Cyclone Nargis and the Constitutional Referendum

Facing renewed criticism following the crackdown and international calls for democratic reform, the SPDC in October 2007 created a 54-member Commission for Drafting the State Constitution.[39] The Commission was to carry on the work of the National Convention and give effect to Gen. Myo Nyunt's Seven Step Road Map to Democracy.[40] In February 2008, the SPDC announced that the final draft of a new constitution was complete,[41] and scheduled a vote to approve the draft constitution in May 2008.[42]

On May 2, 2008, just eight days before the scheduled vote on the referendum, Cyclone Nargis slammed into the country, dragging thousands out to sea in the first few hours. Four-meter waves reaching up to 30 kilometers inland ripped across the delta areas, destroying low-lying areas of the country in the Irrawaddy and parts of Rangoon Division, the economic heart of the nation. Following the storm, more than two million people were in desperate need of food, clothing, clean water, and shelter. Official estimates place the death toll at 140,000, but aid groups estimated the death toll to be over twice as high.[43] Despite the devastation in parts of the country, the SPDC announced that the referendum would continue as scheduled but be delayed in the Irrawaddy Division and affected areas of Rangoon.[44]

The vote was denounced internationally as neither free nor fair.[45] Voting irregularities were reported nationwide on the day of the referendum.[46] Citizens interviewed by Human Rights Watch after the referendum said that in some cases they were pressured to vote "yes" by local officials. In other areas, authorities simply informed the villagers that they had

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[39] Human Rights Watch, *Vote to Nowhere,* p. 22.

[40] Fink, *Living Silence in Burma*, p. 94.

[41] *Announcement Nos 1/2008 and 2/2008 issued*, *New Light of Myanmar*, Feb. 11, 2008, http://www.ibiblio.org/obl/docs4/Announcements1-2008&2-2008.pdf (discussing announcement 1/2008 wherein the SPDC confirmed that the constitution had been finished) (accessed March 31, 2016).

[42] Human Rights Watch, *"I Want to Help My Own People," State Control and Civil Society in Burma After Cyclone Nargis*, (New York: Human Rights Watch, 2010), p. 14.

[43] See Rena Pederson, *The Burma Spring*: *Aung San Suu Kyi and The New Struggle for the Soul of a Nation* (New York: Pegasus Books, 2015), pp. 386-408; see also Human Rights Watch, *"I Want to Help My Own People*," pp. 14-15.

[44] The SPDC delayed the vote for the hardest hit divisions until May 24. "Burma: Reject Constitutional Referendum," Human Rights Watch news release, May 17, 2008.

[45] "Burma: Reject Constitutional Referendum," Human Rights Watch news release, May 17, 2008; Pederson, *The Burma Spring*, p. 406.

[46] Human Rights Watch, *"I Want to Help My Own People,"* p. 61.

already voted after recording their names.[47] Furthermore, although voting for the referendum was postponed in the Irrawaddy Division and certain hard-hit districts in Rangoon, the government declared victory prior to the delayed voting, reporting a 99 percent voter turnout and that the proposed constitution had been approved with 92 percent voting "yes."[48]

Military Power and Role under the 2008 Constitution

Although the 2008 Constitution provides for a civilian-controlled democratic government, the military retains a significant role in running the country. The military's power is derived from several provisions in the Constitution, as well as through the basic structure of government the Constitution provides. The main conduit of this power is the commander-in-chief, the appointed leader of the Burmese military, or Tatmadaw.[49]

The Constitution establishes a tripartite system of government, with three branches: executive, legislative, and judicial.[50] The military retains power and presence in the legislative bodies through provisions in the Constitution that allocate it 25 percent of the seats in each of the legislative bodies.[51] The Union Legislature (Pyidaungsu), with representatives elected nationally, has two houses, the Amyotha (upper) and the Pyithu (lower) Hluttaw.[52] There is also a unicameral legislature for the separate regions and states. The laws passed by the Union Legislature have supremacy over those passed by the regional and state legislatures.[53] The commander-in-chief appoints individuals to each of the seats reserved for the military in each of these bodies.[54] The members that are selected

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[47] Human Rights Watch, *"I Want to Help My Own People,"* p. 61.

[48] "Burma: Reject Constitutional Referendum," Human Rights Watch news release, May 17, 2008.

[49] Constitution of Burma, sec. 432. Technically, the president appoints the commander-in-chief (CIC), but the appointment is conditioned on the approval of the National Defense and Security Council (NDSC), a majority of whom are under the control of the (CIC). The CIC has not term limits and the Constitution does not provide for impeachment or removal processes. See ibid.; see also Dominc Nardi, Jr., "Finding Justice Scalia in Burma: Constitutional Interpretation and the Impeachment of Myanmar's Constitutional Tribunal," 23 *Pac. Rim L. & Pol'y J.* 633, 652 (2014).

[50] According to the section 11(a) of the Constitution, the branches of government are to be kept separate "to the extent possible." Constitution of Burma (2008), art. 11(a); see also David C. Williams, "What's So Bad About Burma's 2008 Constitution?" in Crouch and Lindsey, eds., *Law Society and Transition in Myanmar* (Oxford: Hart, 2014), p. 123.

[51] The powers the Constitution provides to the military are housed primarily in the legislative and the executive branches, giving the military a variety of avenues through which to exercise its policy preferences and to protect against significant erosion of those powers. See Constitution of Burma (2008) arts. 109(b), 141(b), 161(d) (allotting seats in the Pyithu, Amyotha, and Regional and State Hluttaws).

[52] Constitution of Burma (2008), art. 74.

[53] Constitution of Burma (2008), art. 198(b).

[54] Constitution of Burma (2008), art. 161(d).

by the commander-in-chief are members of the military and, as such, remain under the direction and control of the commander-in-chief.[55]

This arrangement in the legislature gives the military certain powers over the civilian government. Passing constitutional amendments requires more than 75 percent of the votes in the Union Legislature. Control of 25 percent of those votes ensures that the military will have to consent to any fundamental changes. With 25 percent of the seats, the military does not, however, have the ability to block normal legislation, which requires only a simple majority.

The military also has significant power in the executive branch. The commander-in-chief has power to appoint the ministers of defense, home affairs, and border affairs,[56] as well as regional ministers of security and border affairs.[57] A great deal of power resides within these three union-level ministries—defense, home affairs, and border affairs. Of principal concern for the administration of justice is the Ministry of Home Affairs, which is responsible for the Myanmar Police Force, the Bureau of Special Investigation, Fire Service Department, the General Administration Department, and the Prison Department.[58] This gives a member of the military, under the direction of the commander-in-chief of Burma's military force, effective control over the basic levels of law enforcement—including the prison system—and, more generally, over nearly every aspect of the administration of the state, from state and region levels down to village and ward levels.[59]

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[55] Williams, "What's So Bad About Burma's 2008 Constitution?," p. 120.

[56] Constitution of Burma (2008), art. 232(b)(iii).

[57] Constitution of Burma (2008), art. 262(a)(iii).

[58] Kyi Pyar Chit Saw and Matthew Arnold, *Administering the State in Myanmar: An Overview of the General Administration Department*, The Asia Foundation, October 2014, https://asiafoundation.org/resources/pdfs/GADEnglish.pdf (accessed March 31, 2016), p. 13.

[59] "All levels of government administration are under authority of the military chief," *Myanmar Now*, January 2, 2016, http://www.myanmar-now.org/news/i/?id=a79df810-6294-4c7e-b12e-5dbed993505e (accessed March 31, 2016); see also Kyi Pyar Chit Saw and Matthew Arnold, *Administering the State in Myanmar: An Overview of the General Administration Department*, The Asia Foundation, October 2014, https://asiafoundation.org/resources/pdfs/GADEnglish.pdf (accessed March 31, 2016), pp. 13-14.

Lack of Independence of the Judiciary

From the 1962 military coup until the present, Burmese courts have lacked independence, a fundamental requirement under international law.[60] Instead, they have been used as tools of the military and government. Under pressure and orders from the authorities, judges have routinely convicted those charged by the government with political crimes, even when the accused have done nothing more than engage in peaceful criticism of the authorities. Sentences have often been extremely harsh.[61] Previous governments have appointed unqualified people as judges in courts at all levels, including many retired military officers.[62]

Reforms under President Thein Sein

On November 8, 2010, Burma held its first parliamentary elections in 20 years. There was considerable international condemnation of the elections for lack of fairness,[63] with monitors reporting a range of abuses, including fraud and coercion, on election day.[64] Beyond the reported abuses, the NLD boycotted the election with their leader, Aung San

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[60] Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985).

[61] Williams, "What's So Bad About Burma's 2008 Constitution?," p. 124. See also International Commission of Jurists, "Myanmar: End Practice of Appointing Military Officers," http://www.icj.org/myanmar-end-practice-of-appointing-military-officers-to-judiciary/ (accessed June 3, 2016).

[62] The president appoints the Supreme Court Justices and Chief Justices of the High Courts of States and Regions. Constitution of Burma (2008), arts. 299(c)(i)-(ii) and 308(b)(i). The president's power to appoint judges is virtually unchecked by the legislature. Nominees advanced by the president can only be rejected if they fail to meet the basic qualifications laid out in the Constitution—age, citizenship, and experience.[62] Since the president also has the power to appoint chief ministers of states and regions, he also can exercise considerable influence over the associate justices on these courts, who are appointed by the chief ministers of the states and regions. Both the president and the legislature play a role in dismissing judges. The president, acting effectively as the prosecutor, can bring impeachment charges against judges on the Supreme Court and of the high courts of states and regions. The legislature reviews the charges, which include "inefficient discharge of duties assigned by law," misconduct, and breach of any provision of constitution. Similarly, the upper and lower houses of the legislature can bring impeachment charges against judges on the Supreme Court with a minimum of 25 percent of members supporting the charge. The regional or state parliaments have authority to impeach judges on the high courts. No matter which body initiates charges, the legislature (national or regional) must confirm the charges following an investigation by a two-thirds vote. Thus, the president can unilaterally bring impeachment charges against a judge, and, because the military controls 25 percent of every legislative body, so can the military.

[63] "Western states dismiss Burma's election," *BBC News*, November 8, 2010, http://www.bbc.com/news/world-asia-pacific-11707294 (accessed March 31, 2016).

[64] *Burma's 2010 Elections: a comprehensive report*, Burma Fund UN Office (Jan. 31, 2011), http://www.burmalibrary.org/docs11/BurmaFund-Election_Report-text.pdf (accessed March 31, 2016); *see also* "Western states dismiss Burma's election," *BBC News*, November 8, 2010, http://www.bbc.com/news/world-asia-pacific-11707294 (accessed March 31, 2016).

Suu Kyi, still under house arrest.[65] The results were unsurprising: the military-backed USDP won over three-quarters of the seats available.[66]

Following the election, the military-led junta nevertheless took steps to formally relinquish control of the administration of the country to a quasi-civilian government as it had promised. On February 4, 2011, Thein Sein, a senior general who had served as prime minister under the SPDC, was elected president by the Presidential Electoral College.[67] In the following months, he was sworn in as president and the quasi-civilian government took full control of the government, formally displacing the SPDC under the banner of USDP.

Significant changes with respect to government policies relating to the freedom of expression, assembly, and association followed close on the heels of the transition. In August 2012, the Press Scrutiny and Registration Department (PSRD) announced that reporters were no longer required to submit work to state censors prior to publishing, ending the 48-year policy.[68] In addition to ending pre-publication censorship, the Thein Sein government scaled back other media controls and restrictions.[69] Exiled media outlets, such as the Democratic Voice for Burma (DVB) began operating within the country in 2012.[70] In April 2013, the government allowed privately owned daily newspapers to operate

[65] "Western states dismiss Burma's election," *BBC News*, November 8, 2010, http://www.bbc.com/news/world-asia-pacific-11707294, (accessed March 31, 2016).

[66] Oxford Burma Alliance, "2010 Elections: "Free and Fair," http://www.oxfordburmaalliance.org/2010-elections.html (accessed Mar. 4, 2016).

[67] International Crisis Group, "Myanmar's Post-Election Landscape," March 7, 2011, http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/B118%20Myanmars%20Post-Election%20Landscape.ashx (accessed March 31, 2016), pp. 3-4.

[68] "Burma abolishes media censorship," *BBC News*, August 20, 2012, http://www.bbc.com/news/world-asia-19315806/ (accessed March 31, 2016).

[69] Stephen Adelgren, "Myanmar enacts law assuring freedom for local media," *Jurist*, March 18, 2014, http://jurist.org/paperchase/2014/03/myanmar-enacts-law-assuring-freedom-for-local-media.php (accessed March 31, 2016).

[70] Kavi Chongkittavorn, "Myanmar's Exiled Media Starting to Head Home," *The National*, April 23, 2012, http://www.nationmultimedia.com/opinion/Myanmarsexiled-media-starting-to-head-home-30180487.html (accessed March 31, 2016); see also Freedom House, "Burma: World Report 2013," https://freedomhouse.org/report/freedom-world/2013/burma (accessed March 31, 2016).

for the first time in decades.[71] This opening included the granting of licenses to some ethnic media outlets.[72]

Even as privately owned media organizations proliferated and some old restrictions fell away, the process of liberalization was uneven. New laws that had positive aspects and represented a trend towards openness often failed to meet domestic and international expectations for protection of rights.[73] At the same time, the Thein Sein government did not repeal older statutes and Penal Code sections that authorities continued to use to repress peaceful expression.

New Parliamentary Elections and Reform

On November 8, 2015, the NLD won a landslide victory in Burma's first full, countrywide parliamentary elections since 2010. Taking nearly 80 percent of the contested parliamentary seats, the NLD obtained a clear majority in both houses.[74] The election was widely regarded as fair.[75] Despite this NLD electoral mandate—the NLD took control of both houses of parliament, the presidency, and several other important executive positions—the military, pursuant to the constitutional provisions outlined above, has retained significant power over many facets of the daily lives of the Burmese people.

On March 30, 2016, the country swore in its first elected civilian president, Htin Kyaw, while Aung San Suu Kyi, who was barred from the presidency by the 2008 Constitution,[76]

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[71] Doha Center for Media Freedom, "Private daily newspapers launched in Myanmar," April 1, 2013, http://www.dc4mf.org/en/content/private-daily-newspapers-launched-myanmar (accessed March 31, 2016).

[72] See PEN American Center, "Unfinished Freedom: A Blueprint for the Future of Freedom of Expression in Myanmar," December 2, 2015, http://www.pen.org/sites/default/files/unfinished_freedom_lowres.pdf (information gleaned from the various media outlets' Facebook pages) (accessed March 31, 2016), pp. 6-7.

[73] See, for example, Article 19, "Myanmar: Disappointment surrounds amendment to assembly law," June 27, 2014, https://www.article19.org/resources.php/resource/37606/en/myanmar:-disappointment-surrounds-amendment-to-assembly-law (accessed March 31, 2016).

[74] The NLD took nearly 79 percent of the elected seats, which grants it majority control in both the upper and lower house. Taking into account the military's constitutionally apportioned parliamentary seats, the NLD controls 60 and 59 percent of the seats in the upper and lower houses, respectively. International Crisis Group, "The Myanmar Elections: Results and Implications," December 9, 2015, http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/b147-the-myanmar-elections-results-and-implications.pdf (accessed March 31, 2016), pp. 3, 15-16.

[75] In spite of the few reported irregularities, observers accepted the process as credible. "Myanmar's 2015 landmark elections explained," *BBC News* (December 3, 2015), http://www.bbc.com/news/world-asia-33547036 (accessed March 31, 2016).

[76] Pursuant to section 59(f) of the 2008 Constitution, the president "shall he himself, one of the parents, the spouse, one of the legitimate children or their spouses not owe allegiance to a foreign power, not be subject of a foreign power or citizen of

became State Counsellor. One of the first acts of the new government was to order the release of dozens of political prisoners, including many of those whose prosecutions are documented in this report. While the release of the prisoners is an essential first step, it is crucial that the laws that were used to arrest and detain them be amended or repealed. In the absence of legal reform, the potential for abusive arrests under overly broad laws—either by a police force not fully under the control of central government or by a future administration—remains unchecked.

a foreign country. They shall not be persons entitled to enjoy the rights and privileges of a subject of a foreign government or citizen of a foreign country." Aung San Suu Kyi's husband was British, and her two children have British citizenship.

II. International and Domestic Legal Standards

The rights to freedom of expression, association, and peaceful assembly are universally protected under international human rights conventions and customary law. These rights are not only important liberties in themselves, but they are crucial for helping to ensure that all other rights—civil, political, economic, social, and cultural—are accessible to all persons.[77]

The Universal Declaration of Human Rights, which has the endorsement of every UN member state, is considered broadly reflective of customary law.[78] It sets out rights to "freedom of opinion and expression" (article 19) and "peaceful assembly and association" (article 20).[79] These rights are included in regional human rights treaties, including the European Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights, all of which draw upon the Universal Declaration of Human Rights. The 2012 "ASEAN Human Rights Declaration," signed by Burma, commits Burma to uphold all of the civil and political rights in the Universal Declaration of Human Rights, including the rights to freedom of speech and assembly.[80]

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[77] The UN Human Rights Committee has stressed the importance of freedom of expression in a democracy: "[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.... [C]itizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members." UN Human Rights Committee, Decision: Gauthier v. Canada, Communication No. 633/1995, U.N. Doc. CCPR/C/65/D/633/1995, May 5, 1999, http://www1.umn.edu/humanrts/undocs/session65/view633.htm (accessed March 18, 2014), para. 13.4.

[78] See UN General Assembly, Vienna Declaration and Programme of Action, July 12, 1993, UN Doc. A/CONF.157/23, http://www.refworld.org/docid/3ae6b39ec.html (accessed March 17, 2016) (emphasizing that the Universal Declaration of Human Rights, "which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights."). Burma participated in the Asia Regional Preparatory meeting for the 1993 Vienna World Conference on Human Rights that led to the adoption, by consensus, of the Vienna Declaration.

[79] Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A (III), 3 UN GAOR, UN Doc. A/810, at 71 (1948).

[80] ASEAN Human Rights Declaration, General Principles 10, 23, and 24, https://www.aichr.org/documents (accessed June 3, 2016).

These treaties, declarations, and the court judgments deriving from them demonstrate the global acceptance of the rights guaranteed by the Universal Declaration, and provide useful perspectives on the appropriate interpretation of those rights.

The rights to free expression, association, and assembly can be found in several widely ratified international human rights conventions, mostly notably the International Covenant on Civil and Political Rights (ICCPR).[81] While Burma is not a state party to the ICCPR, commentary from the UN Human Rights Committee, UN special procedures, and other authoritative bodies make clear that the right to freedom of expression is a fundamental right that can only be limited in specific ways. The ICCPR, in article 19(3), permits governments to impose restrictions or limitations on freedom of expression only if such restrictions are provided by law and are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security, public order, public health, or morals.[82]

The UN Human Rights Committee, the independent expert body that monitors state compliance with the ICCPR, in its General Comment no. 34 on the right to freedom of expression, states that restrictions on free expression should be interpreted narrowly and that the restrictions "may not put in jeopardy the right itself."[83] The government may impose restrictions only if they are prescribed by legislation and meet the standard of being "necessary in a democratic society." This implies that the limitation must respond to a pressing public need and be oriented along the basic democratic values of pluralism and tolerance. "Necessary" restrictions must also be proportionate, that is, balanced against the specific need for the restriction being put in place. General Comment no. 34 also provides that "restrictions must not be overbroad."[84] Rather, to be provided by law, a

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[81] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

[82] ICCPR, art. 19(3). The same three-part test has been applied by, among others, the African Court of Human and Peoples' Rights to cases under article 9 of the African Charter on Human and Peoples' Rights, see, e.g., *Lohe Issa Konate v. Burkina Faso,* Application no. 004/2013, December 5, 2014, http://www.african-court.org/en/images/documents/Judgment/Konate%20Judgment%20Engl.pdf (accessed June 17, 2015); the European Court of Human Rights to cases under article 10 of the ECHR, see, e.g. *Goodwin v. United Kingdom,* [GC] (No. 17488/90), 22 EHRR 123 (1996), para. 28-37, the Canadian Supreme Court to cases under the Canadian Charter of Rights and Freedoms, *see, e.g., R. v. Oakes,* [1986] 1 SCR 103, 138-139, and the Kenyan High Court, Constitutional and Human Rights division, to cases under the Kenyan Constitution, *see, e.g., Coalition for Reform and Democracy v. Republic of Kenya,* Petitions 628 and 630 of 2014 and 12 of 2015 (consolidated), February 23, 2015, http://kenyalaw.org/caselaw/cases/view/106083/ (accessed June 23, 2015).

[83] UN Human Rights Committee, General Comment no. 34, Article 19, Freedoms of Opinion and Expression, CCPR/C/GC/34 (2011).

[84] UN Human Rights Committee, General Comment No. 34.

restriction must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.[85]

Restrictions on freedom of expression to protect national security, "are permissible only in serious cases of political or military threat to the entire nation."[86] Since restrictions based on protection of national security have the potential to completely undermine freedom of expression, "particularly strict requirements must be placed on the necessity (proportionality) of a given statutory restriction."[87]

With respect to criticism of government officials and other public figures, the Human Rights Committee has emphasized that "the value placed by the Covenant upon uninhibited expression is particularly high." The "mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties." Thus, "all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition."[88] The Human Rights Committee has further stressed that the scope of the right to freedom of expression "embraces even expression that may be regarded as deeply offensive."[89]

International law permits governments to take action against advocacy of national, racial, or religious hatred that constitutes incitement to violence, discrimination, or hostility.[90] Such action should be limited as a matter of law, proportionality, and necessity like other restrictions on freedom of expression.[91] Human Rights Watch considers incitement to be an encouragement to cause imminent harm, which is not merely possible or potential harm but harm likely to be directly or immediately caused or intensified by the speech in question. "Violence" refers to a physical act and "discrimination" refers to the actual deprivation of a benefit to which similarly situated people are entitled.

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[85] Ibid., para. 25. See also European Court of Human Rights, *Sunday Times v. United Kingdom,* Judgment of 26 April 1979, Series A, no. 30, www.coe.echr.int, ECHR 1, para. 49.

[86] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR* Commentary (Kehl am Rhein, Germany: N.P. Engel, 2d ed. 1993), pp. 463-64.

[87] Ibid., pp. 465-66.

[88] UN Human Rights Committee, General Comment no. 34, para. 38.

[89] UN Human Rights Committee, General Comment no. 34, para. 11; see also European Court of Human Rights, *Handyside v. United Kingdom,* (no. 5493/72), Judgment of 7 December 1976, ECHR 1976-V, available at www.echr.coe.int, para. 49 (freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population; *R. v. Central Independent Television plc*, [1994] 3 All ER 641 ("Freedom of [speech] means the right to [say] things which the government and judges, however well-motivated, think should not be [said]. It means the right to say things which 'right-thinking people' regard as dangerous or irresponsible.").

[90] ICCPR, art. 20.

[91] UN Human Rights Committee, General Comment no. 34, para. 50.

When analyzed pursuant to these standards, a number of the laws currently in effect in Burma impose limitations on expression that go far beyond the restrictions that are permitted by international law.

Constitution of Burma

Burma's 2008 constitution appears to ensure respect for the rights of freedom of expression and assembly.[92] Article 354 states that every citizen has the right "to express and publish freely their convictions and opinions." Every citizen also has the right "to assemble peacefully without arms and holding procession." However, these rights only apply when "not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility, or public order and morality." These restrictions are inconsistent with the requirements of international law. Restrictions imposed for reasons of "community peace and tranquility" are a much broader basis for restrictions than under the UDHR or ICCPR. In addition, the Constitution does not require that the restrictions be "necessary" to protect one of the interests listed, a key element of international legal protection for freedom of expression.

[92] The 2008 Constitution falls short of the human rights protections afforded by international law in many respects. This report does not purport to analyze all of the ways in which it does not meet international standards.

III. Laws Used to Criminalize Peaceful Expression

LAWS PENALIZING ASSEMBLIES	DEFINITION OF OFFENSE	MAXIMUM PENALTY
PEACEFUL ASSEMBLY AND PEACEFUL PROCESSIONS ACT 2012 (as amended in 2014)	Article 18: conducting a peaceful assembly or peaceful procession without government consent	6 months in prison and fine
	Article 19: deviating from the permitted location or route, or violating any of the broad restrictions on the conduct of an assembly contained in article 12 of the law	3 months in prison and fine
PEACEFUL ASSEMBLY AND PEACEFUL PROCESSIONS ACT 2016	Article 17: conducting a peaceful assembly or peaceful procession without giving notice	3 months in prison and fine for first offense, increased penalties for repeat offense
	Article 18: deviating from the location or route specified in the notice, or violating any of the broad restrictions on the conduct of an assembly contained in article 9 of the law	3 months in prison and fine
UNLAWFUL ASSEMBLY Sections 141, 143 and 145 of the BPC	Section 141 defines "unlawful assembly" to include any group of five or more people as any group who have as their common object "to overawe by criminal force, or show of criminal force, the Union Parliament or the Government, or any public servant in the exercise of the lawful power of such public servant," "to resist the execution of any law, or of any legal process," or "to commit any mischief or criminal trespass, or other offence"	
	Section 143 makes it unlawful to participate in an unlawful assembly	6 months in prison and fine (section 143)
	Section 145 makes is unlawful to join or continue in an unlawful assembly that has been ordered to disperse	2 years in prison and fine (section 145)
RIOTING Sections 146 and 147 of the BPC	Section 147 makes it unlawful to participate in a riot	2 years in prison and fine
	Section 146 deems *every* participant in an assembly guilty of rioting if *any* participant in the assembly uses force or violence	

Successive governments in Burma have long used an arsenal of overly broad and vaguely worded laws to harass, arrest, and prosecute individuals for their peaceful expression. Some of these laws are carried over from the British colonial era while others are recently enacted. This section describes those laws, identifying provisions that do not meet international standards for the protection of freedom of expression and assembly, and examines how they have been used to criminalize the peaceful exercise of those rights.

Law Relating to the Right of Peaceful Assembly and Peaceful Procession

The Law Relating to the Right of Peaceful Assembly and Peaceful Procession (2012 Peaceful Assembly Law) was enacted in 2012 to enable citizens to "legally" exercise their constitutionally protected right to peacefully assemble.[93] Amendments in 2014 reduced the possible sentences for violation of the law but did not fundamentally alter its terms.[94]

Under the law, citizens were permitted to hold peaceful assemblies only if they provided the government with five days' advance notice and received the government's consent for the assembly.[95] Anyone organizing an assembly without government consent faced the possibility of criminal charges, as did anyone who violated any one of a number of broad restrictions the statute imposed on what could be expressed, orally or in writing, at assemblies.[96] A new Peaceful Assembly and Peaceful Processions Law (2016 Peaceful Assembly Law), passed by the upper house of Parliament on May 31, 2016, but still pending in the lower house at time of writing, corrects some of the flaws of the 2012 statute but still restricts freedom of assembly and freedom of expression in ways that significantly exceed those permissible under international legal standards.

As the UN Human Rights Council has recognized, the ability to exercise the right of peaceful assembly subject only to restrictions permitted under international law is indispensable to the full enjoyment of the right, "particularly where individuals may espouse minority or dissenting views."[97] The UN Special Rapporteur on the rights to

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[93] The Law Relating to the Right of Peaceful Assembly and Peaceful Procession, Pyidaungsu Hluttaw Law No. 15/2011, preamble.

[94] Amendments to the law were tabled in Parliament in May 2016 but had not yet been passed at time of writing.

[95] Peaceful Assembly Law, art. 4 and 5.

[96] Peaceful Assembly Law, art. 18 and 19.

[97] UN Human Rights Council, Resolution 15/21, October 6, 2010, UN Doc. A/HRW/RES/15/21, preamble.

freedom of assembly and of association has made clear that "freedom is to be considered the rule, and its restriction the exception."[98]

Requirement of Prior Government Authorization

The 2012 Peaceful Assembly Law required those wishing to hold a peaceful assembly to first obtain the consent of the government.[99] However, the right to freedom of assembly is a right and not a privilege, and as such its exercise should not be subject to prior authorization by the authorities.[100] The Peaceful Assembly Law's "consent" requirement was thus inconsistent with international norms for the protection of that right. The 2016 law, as passed by the upper house,[101] eliminates the need for government consent, replacing it with a requirement that those planning an assembly give notice 48 hours in advance, in a move that places the law more in line with international standards.[102]

However, the new law does not go far enough. The sole purpose of the notice requirement should be to allow the government to facilitate an assembly by, for example, closing roads or redirecting traffic.[103] It should not serve "as a de facto request for authorization or as a basis for content-based regulation."[104]

The new law continues to require, as the 2012 law did, that the applicant state not only the date, time, and place of the planned assembly and the approximate number of attendees, but also the purpose and topic of the assembly, the words or slogans that protesters will

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[98] Kiai Report, May 21, 2012, UN Doc. A/HRC/20/27, para. 16. See also Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly ("OSCE/ODIHR Guidelines"),* 2nd edition, adopted by the Venice Commission on 4 June 2010, http://www.osce.org/odihr/73405, Guideline 2.1 ("As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation.").

[99] Peaceful Assembly Law, art. 4 and 5.

[100] Joint Report of the special rapporteur on the rights of freedom of peaceful assembly and of association and the special rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, February 4, 2016, UN Doc. A/HRC/31/66, para. 21. Similarly, the Guidelines on Freedom of Peaceful Assembly drafted by the Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR) state that "those wishing to assemble should not be required to obtain permission to do so." OSCE/ODIHR Guidelines, Guideline 2.1.

[101] Throughout this report, discussion of 2016 Peaceful Assembly Law refers to the version of that law passed by the upper house of Parliament on May 31, 2016. The lower house had not yet considered the law at time of writing.

[102] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 21.

[103] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 21; UN Human Rights Committee, Decision, *Kivenmaa v. Finland,* Communication No. 412/1990, UN Doc. CCPR/VC/50/D/412/1990 (June 9, 1994), https://www.umn.edu/humanrts/undoc/html/vws412.htm ("The Committee finds that a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21 of the [ICCPR].").

[104] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 21.

chant, the name and complete address of the leader and the speakers, and the agenda for the assembly.[105] There is no valid state interest in requiring this level of detail, which in turn infringes on the right to freedom of expression of individuals who participate in the assembly.

The law also fails to provide an explicit exception to the notice requirements where giving such notice is impracticable due to the spontaneous nature of the assembly.[106] Most importantly, the law continues to allow the dispersal of peaceful assemblies and the imposition of criminal penalties for failing to give the required notice.[107]

Specification of Content

Both the 2012 and 2016 Peaceful Assembly Laws require those seeking to hold an assembly to specify not only information regarding location and size, which may be useful to the government in determining how best to facilitate or provide security for the assembly, but also information relating to the content of the assembly. Under article 4 of both laws, those seeking consent or providing notification must specify the "purpose" of the assembly or procession, the "topic" of any proposed assembly, and the "chants" or "slogans" that will be used at the assembly or procession.

By requiring information about the content of the proposed assembly, the 2012 law enabled the authorities to ban assemblies intended to convey messages with which the government disagreed. For example, Phyo Wai Kyaw applied to the Myoma police three times, in April, July, and October 2014, for consent to hold a solo protest calling for the elimination of bribery in the court system. Each time, his request was denied on the grounds that he intended to say things "that could affect the country or the Union."[108] Regulation of assemblies should not, however, be based on the content of the message

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[105] 2016 Peaceful Assembly Law, art. 4.

[106] OSCE/ODIHR Guidelines, para. 97-98, Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 23.

[107] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 23 ("Failure to notify the authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly. Where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administration sanctions resulting in imprisonment or fines."); European Court of Human Rights, *Butka v. Hungary,* (No. 25691/04), Judgment of 17 July 2007, Reports 2007-III, para. 36 (finding the dispersal of a peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of assembly).

[108] Assistance Association for Political Prisoners (Burma), "Monthly Chronology of October 2014," November 17, 2014, http://aappb.org/2014/11/1925/ (accessed January 13, 2015).

the organizers seek to communicate, unless it is clear that they intend to incite violence (see below).[109]

While the notification regime set forth in the 2016 law makes prior censorship or control of content more difficult, it still includes criminal penalties for those who chant slogans not specified in the notice and authorizes the police to disperse an assembly for violation of any rules, including the rules prohibiting chanting slogans or displaying signs not specified in the notice.[110] It thus gives the police the ability to penalize peaceful expression at an assembly, in violation of international standards. Participants in assemblies should be free to choose and express the content of their message without government interference, as long as they do not advocate imminent violence or discrimination against an individual or clearly defined group of persons.[111]

Designation of Inappropriate Locations

In some cases under the 2012 law, the authorities gave consent for an assembly but limited the assembly to a location that was nowhere near the people or institutions the organizers sought to influence. For example, authorities in Rangoon limited some assemblies to the Tamwae Protest Ground, an enclosed space far from any government offices and out of public view. They then arrested protesters who chose to hold their assembly in a more relevant location.[112]

International standards provide that the government has an obligation to facilitate peaceful assemblies "within sight and sound" of their intended target.[113] Where the government seeks to impose restrictions on the time, place, or manner of an assembly, the

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[109] OSCE/ODIHR Guidelines, section B, para. 94; OSCR/ODIHR Guidelines, section B, para. 119 ("criteria should be confined to considerations of time, place and manner, and should not provide a basis for content-based regulation."); European Court of Human Rights, *Hyde Park and Others v. Moldava,* (no. 4509/06), Judgment of 31 March 2009, http://hudoc.echr.coe.int, para. 26 ("The Court finds it unacceptable from the standpoint of Article 11 of the [European] Convention [on Human Rights] that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest.").

[110] 2016 Peaceful Assembly Law, article 9(g), 9(h), 10, and 18.

[111] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 33.

[112] Nobel Zaw, "Rangoon Police Charge Ko Ko Gyi, Four Other Activists for Unauthorized Protest," *The Irrawaddy,* December 22, 2014, http://www.irrawaddy.org/burma/rangoon-police-charge-ko-ko-gyi-4-activists-unauthorized-protest.html (accessed January 13, 2014).

[113] Report of the special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 2013, UN Doc. A/HRC/23/29, para. 60.

government bears the burden of justifying those restrictions, and the law should provide an avenue for review of the decision.[114]

In addition, "Time, place, and manner restrictions should never be used to undermine the message or expressive value of an assembly or to dissuade the exercise of the right to freedom of assembly."[115] In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should aim to facilitate the assembly within "sight and sound" of its object or target audience.[116] Restricting protests to a venue far from the target of the protests and out of public view cannot be justified as a reasonable restriction on freedom of assembly, nor can imposing criminal penalties on those who deviate from the assigned location, when that location has the effect of undermining the expressive value of the protest.

Overly Broad Restrictions on What Protesters Can Say

Both the 2012 and 2016 assembly laws impose a number of vaguely defined and overly broad restrictions on the speech of the participants. Both laws state that protesters must not talk or behave in a way that may cause "disturbance or obstruction, danger or injury or a concern that these might take place."[117] They must not say things "which affect the State or the Union, race, or religion, human dignity, and moral principles."[118] Finally, they "must not spread rumors or incorrect information."[119] Violation of any of these restrictions could result in a sentence of up to three months in prison.[120]

The right to freedom of expression does not allow blanket prohibitions on speech that affects "the State or the Union, race, or religion, human dignity, and moral principles." Indeed, political or critical statements about "the State or the Union" lie at the heart of the type of speech protected under international law.

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[114] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 35

[115] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 34.

[116] OSCE/ODIHR Guidelines, para. 101.

[117] 2012 Peaceful Assembly Law, art. 12(a); 2016 Peaceful Assembly Law, art. 9(a).

[118] 2012 Peaceful Assembly Law, art. 12(e); 2016 Peaceful Assembly Law, art. 9(e).

[119] 2012 Peaceful Assembly Law, art. 12(f); 2016 Peaceful Assembly Law, art. 9(f).

[120] 2012 Peaceful Assembly Law, art. 19, as amended by Pyidaungsu Hluttaw Law No. 26/2014, sec. 8 (reducing the penalty from six months to three months); 2016 Peaceful Assembly Law, art. 18.

Moreover, the content restrictions are vague, subjective, and fail to satisfy the requirement that any limitations be "provided by law."[121] Citizens participating in an assembly cannot know what might be considered to cause "disturbance," nor what might be considered to "affect human dignity" or "moral principles." The law also sets up a standard that bans "incorrect" information, but a speaker cannot know in advance what the authorities may consider to be incorrect information. The use of vague terms leaves the law subject to abuse by officials looking for a way to silence critics of the government or others who are saying things the government does not like.[122]

The restriction on speech that may "disturb" others is particularly troublesome. Freedom of expression is applicable not only to information or ideas "that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb the State or any sector of the population."[123] The fact that others may be disturbed or offended by the speech is not a basis on which to restrict what is said at the assembly, but rather a reason to facilitate and protect the assembly.[124]

Excessive Police Powers to Disperse Assemblies

Article 10 of the 2016 Peaceful Assembly Law authorizes the police to disperse an assembly for failure to follow any of the rules imposed by the law.[125] Allowing the government to disperse a peaceful assembly for violation of the broad and vaguely worded restrictions in article 9 is a disproportionate interference with the rights to freedom of assembly and expression, as is allowing the dispersal of a peaceful assembly simply on

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[121] See, e.g., UN Human Rights Committee, General Comment no. 34, para. 25 ("A norm, to be characterized as a 'law,' must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly"); European Court of Human Rights, *Sunday Times v. United Kingdom* (no. 6538/74), Series A, no. 30, available at www.echr.coe.int, para. 49 (the defendant "must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstance, the consequences that a given action may entail").

[122] La Rue Report, June 2012, UN Doc. A/HRC/20/17, para. 32 (expressing concern that "vaguely worded and ambiguous laws" to combat hate speech are frequently used to silence criticism and legitimate political expression). See also US Supreme Court, *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972), p. 170 (law is void for vagueness if it is a "standardless sweep" that allows law enforcement officials to pursue their own predilections).

[123] European Court of Human Rights, *Handyside v. United Kingdom* (no. 5493/72), Judgment of 7 December 1976, ECHR 1976-V, www.echr.coe.int, (accessed June 3, 2016), para.49. See also UN Human Rights Committee, General Comment no. 34, para. 11 ("The scope of paragraph 2 [of the ICCPR] embraces even expression that may be regarded as deeply offensive.").

[124] OSCE/ODIHR Guidelines, Guideline 1.3 (a "peaceful" assembly can include conduct "that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties").

[125] The procedures for ordering dispersal for alleged violation of the rules are set forth in articles 12-14 of the 2016 Peaceful Assembly Law.

the basis that no notice has been given.[126] According to the UN special rapporteur on the rights of freedom of peaceful assembly and of association and the UN special rapporteur on extrajudicial, summary or arbitrary executions, dispersal of assemblies should be a measure of last resort and should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm (including by, for example, quieting hostile onlookers who threaten violence) and unless there is an imminent threat of violence.[127]

Denial of Right to Assembly to Non-Citizens

The 2012 Peaceful Assembly Law permitted only citizens and organizations to apply for consent to hold an assembly, and the 2016 Peaceful Assembly Law allows only citizens and organizations to give notice of an assembly.[128] However, the right to peacefully assemble is not limited to citizens. The Universal Declaration of Human Rights makes clear that "*everyone* shall have the right to peacefully assemble."[129] The UN Human Rights Committee has specifically stated that "aliens receive the benefit of the right of peaceful assembly."[130] The deprivation of the right of non-citizens to peacefully assemble is contrary to international legal standards and should be eliminated.[131]

Imposition of Criminal Penalties

The most problematic and most abused provision in the 2012 Peaceful Assembly Law was article 18, which authorized the imposition of criminal penalties of up to six months in prison for carrying out peaceful assembly without prior consent. The 2012 Peaceful Assembly Law held the organizer of an assembly carried out without consent criminally

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[126] Report of the special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, May 2012, UN Doc. A/HRC/20/27, para. 29 ("Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment."); European Court of Human Rights, *Butka v. Hungary,* (No. 25691/04), Judgment of 17 July 2007, Reports 2007-III, para. 36 (finding the dispersal of a peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of assembly). Article 15 of the 2016 Peaceful Assembly Law authorizes the dispersal of assemblies for which no notice was given.

[127] Joint Report, February 2016, UN Doc. A/HRC/41/66, para. 61-62; OSCE/ODIHR Guidelines, para. 166.

[128] 2012 Peaceful Assembly Law, art. 4; 2016 Peaceful Assembly Law, art. 4.

[129] UDHR, art. 21 (emphasis added).

[130] UN Human Rights Committee, General Comment no. 15, The Position of Aliens Under the Covenant, UN Doc. HRI/GEN/1/Rev.1 at 18 (1994), http://www1.umn.edu/humanrts/gencomm/hrcom15.htm (accessed June 3, 2016), para. 7.

[131] Not only should non-citizens not be denied the right to assemble, particular effort should be made to ensure equal and effective protection of the rights of non-citizens and any groups or individual who have historically experienced discrimination. Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 16.

liable *even if the assembly was peaceful and caused no disruption of public order,* and was repeatedly used to arrest the organizers of purely peaceful protests.[132] The 2016 Peaceful Assembly Law, similarly, provides criminal penalties of up to three months in prison for failure to give notice of an assembly, and increased penalties for a repeat offense.[133]

International norms establish that no one should be held criminally liable for the mere act of organizing or participating in a peaceful assembly.[134] The imposition of criminal penalties on individuals who fail to notify the government of their intent to peacefully assemble is disproportionate to any legitimate state interest that might be served.[135]

Articles 18 and 19 of the 2012 Peaceful Assembly Law were used extensively to arrest and prosecute peaceful protesters speaking out on matters of public interest. According to the Association for Assistance of Political Prisoners (AAPP), when the new MPs were sworn in, 167 people were facing trial under article 18 or article 19 in what AAPP considered to be political cases.[136]

Those who faced charges included students who protested against the new national education law, farmers who protested the confiscation of their land for mines or military barracks, individuals who protested about the role of the military in government, individuals who protested against the arrest and detention of students or journalists, the organizer of a silent communal prayer for detained journalists, and even individuals who staged solo protests. A few examples of such prosecutions are discussed below.

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[132] Peaceful Assembly Law, art. 18. The 2014 amendments reduced the sentence for "conducting a peaceful assembly or peaceful procession" from one year to six months. Pyidaungsu Hluttaw Law No. 26/2014, para. 7.

[133] 2016 Peaceful Assembly Law, art. 17.

[134] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 27.

[135] Report of the special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, May 2012, UN Doc. A/HRC/20/27, para. 29 ("Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment."). See also European Court of Human Rights, *Ezelin v. France,* (no. 11800/85), Judgment of 26 April 1991, Series A, no. 202, http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/233813e697620022c1256864005232b7/5b6a81da5bdc1790c1256640004c1a8f) (the imposition of penalties after an assembly is an interference with the right to freely assemble that must be justified under article 11(2) of the ECHR).

[136] Association for the Assistance of Political Prisoners, "418 PPs List (Facing Trail) Updated on 29 Feb 2016," http://aappb.org/2016/03/monthly-chronology-of-february-2016-and-remaining-political-prisoners-list-and-facing-trial-list/418-pps-list-facing-trailupdated-on-29-feb-2016/ (accessed March 14, 2016).

Prosecutions of Activist Win Cho for Promoting "Citizens' Rights"

Win Cho is a long-time political activist whose more recent political activism was sparked by the passage of the 2008 Constitution. According to Win Cho:

> We had not had a constitution since 1990. We could not enjoy rights as citizens. Now we had rights and I wanted to focus on citizens' rights. I wanted to tell people there are things they can do.… I joined labor protests and worked on land grabbing issues to show the people suffering that they have rights. I am not a stakeholder for land grabbing issues, but was showing them that they can speak out.[137]

As a result of his efforts to encourage others to exercise the rights enshrined in the 2008 Constitution, Win Cho was charged with violating article 18 of the Peaceful Assembly Law 34 times between 2013 and 2014. He was arrested on April 1, 2014 for organizing a protest in front of City Hall in Rangoon for ethnic Kachin farmers whose land had been confiscated. According to Win Cho, they applied for permission for the protest, but permission was denied.[138] Despite the fact that the protest was peaceful, he was charged with violating section 18 and sentenced to three months in prison.

Win Cho also served three months in prison for his involvement in a peaceful protest about rising electricity prices held in front of Rangoon City Hall in March 2014. Although he was not the organizer of that assembly, "They could not find the leaders but they knew me so they arrested me."[139] He was convicted and sentenced to four months in prison, but was released after three months so he could attend his daughter's wedding. He paid fines in four other cases, and the remaining charges against him were dropped as part of a presidential amnesty in December 2013.

Win Cho believes that the assembly law is not fair:

> In the constitution there is a chapter on the rights of citizens—sections 345-390. There is freedom of speech, freedom to criticize, freedom to live

[137] Human Rights Watch interview with Win Cho, Rangoon, January 12, 2016.
[138] Ibid.
[139] Ibid.

> anywhere you want. If we cannot practice those rights, it is not good for us. The law alone is not enough. I am always making a joke—if there is a fault, it is believing in citizens' rights. The only fault in my activity is believing in the Constitution.[140]

Prosecution of Shwe Hmone for Organizing Prayers

Journalist Shwe Hmone, a member of the Central Executive Committee of the Myanmar Journalists Network, applied to hold a protest on November 2, 2014, World Impunity Day, when "the whole world celebrates for those imprisoned for unjust things."[141] She said:

> We wanted to have a protest that day. You have to apply for a permit five days in advance. We asked to make speeches and share information about World Impunity Day. We said we wanted to hold the protest near Sule Pagoda, in the park [in Rangoon]. After five days, they gave permission, but only for Tamwae Protest Ground. Tamwae is blocked on four sides so no one can see or hear us. Only we can hear our voices.[142]

Shwe Hmone told the police that they would cancel the protest and just pray at Sule Pagoda if they were not given permission to protest near the pagoda. She pursued her attempts to obtain permission to protest near Sule Pagoda to the township administrator's office: "We said we won't cause trouble to people passing by. We explained about World Impunity Day. We said we were not people trying to destabilize the country. We tried to convince him but he said no."[143]

So, rather than holding a protest with speeches and other activity, it was decided simply to gather and pray for the journalists arrested and imprisoned in 2014, as she and others had done on several other occasions. "It is a Buddhist custom to pray for the release of those arrested and those ongoing trials," she said. "When people are arrested, their families are

[140] Ibid.

[141] Human Rights Watch interview with Shwe Hmone, Rangoon, January 20, 2016.

[142] Ibid.

[143] Ibid.

in difficulties in different ways, so we pray for them too. This is a tradition of the country. 2014 was a remarkable year because many journalists were arrested."[144]

At about 3 p.m. on November 2, people gathered in the corner of the Maha Bandoola Park.

> Many people came from civil society, working journalists, the lawyers' network, media networks. Most of us, when we write an article or take a photo, use our right hand. To symbolize this, we put a black ribbon on our right wrist. We also wore white t-shirts with "World Impunity Day" on them.[145]

The group of approximately 100 people entered the pagoda from the east corner, went once around the pagoda, then stopped at the Sunday Corner to light candles and pray silently. According to Shwe Hmone, the prayer lasted about three minutes; the entire event, from the time people started gathering to when they dispersed, lasted about an hour.[146]

About six months later, on May 16, 2015, Shwe Hmone received a call informing her that there was an open case against her.

> I could not believe I was being sued. In 2014 so many journalists were sued—*Bi Midday Sun, DVB, Unity*. A journalist died during his ongoing trial. We would pray for them. We have been to pray for them many times. I couldn't believe I was being sued over praying.[147]

She was charged with violating article 19 of the Peaceful Assembly Law by protesting at a place other than the one permitted. "I told the police that I had said we wouldn't protest if we couldn't do it where we wanted to," she said. "They did not care." After a trial lasting nine months, she was convicted and sentenced to 15 days in jail or a fine of 10,000 kyat. She refused to pay the fine, but others present in the courtroom collected money and paid

[144] Ibid.
[145] Ibid.
[146] Ibid.
[147] Ibid.

the fine for her. She is appealing her conviction. "Even though it is a small punishment, it is still punishment under an unjust law," she said.[148]

Shwe Hmone believes she was targeted because she had been very vocal in demanding more media freedom and had attended the trials of other journalists: "The government made an example of me—showing others in the media: 'Look what happens. She asked for right to information and media freedom and look what happened.'"
"Many activists are being charged under [the Peaceful Assembly Law]," she said. "The law is blocking freedom of expression. It is like putting a gun in the mouths of the people."[149]

Prosecution of Solo Protesters

Although the Peaceful Assembly Law defines a peaceful assembly or procession as a gathering of more than one person,[150] the law has been repeatedly used to prosecute individuals engaged in solo protests. For example, Zaw Myint was arrested for holding a solo protest on International Peace Day, September 22, 2014, calling for national unity. He had applied for permission to hold the protest in Naypyidaw, but permission was denied on the grounds that his protest might alarm the public. Zaw Myint's protest consisted of waving vinyl placards with slogans that said: "The public will only trust when they receive absolute freedom and peace," "Please leave hate and grudges in 20th century," and "We want to be proud of our country in the international community."[151] On March 5, 2015, he was convicted and sentenced to four months in prison.[152] Similarly, when Phyo Wai Kyaw, after having been denied permission three times, went ahead with a solo protest calling for the elimination of bribery in the judicial system, he was arrested and charged with violating article 18.[153]

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[148] Ibid.

[149] Ibid.

[150] Peaceful Assembly Law, art. 2(b) and 2(c).

[151] Nay Yain, "Man arrested for calling for national unity," *Myanmar Eleven,* September 22, 2014, http://www.nationmultimedia.com/aec/Man-arrested-for-calling-for-national-unity-30243844.html (accessed February 5, 2016).

[152] Associations for the Assistance of Political Prisoners, "Monthly Chronology, March 2015," http://aappb.org/wp-content/uploads/2015/04/March-2015-1-Chronology.pdf (accessed February 15, 2016).

[153] Assistance Association for Political Prisoners (Burma), "Monthly Chronology of October 2014," November 17, 2014, http://aappb.org/2014/11/1925/ (accessed January 13, 2015).

Recommendations to the Burmese Government

- Amend the 2016 Peaceful Assembly and Peaceful Processions Law to specifically recognize the government's obligation to facilitate peaceful assemblies, even if prior notification has not been given.
- Amend article 4 to delete the requirement that organizers specify the topic and purpose of the assembly, the slogans that will be used, and the personal details of the speakers. The notice requirements should be limited to those essential for the authorities to facilitate the assembly and protect public order, public safety, and the rights of others.
- Provide an explicit exception to the notice requirements where giving such notice is impractical due to the spontaneous nature of the assembly.
- Repeal article 17 of the statute, removing criminal liability for organizing or participating in an assembly for which notice was not given.
- Repeal article 9(g) to eliminate the restriction on display of signs or posters containing slogans not specified in the notice.
- Amend article 9(h) to eliminate the restriction on expressing slogans not contained in the notice.
- Repeal the overbroad and vague restrictions on speech during a peaceful assembly contained in articles 9(a), 9(e), and 9(f). Restrictions on speech at assemblies should be limited to speech intended to and likely to incite imminent violence or discrimination against an individual or clearly defined group of persons where alternative measures to prevent such conduct are not reasonably available.
- Repeal article 18 of the statute to eliminate the criminal penalties for (a) holding a peaceful protest at location other than that which is specified in the notice, (b) deviating from the specified route of a procession, or (c) violating any of the restrictions imposed on assemblies under article 9.
- Amend article 10 and article 12 to make clear that the police may only order dispersal of an assembly as a measure of last resort, and only when there is an imminent threat of violence.
- Repeal article 15 to preclude the ability to disperse a peaceful assembly simply for failure to give notice.
- Amend article 4 to eliminate the restriction on the right of non-citizens to peacefully assemble.

Penal Code Sections 141-147: Unlawful Assembly

Burma's colonial-era Penal Code contains a group of provisions aimed at penalizing what are referred to as "unlawful assemblies." An unlawful assembly is defined in section 141 of the Penal Code as any group of five or more people who have as their common object "to overawe by criminal force, or show of criminal force, the Union Parliament or the Government, or any public servant in the exercise of the lawful power of such public servant," "to resist the execution of any law, or of any legal process," or "to commit any mischief or criminal trespass, or other offence."[154] Participation in an "unlawful assembly" can be punished with up to six months in prison, a fine, or both.[155] Joining or continuing in an "unlawful assembly" that has been told to disperse is punishable by up to two years in prison.[156]

While these provisions appear to be directed at violent gatherings, the definition of unlawful assembly in section 141 is overly broad. Assemblies that have as their purpose "mischief"—a term that is subject to wide and varying interpretations—are not necessarily violent, and assemblies intended to "resist the execution of any law or any legal process" could well be peaceful. By criminalizing such assemblies without regard to whether or not they are actually violent, the law violates international norms for protection of the right of peaceful assembly.

Under international law, an assembly should be deemed peaceful so long as its organizers have not professed violent intentions and the conduct of the assembly is non-violent.[157] A non-violent intent should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in that particular event intend to use, advocate or incite imminent violence.[158] As the UN special rapporteur on the right of peaceful assembly has made clear, the right to peaceful assembly is an individual right, so an assembly cannot be considered violent under international law just because a few people in the assembly take violent action.[159]

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[154] Penal Code, sec. 141.

[155] Penal Code, sec. 143.

[156] Penal Code, sec. 145

[157] See OSCE/ODIHR Guidelines, Guideline 1.3 (a "peaceful" assembly can include conduct "that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties").

[158] OSCE/ODIHR Guidelines, sec. B, para. 25.

[159] UN Office of the High Commissioner, *Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the Republic of Korea*, January 29, 2016,

Similarly, individuals who do not engage in violence or incitement to violence cannot, under international law, be held responsible for the actions of those who do.[160] Section 146 of the law, which deems *every* participant in an assembly guilty of rioting if *any* participant in the assembly uses force or violence, is in clear violation of this legal standard.[161] Where a few people are violent, the police have the responsibility to find ways to apprehend and hold them accountable, using the least disruptive means possible. [162] There is no lawful justification for prosecuting individuals who have not themselves engaged in violent conduct or incitement.

Successive Burmese governments have responded to public protests by treating largely peaceful assemblies as "unlawful" and engaging in mass arrests of the participants. A recent example of this practice was the treatment of students protesting against the National Education Law.

Prosecution of National Education Law Protesters

After months of escalating tensions in 2015 between the Ministry of Education and student unions who said that students had been insufficiently consulted about the proposed national education law, a number of student groups throughout Burma staged marches from regional centers towards Rangoon.[163]

During the first week of March, police stopped one such group from advancing further south towards Rangoon. However, authorities gave students assurances that on March 10 at 11 a.m. they would be permitted to proceed to Rangoon in small groups.[164] As the students traveled south on March 10, police backed by local plainclothes police auxiliaries

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http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16998&LangID=E (accessed June 3, 2016); OSCE/ODIHR Guidelines, para. 164 (the use of violence by a small number of participants in an assembly (including the use of inciteful language) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly").

[160] Joint Report, February 2016, UN Doc. A/HRC/31/66, para. 20 ("acts of sporadic violence or offences by some should not be attributed to others whose intentions and behavior remain peaceful in nature"); European Court of Human Rights, *Ziliberberg v. Moldova*, application No. 61821/00 (2004).

[161] Anyone convicted of rioting faces a sentence of up to two years in prison under Penal Code section 147.

[162] OCSE/ODIHR Guidelines, para. 64 ("any intervention [in the event of violent conduct] should aim to deal with the particular individuals involved rather than dispersing the entire event").

[163] "Burma: Police Baton-Charge Student Protesters," Human Rights Watch news release, March 10, 2015.

[164] Ibid.

with batons violently dispersed an estimated 200 student demonstrators near the town of Letpadan.[165]

Min Thwe Thit, the leader of the All Burma Federation Students Union, was surrounded by police who identified him as a protest leader. Although he agreed to be arrested peacefully, he was beaten with riot batons and kicked repeatedly. He was then made to pass through two lines of police officers, with his hands tied behind his back, while police kicked him in his legs. When he fell, they continued kicking him and beat him using riot batons. Min Thwe Thit said the beatings were so harsh that some of the batons were broken over the protesters and, when they were no longer useable, some police began beating the protesters with their fiberglass helmets.[166] He was subsequently charged with 40 offenses, including unlawful assembly (section 143), continuing in an unlawful assembly after it was ordered to disperse (section 145), rioting (section 147), making statements likely to cause fear and alarm in the public (section 505(b)), and 34 separate charges of violating article 18 of the Peaceful Assembly Law. He was held in jail from the time of his arrest until charges against him were dropped by the new NLD-led government in April 2016, despite being diagnosed with stomach cancer in January.

Min Thwe Thit was one of over 120 students arrested that day, many of whom suffered injuries from police violence. Ultimately 87 students and supporters were charged with criminal offenses, and as of the date when the new Parliament was sworn in, 48 remained in prison despite many suffering from injuries and ill-health.[167] 85 of the 87 were charged with violating sections 143, 145 and 147 and 505(b) of the Penal Code.[168] Charges against the students arrested at Letpadan were dropped, and the students released from custody,

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[165] Ibid. Subsequent investigations found that police had used unnecessary and excessive force in breaking up the protest. See International Human Rights Clinic, Harvard Law School, "Crackdown at Letpadan: Excessive Force and Violations of the Rights to Freedom of Assembly and Freedom of Expression in Letpadan, Bago Region, Myanmar," October 2015, http://hrp.law.harvard.edu/wp-content/uploads/2015/10/IHRC_FR_Crackdown_REV22.pdf (accessed February 18, 2016). The Myanmar Human Rights Commission also concluded that the police had wrongfully attacked students, and urged the government to take legal action against those involved. Wa Lone, "Rights commission urges action against police," *Myanmar Times,* September 14, 2015, http://www.mmtimes.com/index.php/national-news/16454-rights-commission-urges-action-against-police.html (accessed March 10, 2016).

[166] Human Rights Watch interview with Min Thwe Thit, Rangoon, January 14, 2016.

[167] Assistance Association for Political Prisoners, "Letpadan Crackdown arrested students and supporters list updated February 29, 2016," http://aappb.org/wp-content/uploads/2016/03/LPT-Eng-version29-Feb-16.pdf (accessed March 14, 2016).

[168] Ibid.

by the new NLD-led government, in April 2016, but until the laws are amended the potential for abuse remains.

Recommendations to the Burmese government

- Amend section 141 of the Penal Code to narrow the definition of "unlawful assembly" to assemblies for which there is compelling and demonstrable evidence that those organizing or participating in the assembly intended to use or incite imminent violence.
- Amend sections 142 and 143 of the Penal Code to limit criminal prosecution for participation in an unlawful assembly to those who the government can demonstrate used or incited imminent violence.
- Repeal section 146 of the Penal Code, which deems every participant in an assembly guilty of rioting if any member of the assembly uses unlawful force or violence.
- Repeal section 147 of the Penal Code to eliminate the ill-defined offense of "rioting" and instead prosecute any individual who engages in violence, force, or destruction of property during an assembly under the provisions of the Penal Code dealing with assault or other violent acts.

FREQUENTLY USED LAWS PENALIZING SPEECH	DEFINITION OF OFFENSE	MAXIMUM PENALTY
PUBLIC TRANQUILITY Section 505(b) of the Burmese Penal Code	Anyone who "makes, publishes or circulates any statement, rumour or report … with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility"	2 years in prison and fine
CRIMINAL DEFAMATION Sections 499 and 500 of the BPC	Defines defamation as any words, spoken or written, or any signs or visible representation, making or publishing any imputation concerning a person "intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person"	2 years in prison and fine
TELECOMMUNICATIONS ACT Section 66(d)	Criminalizes "extortion of any person, coercion, unlawful restriction, defamation, interfering, undue influence, or intimidation using a telecommunications network"	1 year in prison and fine
ELECTRONIC TRANSACTIONS ACT Sections 33 and 34	Section 33 criminalizes any of the following acts using "electronic transactions technology": (a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture; and (b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture	7 years in prison
	Section 34 criminalizes "creating, modifying or altering of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person"	Fine or, if fine not paid, 3 years in prison
OFFICIAL SECRETS ACT	Section 5(1) and 5(2): Penalizes receiving or disseminating a broad range of documents and information, particularly government documents	2 years in prison and fine
	Section 3: Defines the offense of "spying" extremely broadly to include making, receiving, or communicating any document that is "calculated to be," "might be," or is intended to be" "directly or indirectly useful to a foreign country"	14 years in prison
SEDITION Section 124A of the BPC	Prohibits any words, spoken or written, or any signs or visible representation that can cause "hatred or contempt, or excites or attempts to excite disaffection," toward the government	Life in prison
NEWS MEDIA LAW Section 9 and 25	Contains broadly worded code of conduct that prohibits, among other things, writing that "deliberately affects the reputation of a person or organization or that disrespects their human rights, unless the writing is in the public interest"	Fine

HURTING RELIGIOUS SENTIMENTS Section 295A of the BPC	Criminalizes language that "with deliberate and malicious intention of outraging the religious feelings of any class of persons resident in the Union … insults or attempts to insult the religion or the religious beliefs of that class"	2 years in prison and fine
HURTING RELIGIOUS SENTIMENTS Section 298 of the BPC	Criminalizes expression of any kind made "with the deliberate intention of wounding the religious feelings of any person"	1 year in prison and fine
CONTEMPT OF COURTS ACT	Defines as contempt of court speech or writing that "disgraces or is likely to disgrace the court," "by any means diminishes the public trust in an honest and independent judicial inquiry," or "criticizes, writes, prints or distributes any matter that falls within the jurisdiction of the court prior to the verdict"	6 months in prison and fine
PRINTING AND PUBLISHING ENTERPRISE LAW	Contains broadly worded content restrictions that forbid publication of "matters that can tarnish the ethnicity, religion or culture of an ethnic group or a citizen" and "matters that can undermine national security, the rule of law, community peace and tranquility or the equality, freedom, justice and rights of every citizen"	Fine

Penal Code Section 505(b): Offenses Against Public Tranquility

The Penal Code also contains a number of overly broad provisions that criminalize peaceful expression, many of which have been used by successive Burmese governments to harass and prosecute those expressing views the government or security forces oppose. Among the most abused provisions is section 505(b), which criminalizes speech that may somehow lead to a breach of "public tranquility."

Section 505(b) provides a sentence of up to two years' imprisonment for anyone who "makes, publishes, or circulates any statement, rumor, or report with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquility."

While international law permits restrictions on speech to protect public order, the limitations imposed must be "appropriate to achieve their protective function" and be "the least intrusive instrument amongst those which might achieve their protective function."[169] While the government might be able to justify restricting speech that is both intended and very likely to induce the commission of offenses against the state, section 505(b) is not so

limited.[170] A statement about suspected electoral fraud could "alarm" a segment of the population and cause people to protest—thereby "offending" public tranquility—but this should not be treated as a crime.

Criminalizing speech simply because it is likely to alarm or offend others, causing them to protest or otherwise disturb public order, is an extreme measure that cannot be justified as "necessary" in a democratic society.[171] Such restrictions hand those offended what is known as a "heckler's veto" that stifles healthy debate. Indeed, some types of provocative and disturbing speech—such as criticism of government or public figures—are vital to a democratic society and should be protected even if inaccurate.

The restriction of speech in section 505(b) also lacks sufficient precision to enable an individual to know what speech would violate the law.[172] An individual cannot know what statements are "likely to cause fear and alarm in the public … whereby any person may be induced to commit an offence against the State or against the public tranquility," as that would require knowing in advance another person's subjective response to their speech. The provision thus does not provide an individual with sufficient guidance to enable them to regulate their conduct accordingly,[173] or provide clear limitations on those who are charged with enforcing the law.[174] This lack of clarity leaves the provision subject to abuse by officials looking for a way to silence critics of the government or others who are making statements to which officials object.

Successive Burmese governments have repeatedly used section 505(b) against activists and critics, particularly those involved with public protests. When new MPs were sworn in at the end of February 2016, more than 100 people were facing charges under section 505(b) in cases that AAPP deemed "political," all but ten of whom were also facing charges

[170] Section 505(b) does contain an exception for statements made where the speaker has "reasonable grounds" for believing that it is true and makes the statement without any "intent" to cause someone to offend public tranquility or commit an offense. However, the provision is too broad to be sufficiently limited by the exception.

[171] ECHR, *Sunday Times v. United Kingdom,* para. 59.

[172] UN Human Rights Committee, General Comment No. 34, para. 25.

[173] Ibid.; ECHR, *Sunday Times v. United Kingdom,* para. 49.

[174] UN Human Rights Committee, General Comment No. 34, para. 25 ("Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.")

under the Peaceful Assembly Law or sections 143-147 of the Penal Code.[175] Moreover, more than half of those then serving prison terms for political protests had been convicted under section 505(b), among other charges.[176]

Not only does section 505(b) carry a significantly longer sentence than section 18 of the Peaceful Assembly Law or section 143 of the Penal Code, the offense is "non-bailable" under Burma's Code of Criminal Procedure, thus justifying holding those arrested for unauthorized or "unlawful" protests in prison, sometimes for long periods, pending trial.[177]

As activist Wai Lu, who has faced charges under article 18 and section 505(b) multiple times, said:

> People risk their lives to tell about their situation. They think the highest risk is article 18. But really article 18 is a cover and the real charge is 505(b).[178]

Prosecutions for Questioning the Military's Role in Government

The role of the military in Burmese politics has for decades been a contentious issue in Burma. The National League for Democracy and many other political parties and activists have long campaigned for the military to hand over power to an elected civilian government and for the military to accept civilian control and limit its activities to national defense.

On June 30, 2015, five days after the Burmese parliament voted down constitutional amendments that would have reduced the military's ability to block reform efforts, [179] university students Zeyar Lwin, Paing Ye Thu, and Nan Lin organized a protest to call for the

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[175] AAPP, "418 PPs List (Facing Trial) Updated on 29 Feb 2016," http://aappb.org/2016/03/monthly-chronology-of-february-2016-and-remaining-political-prisoners-list-and-facing-trial-list/418-pps-list-facing-trailupdated-on-29-feb-2016/ (accessed March 14, 2016).

[176] AAPP, "90 political prisoners list in prison last Updated on 29 Feb 2016," http://aappb.org/2016/03/monthly-chronology-of-february-2016-and-remaining-political-prisoners-list-and-facing-trial-list/90-political-prisoners-list-in-prison-last-updated-on-29-feb-2016-eng/ (accessed March 14, 2016).

[177] Code of Criminal Procedure, Schedule II, http://www.burmalibrary.org/docs14/Code_of_Criminal_Procedure+schedules.pdf (accessed June 3, 2016).

[178] Human Rights Watch interview with Wai Lu, Rangoon, January 18, 2016.

[179] "Myanmar Lawmakers Vote Down Key Charter Amendment on Military Veto," *Radio Free Asia,* June 25, 2015, http://www.rfa.org/english/news/myanmar/vote-06252015165725.html (accessed March 10, 2016).

military to relinquish political power. All three were charged with violation of article 18 of the Peaceful Assembly Law and section 505(b) of the Penal Code. Since the protest passed through two townships, they were charged in both townships and, as a result, faced the possibility of up to five years in prison. They were held without bail and were refused permission to take their university exams while in prison.[180]

The fact that statements on a matter of public interest in Burma—such as the military's role in government—were made the basis of charges under section 505(b) demonstrates just how broadly the provision sweeps, and how easily it can be used to silence critical voices. Paing Ye Thu said, "In Myanmar, if you are involved in politics, you will be arrested. We were involved in politics, so when we were arrested, we were not surprised."[181]

The police did not explain to the students how their statements calling on the military to withdraw from politics were "likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquility," nor is there any indication that the speeches at the protest led to any public disorder.

As Paing Ye Thu stated, "The problem between the government and us is political. The government should talk to us in a political, negotiated way. Instead, they are using laws to lock us up. We believe it is not fair. We are not going to have fair trial under unfair laws."

Charges against the students were dropped by the new NLD-led government in April 2016 and they were released from prison, but the laws used against them remain on the books.

Repeated Prosecutions of Activist Wai Lu

Wai Lu is an activist who has been repeatedly arrested and charged with criminal offenses for his involvement in protests against what he perceives as injustices by the Thein Sein government.

[180] Human Rights Watch interview with Zeyar Lwin, Paing Ye Thu and Nan Lin, Rangoon, January 12, 2016.
[181] Ibid.

The first time he was arrested for violating section 505(b) was on November 27, 2012. He said:

> I was in Rangoon because Aung San Suu Kyi was going to go to Letpadaung [a controversial mine project] on November 29. I said that Daw Suu was welcome to visit and to please listen to the needs of the people and resolve the conflict. I marched from Sule [Pagoda] to Theingyi Market in Rangoon. I was arrested and charged with section 18 [of the Peaceful Assembly Law] and section 505(b).[182]

When asked whether the police ever specified what statement he made that would violate the language of the law, his view was that "the police can arrest anyone they want for 505(b)."[183] He was released after spending 14 days in prison, a result, he believes, of negotiations between Aung San Suu Kyi and the government.

In December 2014, Wai Lu donated rice and medicine to villagers who had been camping near Maha Bandoola Park in Rangoon to peacefully protest the seizure of their land in Michaungkan. He also posted information about the protest on Facebook, asking people to donate rice and medicine to the villagers. He was arrested on December 18 and charged with violating section 505(b). He said:

> I asked the judge, "Is it 505(b) to give rice to the people?" The judge did not answer, so I boycotted the rest of the trial to show my lack of confidence in the process.[184]

On April 8, 2015, Wai Lu was convicted of violating section 505(b) and sentenced to one year in prison. He was released from Insein Prison on November 13, 2015.

Prosecution of Naw Ohn Hla

Long-time activist Naw Ohn Hla was one of six leaders of a demonstration outside the Chinese Embassy in Rangoon on December 29, 2014 to protest the killing of 56-year-old Khin Win at the site of the controversial Letpadaung copper mine, run by Chinese company

[182] Human Rights Watch interview with Wai Lu, Rangoon, January 17, 2016.
[183] Ibid.
[184] Ibid.

Wanbao. Nearly 100 protesters attempted to lay wreaths for Khin Win in front of the Chinese Embassy but were blocked by a police barricade.[185]

Naw Ohn Hla and two other protest leaders were arrested on December 30. The remaining three were arrested at a later date.[186] All six were charged in Dagon township with violating sections 505(b), 147 and 353 of the Penal Code, as well as section 18 of the Peaceful Assembly Law.[187] According to her attorney, the 505(b) charge was based on statements she made to the effect that "the shooting happened because the government favors China over the farmers" and "Wanbao [the Chinese company that runs the mine] get out."[188]

All six activists were convicted on all charges on May 15, 2015 and sentenced to four years and four months in prison, of which two years was for violation of section 505(b).

In a clear example of the abusive use of multiple charges for the same offense, Naw Ohn Hla was later charged and convicted in four additional townships for the same protest, with the sentences added on to her original sentence from Dagon township, giving her a total sentence of six years and four months.[189]

While imprisoned, she was charged in connection with her participation in prior protests. In April 2015, she was sentenced to four months in prison for her September 2014 protest calling for the release of political prisoners, while in June 2015 she was given six months for conducting a peaceful prayer vigil at Shwedagon Pagoda in 2007 for the release of Aung San Suu Kyi from house arrest.[190] She was released from prison in April 2016 as part of the prisoner amnesty by the new NLD-led government.

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[185] San Yamin Aung, "Three Activists Arrested for Anti-Mine Protest in Rangoon," *The Irrawaddy,* December 30, 2014, http://www.irrawaddy.com/burma/three-activists-arrested-anti-mine-protest-rangoon.html (accessed December 3, 2015).

[186] In addition to Naw Ohn Hla, the defendants were Nay Myo Zin, Tin Htut Paing, Than Swe, Sein Htwe and San San Win, also known as Lay Lay.

[187] Section 147 criminalizes "rioting" while section 353 deals with "assault or use of force against a public servant." According to her attorney Robert San Aung, this charge was the result of a "shoving match" between Naw Ohn Hla and a police officer. Human Rights Watch interview with Robert San Aung, Rangoon, January 11, 2016.

[188] Human Rights Watch interview with Robert San Aung, Rangoon, January 11, 2016.

[189] Human Rights Watch interview with attorney Robert San Aung, Rangoon, January 11, 2016.

[190] "Myanmar Court Slaps Additional Jail Time on Imprisoned Mine Activists Naw Ohn Hla and Nay Myo Zin," *Radio Free Asia*, September 18, 2015, http://www.rfa.org/english/news/myanmar/court-09182015170427.html (accessed December 4, 2015).

Prosecution of Bi Mon Te Nay Journalists

The use of section 505(b) against journalists at *Bi Mon Te Nay Journal* for an inaccurate news report is a further example of how the provision has been used to protect the image of the government and not to protect public order. The paper published an article in July 2014, based on a statement by activist group Movement for Democratic Current Force, which erroneously claimed that then-opposition leader Aung San Suu Kyi had formed an interim government.[191]

Rather than seeking a retraction of the erroneous article or some other form of correction that would dispel any public concern, on July 8, 2014, the authorities arrested reporter Kyaw Zaw Hein, editors Win Tin, Thura Aung, and Ye Min Aung, and the journal's owners Yin Min Htun and Kyaw Min Khaing. The journalists were originally charged with causing public alarm and undermining the security of the state under sections 5(d) and 5(j) of the 1950 Emergency Provisions Act.[192] On August 4, 2014, the charges under the Emergency Provisions Act were replaced with charges under section 505(b) of the Penal Code and the case against Ye Min Aung was dismissed.[193] Bail was denied for all of the defendants.

On October 16, 2014, the remaining five were convicted under 505(b) for "defaming the state" and sentenced to two years in prison—the maximum permitted under the law.[194] All were released in a prisoner amnesty by the Thein Sein government in July 2015, after having spent almost a year in prison.[195]

The use of criminal laws to imprison journalists for an erroneous news report is an inappropriate and disproportionate response that has a chilling effect on the practice of journalism in Burma.

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[191] Nobel Zaw, "Rangoon Court Rejects Bi Mon Te Nay Appeal," *The Irrawaddy,* October 28, 2014, http://www.irrawaddy.com/burma/rangoon-court-rejects-bi-mon-te-nay-appeal.html (accessed December 5, 2015).

[192] The Emergency Provisions Act is discussed above.

[193] Htet Naing Zaw, "Court Accepts Lighter Charges Against 5 Members of Journal," *The Irrawaddy,* August 4, 2014, http://www.irrawaddy.com/burma/court-accepts-charges-5-members-journal.html (accessed February 16, 2016).

[194] "Five Journalists from Bi Mon Te Nay Sentenced to Two Years in Prison," *Eleven Myanmar,* October 17, 2014, http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=7856:five-journalists-from-bi-mon-te-nay-sentence-to-two-year-prison-term&catid=32:politics&Itemid=354 (accessed December 5, 2014).

[195] Committee to Protect Journalists, "Five Myanmar journalists freed from prison as part of mass amnesty," July 31, 2015, https://cpj.org/2015/07/five-myanmar-journalists-freed-from-prison-as-part.php (accessed February 19, 2016).

Recommendations to the Burmese Government

- Either repeal section 505(b), or amend the provision to criminalize only speech "that is intended to and likely to incite violence."

Penal Code Sections 499-502 and 130B: Criminal Defamation

The criminal defamation provisions in the Burmese Penal Code have primarily been wielded against journalists and other media workers who have published articles critical of the government or the military, or articles that are perceived to have somehow cast them in a bad light.[196] Under Burmese law, the state can prosecute an individual for defamation under sections 499-502 of the Penal Code. The penalty for criminal defamation is imprisonment for up to two years, a fine, or both.[197] The Penal Code contains a separate provision, section 130B, criminalizing "libel against foreign powers," which carries a penalty of up to three years' imprisonment, a fine, or both.

Defamation has been defined as a false statement that harms another person's reputation. It is increasingly recognized that defamation should be considered a civil matter, not a crime punishable with imprisonment. The UN special rapporteur on the protection and promotion of the right to freedom of opinion and expression has recommended that criminal defamation laws be abolished,[198] as have the special mandates of the United Nations, the Organization for Security and Cooperation in Europe, and the Organization of American States, which have together stated that: "Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws."[199]

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[196] Defamation is also criminalized in the Telecommunications Law, the Electronic Transactions Act, and the News Media Law, all of which are discussed later in this report.

[197] Penal Code, sec. 500. Section 501 criminalizes printing or engraving matter knowing or having good reason to know it is defamatory, and section 502 criminalizes selling or offering for sale any printed or engraved matter containing defamatory material, knowing that it contains such matter. Both provisions also carry a penalty of up to two years in prison.

[198] Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue Report, June 2012, UN Doc. A/HRC/20/17, para. 87.

[199] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2002, http://www.oas.org/en/iachr/expression/showarticle.asp?artID=87&lID=1 (accessed June 11, 2014). Similarly, the African Court on Human and Peoples' Rights has held that imposing a custodial sentence for defamation violates both article 9 of the African Charter on Human and Peoples' Rights and the ICCPR. African Court on Human and Peoples' Rights, *Lohe Issa Konate v. Burkina Faso,* Application no. 004/2013, December 5, 2014, https://www.african-court.org/en/images/documents/Judgment/Konate%20Judgment%20Engl.pdf (accessed June 17, 2015).

Defamation cases involving government officials or public persons are particularly problematic. While government officials and those involved in public affairs are entitled to protection of their reputation, including protection against defamation, as individuals who have sought to play a role in public affairs they must tolerate a greater degree of scrutiny and criticism than ordinary citizens. This distinction deters those in positions of power from using the law to penalize their critics or those who seek to expose official wrongdoing, and it facilitates public debate about issues of governance and common concern.[200]

The use of criminal defamation charges against the media has a chilling effect on press freedom. As Toe Zaw Latt, Burma bureau chief for DVB Multimedia Group, said: "Defamation is a problem. If you do an article on cronies and where they get their money, you are at risk. Even if you have hard evidence, they can still bring [defamation] charges."[201]

Prosecution of Myanmar Post Journalists for "Defaming" a Military MP

In March 2015, Chief Editor Than Htaik Thu and Deputy Chief Reporter Hsan Moe of the *Myanmar Post* were convicted of defaming Maj. Thein Zaw, a military member of parliament from Mon State, in a news story entitled, "A military parliamentary representative says they have to take seats in parliament because of low educational standards."[202] The article, written by a freelance reporter, was published in the January 29, 2014 edition of the paper. According to Than Htiak Thu, the paper thought the major's statements were newsworthy because they implied that the military might later give up their seats: "We didn't have any intention to insult or defame the major. Our focus was on

[200] UN Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, April 2010, UN Doc A/HRC/14/23 para. 82 (The protection of reputation of others "must not be used to protect the State and its officials from public opinion or criticism…. (N)o criminal or civil action for defamation should be admissible in respect of a civil servant or the performance of his or her duties."); UN Human Rights Committee, General Comment No. 34, para. 38 ("[T]he Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high"); UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex, para. 37 ("A limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism."); Criminal Code of Canada, sec. 310, http://yourlaws.ca/criminal-code-canada/321 (it is not defamatory libel to publish "fair comments on the public conduct of a person who takes part in public affairs.").

[201] Human Rights Watch interview with Toe Zaw Latt, Rangoon, January 13, 2016.

[202] Human Rights Watch interview with Than Htaik Thu, Rangoon, January 13, 2016.

the military. We thought it would be of interest to the public that the military said it would go back."[203]

After the article came out, other media reported on it, leading to criticism of Maj. Thein Zaw on social media. Two months after the article appeared, the major filed a complaint against members of the *Myanmar Post* staff and they were charged with criminal defamation. According to Than Htaik Thu, the major did not specify any particular statements in the article that were defamatory but simply complained that, because of the language quoted in the article, other media defamed him.[204] Than Thaik Thu added, "We can assume the suit was not really for this particular case but [for] other media reporting we have done over the years. They intentionally wanted to harass us and suppress us."[205]

Trial of the case was held in Mon state, with sessions held initially once every two weeks and then once a week. According to Than Thaik Thu:

> We had to miss three days of work every time there was court. We would leave in the evening, drive up and sleep, have trial, sleep, then drive back to Rangoon. It is about a six-hour drive. After five or six months, the trial was every week…. I was an exile editor for 2014.[206]

After a trial lasting over a year, both defendants were convicted of defamation and sentenced to two months in prison on March 18, 2015.

Prosecution of Eleven Media Group Journalists for "Defaming" the Ministry of Information

Eleven Media Group (EMG), which publishes both a daily and a weekly paper, focuses its reporting on politics and the economy. According to Wai Phyo, chief editor of EMG, "We mostly do investigative reporting, mostly for things that are harming people in the country."[207]

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[203] Ibid.

[204] Ibid.

[205] Ibid.

[206] Ibid.

[207] Human Rights Watch interview with Wai Phyo, Rangoon, January 20, 2016.

According to Wai Phyo, EMG's problems began with the introduction of the draft Public Service Media law:

> In the military government, there was a propaganda mechanism. In this government [under Thein Sein], they were trying to recreate it as "public service media." We were on the front line opposing it. We pointed out that the government was using the public budget to do propaganda.[208]

On June 2, 2014, the *Weekly Eleven* news journal carried a story about a meeting held in Naypyidaw to discuss the proposed law. The article quoted statements made at the meeting by the executive editor of *Daily Eleven,* who criticized the Ministry of Information for allegedly showing prices higher than the market value on tenders for printing presses, reporting that the ministry had paid more than US$1 million for one printing press. He was further quoted as saying that, if the law passed, the Ministry of Information would need to purchase more printing presses, which would encourage corruption.[209]

Shortly after the article was published, the Ministry of Information held a press conference at which it denied that it had paid more than US$1 million for a printing press. *Weekly Eleven* then published a second article comparing machines it had just purchased for its own use with those purchased by the MOI and showing relative prices paid.[210]

The Information Ministry sent a letter to the newly formed Press Council saying that the article was wrong and demanding an apology. *Eleven Media* stood by its story and the Information Ministry sued, saying that the journal had defamed everyone who works in the department that is in charge of purchasing machines. Those charged with defamation included the author of the article, the chief editor, the publishers of both the weekly and daily newspapers, and the deputy chief editor.[211]

Trial of the case, which was filed in Naypyidaw, began on October 10, 2014 and is ongoing. On November 15, 2015, Dr. Than Htut Aung, chief executive officer of EMG, was stopped by

[208] Ibid.

[209] Ibid.; English translation of the article provided to Human Rights Watch by Eleven Media Group.

[210] Human Rights Watch interview with Wai Phyo, Rangoon, January 20, 2016.

[211] Ibid.

an immigration officer at the Rangoon International Airport and told he had been barred from leaving the country.[212]

The long-running trial has been very burdensome for EMG. According to Wai Phyo,

> We have to leave at 4 a.m. on trial days to get there in time. It is very difficult. All of the important people [on the paper] have been sued. It is a way of putting pressure on us…. It is torture to a journalist in a way. If you think this kind of thing will happen, you won't want to write that in the future.[213]

He added:

> If we are wrong we can be sued, but with a fair law and a fair trial. Instead, it is more of a threat and symbol to other media not to write like that. We are asking for legal protection and legal defense. Not only for us. No one should face trial under these unjust laws.[214]

Recommendations to the Burmese Government

- Repeal sections 499-502 and 130B of the Penal Code to eliminate the offense of criminal defamation.
- A civil defamation law should be designed to restore the reputation harmed. Public figures should have to prove that the defendant knew the information was false. The law should give preference to the use of non-pecuniary remedies such as apology, rectification, and clarification. Any pecuniary awards should be strictly proportionate to the actual harm caused.

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[212] "Dr. Than Htut Aung, CEO of the Eleven Media Group, barred from going abroad: information ministry is responsible for most of the problems EMG face including being barred from going abroad," *Eleven Myanmar,* November 16, 2015, http://www.elevenmyanmar.com/local/dr-htut-aung-ceo-eleven-media-group-barred-going-abroad-information-ministry-responsible-most (accessed December 8, 2015).

[213] Ibid.

[214] Ibid.

Telecommunications Act

The use of the Internet has skyrocketed in Burma in recent years, and a variety of laws have been enacted to regulate the sector, many of which have been aimed at censoring online content.

In 2013, the government passed the Telecommunications Law to regulate the "transmission or reception of information in its original or modified form by wire, fiber optic cable or any conducting cable, by means of radio, optical or any other form of electromagnetic transmission."[215] The law requires anyone wishing to possess or use telecommunications equipment to obtain a license to do so,[216] and provides criminal penalties for possessing telecommunications equipment or providing telecommunications services without a license.[217]

The law also imposes restrictions on speech using telecommunications equipment, and provides criminal penalties for violating those restrictions. Section 66(d) provides a sentence of up the three years in prison for "extortion of any person, coercion, unlawful restriction, defamation, interfering, undue influence, or intimidation using a telecommunications network."[218]

By including a reference to defamation, section 66(d) increases the penalty that can be imposed for that offense, when committed via the Internet, from two years under sections 499-502 of the Penal Code to three years under 66(d). The severity of criminal sanctions may well cause speakers to remain silent rather than risk being deemed to have communicated arguably unlawful words, ideas, or images.[219] As discussed above, defamation should not be a criminal offense, whether committed on the Internet or otherwise.

The statute's use of vague and ambiguous terms compounds the problems. There is no definition in the statute of what constitutes "undue influence," "intimidation" or

[215] Telecommunications Law, sec. 3(a).

[216] Telecommunications Law, sec. 13

[217] Telecommunications Law, sec.65 and 67.

[218] Telecommunications Law, sec. 66(d).

[219] See US Supreme Court, *Reno v. American Civil Liberties Union,* 521 U.S. 844 (1997).

"interfering" with someone. Some of the terms are highly subjective, making the criminal liability of a telecommunications user dependent upon the opinion and sensitivity of those receiving the communication. As a result, telecommunications users are left uncertain about what speech might fall afoul of the law, violating the international legal requirement that restrictions on speech be formulated "with sufficient precision to enable an individual to regulate his or her conduct accordingly."[220]

In October 2015, the Thein Sein government began aggressively using section 66(d) to prosecute users of social media for posts viewed as somehow "insulting" to the military or President Thein Sein. However, as the UN Human Rights Committee has made clear, the mere fact that an expression is considered insulting to a public figure is not sufficient to justify the imposition of criminal penalties.[221]

Prosecution of Chaw Sandi Tun for "Defaming" the Military

Chaw Sandi Tun, also known as Chit Thami, is a 25-year-old activist who was involved in protests against the national education law and actively campaigned for the National League for Democracy. On October 12, 2015, she was arrested and charged with defaming the military in a posting on her Facebook page. Although initially charged under section 34(d) of the Electronic Transactions Act (discussed below), the charge was subsequently changed to section 66(d) of the Telecommunications Act.[222]

The basis of the various charges against her was a photomontage that juxtaposed a photograph of Aung San Suu Kyi in a green *htamain* (traditional skirt) next to a photograph of the military in their new light green uniform, together with a comment that, "The military likes the color of Aung San Suu Kyi's *longyi* so much that they are wearing it."[223] The post was also alleged to have said: "If you love mother that much, why don't you wrap mother's *longyi* on your head?"[224]

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[220] UN Human Rights Committee, General Comment No. 34, para. 25.

[221] UN Human Rights Committee, General Comment no. 34, para. 38. See also UN Human Rights Committee, General Comment no. 34, para. 42 ("The penalization of a media outlet, publisher or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.").

[222] In late October, the authorities filed an additional charged under section 500 of the Penal Code. That charge was dropped on December 14, 2015.

[223] Human Rights Watch interview with attorney Robert San Aung, Rangoon, January 11, 2016.

[224] Ibid. According to Robert San Aung, the government was unable to prove that she posted the second comment.

Because comparing the military uniform to a woman's clothing was considered "insulting" by someone in the government or military, Chaw Sandi Tun was charged with defaming the military, arrested, and held without bail. She denied making the post, alleging that her Facebook account had been hacked.[225] On December 28, 2015, she was convicted and sentenced to six months in prison. She was released from prison on March 30, 2016 at the conclusion of her sentence.[226]

Prosecution of Patrick Khum Jaa Lee for "Defaming" the Military

Humanitarian worker Patrick Khum Jaa Lee was arrested on October 14, 2015 for allegedly posting on Facebook an image showing a foot stepping on a photograph of the military commander in chief. According to his wife, the prominent women's rights and peace activist Mae Sabe Phyu, he was arrested at home at about 6:45 p.m. in the presence of his three children and his paralyzed mother.[227] Mae Sabe Phyu was in Dublin at the time, whence she had traveled after presenting a report to the UN Human Rights Council in Geneva as part of Burma's second Universal Periodic Review.[228]

Patrick Khum Jaa Lee was charged with "defaming the military" in violation of section 66(d). He was denied bail, despite suffering from uncontrolled hypertension and serious asthma. He denied making the post, saying that he had only commented on a post on someone else's page to warn that it was dangerous.[229]

Patrick Khum Jaa Lee, who has worked with international organizations including UNICEF and USAID to provide humanitarian relief to those internally displaced by the conflict in Kachin State, believes his arrest was intended to stop his work.[230] His wife fears that it may have been directed at her. "There are few Kachin activists based in Yangon who can draw attention to what is happening there," she said. "It could be a threatening message that if they want to do something they can."[231]

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[225] Human Rights Watch interview with Robert San Aung, Rangoon, January 11, 2016.

[226] Laignee Barron and Ye Moon, "Facebook Satirist Released," *Myanmar Times,* March 31, 2016, http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/19737-facebook-satirist-released.html (accessed March 31, 2016).

[227] Human Rights Watch interview with Mae Sabe Phyu, Rangoon, January 22, 2016.

[228] Ibid.

[229] Ibid.

[230] Human Rights Watch interview with Patrick Kum Jaa Lee, Rangoon, January 15, 2016.

[231] Human Rights Watch interview with Mae Sabe Phyu, Rangoon, January 22, 2016.

His attorney, Pang Long, argued that the post was not defamatory, that section 66(d) was unconstitutional and violated the ASEAN Human Rights Declaration, and that the law did not provide proper procedures and standards for establishing who actually posted something on the Internet.[232] The court rejected all defense arguments and, on January 22, 2016, convicted Patrick Khum Jaa Lee and sentenced him to six months in prison, including time already served. He was released from prison on April 1, 2016 at the conclusion of his sentence.

Prosecution of Maung Saungkha for "Defamatory" Poetry

In October 2015, Maung Saungkha, 23, posted a risqué poem on Facebook. The brief haiku translates roughly as, "I have the president's portrait tattooed on my penis. How disgusted my wife is."[233] The same night the police came to his door, but he was not home. He eluded capture for four weeks but on November 5, just before the general election, he was arrested and charged with "defaming" the president in violation of section 66(d) of the Telecommunications Act. On December 17, 2015, at his fourth court appearance, the authorities added an additional charge under section 505(b) of the Penal Code.[234]

Regardless of whether one considers the poem offensive or in poor taste, the prosecution of an individual for an "offensive" poem makes the authorities look petty if not ridiculous, violates international law, and demonstrates the overly broad reach of section 66(d). Saungkha was convicted of violating section 66(d) in May 2016 and sentenced to six months in prison. Because he had already spent more than six months in jail since being arrested, he was released after his sentencing.

Prosecution of Zaw Myo Nyunt

Businessman Zaw Myo Nyunt was arrested on October 6, 2015 and charged with violating section 66(d) of the Telecommunications Law and section 505(b) of the Penal Code for having posted a Facebook image showing a foot stepping on a photograph of the military commander-in-chief with the caption "sorry, I stepped on this by accident." On January 29,

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[232] Human Rights Watch interview with attorney Pang Long, Rangoon, January 17, 2016.

[233] Kyaw Phyo Tha, "Bard on the Run, Dodging Defamation over Risqué Rhyme," *The Irrawaddy,* October 21, 2015, http://www.irrawaddy.com/burma/bard-on-the-run-dodging-defamation-over-risque-rhyme.html (accessed December 2, 2015).

[234] Kyaw Phyo Tha, "Penis Poet' Slapped with Fresh Charges," *The Irrawaddy,* December 17, 2015, http://www.irrawaddy.com/burma/penis-poet-slapped-with-fresh-charges.html, (accessed December 17, 2015).

2016, Zaw Myo Nyunt was convicted on both counts and sentenced to one year at hard labor.[235] He was released in the prisoner amnesty in April 2016.

Recommendations to the Burmese Government

- Significantly narrow section 66(d) of the Telecommunications Law to eliminate duplication with other laws and to remove improper restrictions on freedom of expression.
    - The references to "defaming" and "disturbing" another person should be deleted.
    - To the extent that the restrictions on blackmail, wrongful restraint, and exerting undue influence refer to criminal actions that are not otherwise already penalized in the Burma Penal Code, those terms should be clearly defined to ensure that telecommunications users can determine what communications fall within the bounds of the law.
    - Where actions are already prohibited under the Burma Penal Code, eliminate duplicative language in the Telecommunications Law.

Electronic Transactions Act

The Electronic Transactions Act 2004 is a broadly worded statute that can be used to impose criminal penalties on individuals who post information on the Internet.[236]

Section 33: Broad Content Regulations

Section 33 of the Electronic Transactions Act provides criminal penalties for anyone committing various "acts by using electronic transactions technology"—i.e. the Internet—including:

(a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture; and

[235] "Businessman jailed for FB army chief photo," *Eleven Myanmar,* January 29, 2016, http://www.elevenmyanmar.com/local/businessman-jailed-fb-army-chief-photo (accessed March 14, 2016).

[236] The Electronic Transactions Act, 2004, www.ibiblio.org/obl/docs/Electronic-transactions.htm (accessed June 3, 2016).

(b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture.

When enacted in 2004, violation of section 33 carried a minimum sentence of seven years and a maximum of 15 years. In 2014, the law was amended to reduce the penalties to between five and seven years.[237]

Section 33 of the Electronic Transactions Act is so broad that almost any Internet communication—from comments on the state of the economy to critiques of government policy—could be argued to fall within its terms, with no requirement that suppression of such speech be "necessary" to address a pressing social need.

Moreover, given the use of broad and undefined terms such as "community peace" and "national culture," the act is not drafted "with sufficient precision to enable an individual to regulate his or her conduct accordingly."[238] The vagueness of the terms leaves wide scope for arbitrary application and use of the law to suppress communications that the government does not like.

Also problematic are criminal penalties for the "receipt" of communications falling within the broad language of the statute, given that the term is nowhere defined in the statute. As is evident from the proliferation of unsolicited emails, individuals have no control over what is sent to their email inbox. Section 33(b), as drafted, could lead to the imprisonment of an individual simply because someone that they might not even know sent them a message that the authorities viewed as a threat to "community peace."

While the Burmese government's use of section 33 has waned in recent years, it was used aggressively against bloggers, activists, and others trying to disseminate information about the 2007 Saffron Revolution.[239] Unless repealed or substantially revised, authorities

[237] Law Amending the Electronic Transactions Law, 2014 Pyidaungsu Hluttaw Law No. 6, February 25, 2014.

[238] UN Human Rights Committee, General Comment no. 34, para. 25.

[239] Marwaan Macan-Markar, "Junta Turns to Draconian Electronics Law to Silence Critics," *IPS News,* January 10, 2010, http://www.ipsnews.net/2010/01/burma-junta-turns-to-draconian-electronics-law-to-silence-critics/ (accessed February 16, 2016).

might use the law in the future to limit freedom of expression, particularly while the military controls the Ministry of Home Affairs.

Prosecution of Nay Phone Latt

In 2007, Nay Phone Latt was one of many bloggers who sent information about the Saffron Revolution to bloggers outside of the country. He did not, however, post any such information on his blog, which showcased his work as a writer, with poetry, articles, and stories. According to Nay Phone Latt, "there was no evidence against me [on my blog] so they charged me based on what I received."[240] In his email inbox, the authorities found a caricature of the then-military leader Than Shwe, and on that basis charged him with violating section 33 of the Electronic Transactions Act. He was also charged with violating the Video Act for possessing DVDs that did not have a government censorship certificate, and with violating section 505(b) of the Penal Code.

"The main reason was they wanted to frighten the bloggers who spread news about the Saffron Revolution," said Nay Phone Latt. "They used the Electronic Transaction Act. I was a symbol to show the others."[241] He was tried in Insein Prison in a trial lasting nine months, and ultimately sentenced to a total of 20 years and six months in prison: 15 years under section 33 of the Electronic Transactions Act, two years under section 505(b) and three years and six months under the Video Act. He was released as part of a presidential amnesty on January 13, 2012.[242]

Nay Phone Latt was only one of many who received extremely long sentences under the Electronic Transactions Act in the wake of the Saffron Revolution. While the sentences that can be imposed under section 33 have been reduced, they still range up to seven years in prison, and the provision remains ripe for abuse.

Section 34(d): A De Facto Criminal Defamation Provision

Section 34(d) of the Electronic Transactions Act imposes criminal penalties for "creating, modifying or altering of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any

[240] Human Rights Watch interview with Nay Phone Latt, Rangoon, January 17, 2016.
[241] Ibid.
[242] Ibid.

person." As originally enacted, violation of section 34(d) could result in a prison term of up to five years. In 2014, the law was amended to reduce the penalties [to] a fine of between 5,000,000 (US$4,173) and 10,000,000 kyat (US$8,347). If the fine is not paid, the individual can be sentenced to between one and three years in prison.[243]

Section 34(d) is essentially a very broadly worded criminal defamation provision. As with the previous provisions, terms such as "dignity" and "detrimental to the interest" are too vague and broad to protect the right to freedom of expression. Sending an email or creating a Facebook post that criticizes a government official for accepting bribes or a company for environmental degradation could be considered to harm their "dignity" or be "detrimental" to their interest and thus illegal under this law. In fact, any comments critical of public figures or government departments could be challenged as being detrimental to their interest and lowering their dignity—yet such political speech falls within the core of protected speech.

Fear of criminal penalties will lead to a stifling of debate and discussion on the Internet about matters of public concern as users seek to avoid any possibility of being charged under the Electronic Transactions Act.

Initial Charges Against Chaw Sandi Tun

When Chaw Sandi Tun was first arrested on October 12, 2015, she was charged with violating section 34(d) of the Electronic Transactions Act. That charge was then dropped and replaced with a charge under section 66(d) of the Telecommunications Act, perhaps because section 66(d) carries a possible sentence of three years in prison, while section 34(d) no longer allows the imposition of a prison sentence unless the defendant is fined and then fails to pay it.

Recommendations to the Burmese Government

- Amend section 33 of the Electronic Transactions Act to criminalize only speech intended to and likely to incite violence or discrimination against an individual or clearly defined group of persons in circumstances in which such violence or

[243] Law Amending the Electronic Transactions Law, 2014 Pyidaungsu Hluttaw Law No. 6, February 25, 2014.

discrimination is imminent and alternative measures to prevent such conduct are not reasonably available.

- Repeal section 34(d) of the Electronic Transactions Act to eliminate the effective offense of criminal defamation using electronic means.

Official Secrets Act (India Act XIX, 1923)

The Official Secrets Act, dating from Burma's colonial past, penalizes receiving or disseminating a broad and vaguely defined range of documents, especially but not only government documents, and approaching or entering a broad range of "prohibited" places.[244] Although called "The Official Secrets Act," nowhere in the act is the term "official secrets" defined. A bill seeking to amend the OSA was submitted to Parliament in September 2014, but failed to pass.[245]

The Official Secrets Act puts severe limitations on the ability of anyone in or connected to the government to disclose information of any kind. Section 5 of the act makes it an offense for any person who holds or has held office or has worked under contract for the government or been employed by any such person to (1) communicate "any document or information" that they received or had access to by virtue of their position to anyone other than those to whom they are specifically authorized to disclose it; (2) retain any such document or information when they have no right to retain it, or (3) fail to take reasonable care of such document or information.[246] It is also an offense for anyone to receive such a document or information "knowing or having reasonable ground to believe" that it was communicated in contravention of the Official Secrets Act.[247] Both offenses carry a penalty of up to two years' imprisonment.

The imposition of criminal penalties for the disclosure of documents by public employees, without any requirement that the disclosure pose a real risk of harm, violates international standards for the protection of freedom of expression. Under the Global Principles on

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[244] Official Secrets Act (India Act XIX, 1923), www.incl.org/research/library/files/Myanmar/secrets.pdf.

[245] "Parliament Rejects Bid to Amend Official Secrets Act," Eleven Media, September 26, 2014, http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=7673:parliament-rejects-bid-to-amend-official-secrets-act&catid=32:politics&Itemid=354 (accessed January 19, 2015).

[246] Official Secrets Act, sec. 5(1).

[247] Official Secrets Act, sec. 5(2).

National Security and the Right to Information (the "Tshwane Principles"), criminal cases against those who leak information should be considered only if the information disclosed poses a "real and identifiable threat of causing significant harm" to national security.[248] Moreover, public interest in the disclosure should be available as a defense in any such prosecution.[249] The Tshwane Principles further provide that journalists and others who do not work for the government should not be prosecuted for receiving, possessing or disclosing even classified information to the public, or for conspiracy or other crimes based on their seeking or accessing such information.[250]

By criminalizing the disclosure, possession, or receipt of documents or information without the necessity of demonstrating that disclosure of such a document or information would threaten national security or public order, section 5 of the Official Secrets Act fosters a culture of secrecy that runs counter to the public's interest in access to information about government activity and effectively accords unlimited power to the state and its officials to deny the public information and enables the use of the act to conceal corruption, abuse of public power, and mismanagement of public resources.[251]

The breadth of the Official Secrets Act is even more troubling in the context of its definition of "spying," which carries a possible penalty of up to 14 years in prison. Section 3(1)(c) of the act defines the offense of "spying" extremely broadly to include the making, receiving or communication of any document that is "calculated to be," "might be," or is "intended

[248] Global Principles on National Security and the Right to Information (Tshwane Principles), https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf (accessed June 3, 2016), princ. 43 and 46. The Tshwane Principles were launched in Tshwane, South Africa on June 12, 2013, to provide guidance to those engaged in drafting, revising, or implementing laws or provisions relating to the state's authority to withhold information on national security grounds or to punish the disclosure of such information. The principles were drafted by 22 organizations and academic centers in consultation with more than 500 experts from more than 70 countries at 14 meetings held around the world, facilitated by the Open Society Justice Initiative, and in consultation with the four special rapporteurs on freedom of expression and media freedom and the special rapporteur on counter-terrorism and human rights.

[249] Tshwane Principles, principle 43(a) ("Whenever public personnel may be subject to criminal or civil proceedings, or administrative sanctions, relating to their having made a disclosure of information not otherwise protected under these Principles, the law should provide a public interest defense if the public interest in disclosure of the information in question outweighs the public interest in non-disclosure.").

[250] Tshwane Principles, principle. 47.

[251] The Ontario Superior Court of Justice invalidated a provision strikingly similar to Burma's section 5 in Canada's Security of Information Act, finding that it imposed impermissible restrictions on free expression in violation of the right to freedom of expression under Canada's Charter of Rights and Freedoms. *O'Neill v. Canada (Attorney General)*, 82 O.R. 3d 241, 2006.

to be" "directly or indirectly useful to a foreign country."[252] The statute does not require that the conduct result in any actual harm to national security or even that it create a significant risk of such harm.[253] Rather, it requires only that the individual be acting "for any purpose prejudicial to the safety or interest of the State" and that the material be potentially "useful" to another country. Being "useful" to another country is not the same as being a threat to national security.[254]

The provision is far too broad to be justified as "necessary" to protect national security and too vague to enable, for example, journalists and academic writers to know for certain when they might fall afoul of the law. A journalist investigating a report of defective military equipment, or an academic writing about missile technology, could find themselves charged with "spying" on the theory that their writings "could benefit" other countries. Fear of that outcome is likely to lead to self-censorship.

Section 3(1)(a) of the statute criminalizes anyone who "for any purpose prejudicial to the safety or interests of the State—approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place." Prohibited place is defined extremely broadly to include, among others, areas declared by the president, in the official gazette, to be "prohibited"[255] and any "factory, dockyard, or other place" belonging to or occupied by the state and "used for the purpose of building, repairing, making, or storing any munitions of war."[256]

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[252] Section 3(a) prohibits approaching, inspecting, passing over, being near or entering a prohibited place; section 3(b) prohibits the making of any documents meeting the above standards; section 3(c) prohibits the obtaining, collection or dissemination of any secret password or sign or "any article, document or information" which meets the above standards.

[253] Section 3 authorizes imposition of a lengthier term of imprisonment for offenses "committed in relation to any work of defense, arsenal, naval, military or air force establishment or state, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of the State or in relation to any secret official code," but still requires no showing that the offense caused a real risk of harm to national security. Such offenses carry a penalty of 14 years, while all other cases carry a penalty of three years.

[254] UN Human Rights Committee, Decision: *Keun-Tae Kim v. Republic of Korea*, Communication No. 574/1994, UN Doc. CCPR/C/64/D/574/1994 (1999), http://www.refworld.org/docid/3f588eff7.html (accessed April 4, 2014) (finding no showing that "benefit" that might arise to North Korea from statements created any risk to national security that justified restricting the speech). See also UN Human Rights Committee, Decision: *Yong-Joo Kang v. Republic of Korea*, Communication No. 878/1999, UN Doc. CCPR/C/78/D/878/1999 (2003), http://www.refworld.org/docid/404887efa.html (accessed 4 April 2014) (finding violation of article 19 where complainant was convicted of espionage for distributing pamphlets critical of the government where government did not show how pamphlets threatened national security).

[255] Official Secrets Act, sec. 2(8)(c).

[256] Official Secrets Act, sec. 2(8)(a).

Where a military establishment is involved, section 3(2) of the statute effectively places the burden on the defendant to prove that they are not guilty, providing that:

> It shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State … he may be convicted if, from the circumstances of the case, his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State.

The ability to use the "known character" of a defendant to prove that they were acting for a purpose "prejudicial to the safety or interest of" Burma is an open invitation to the government to use the law against those known to be critical of the government.

Prosecution of Unity Journalists

The outdated and overly broad Official Secrets Act has in recent years been invoked against media undertaking investigative journalism. On November 25, 2014, the *Unity Journal* published a front page article about a military facility that had been built in Pauk township on land confiscated from local farmers. According to attorney Robert San Aung, who represented four of the defendants, "The government grabs land. They took 3,000 acres of farmland. The farmers who lost their land had no jobs, so they ended up working in the factory [built on their land] and told the journalists about the factory. The journalists then investigated and reported on it."[257]

The article included photographs of the facility, and alleged that it was a chemical weapons factory. The government denied the report, and charged four journalists and the chief executive officer of *Unity* with violating section 3(1)(a) of the Official Secrets Act. Despite testimony from six villagers that, at the time the journalists photographed the site, there were no signs indicating that the factory was off limits,[258] and despite lack of proof that the report caused any harm to the country,[259] all five were convicted and sentenced to 10 years in prison. The sentences were reduced on appeal to seven years. As a result of the prosecution, *Unity Journal* ceased operations.

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[257] Human Rights Watch interview with Robert San Aung, Rangoon, January 11, 2016.

[258] Human Rights Watch interview with attorney Than Zaw, Rangoon, January 11, 2016.

[259] Ibid.

The district court, in determining whether the defendants were acting for purposes prejudicial to the country, relied on the content of the article itself, finding that "by stating that the ethnic armed group cannot believe the size of the defense budget and the extent to which weapons factories have been built, the accused are deemed to be acting prejudicially to the safety or interest of the state."[260]

The use of official secrets laws in response to journalists' coverage of an issue of public interest goes far beyond the legitimate scope of such laws, and will have a serious chilling effect on journalism in Burma. The *Unity* journalists were among those released from prison by the new government in April 2016, but the law used against them remains on the books.

Recommendations to the Burmese Government

- Amend sections 5(1) and 6(2) of the Official Secrets Act to criminalize only disclosures of clearly defined categories of documents, to require proof by the government that the disclosure poses a real and identifiable risk of causing significant harm to national security, and to allow for a defense of public interest.
- Repeal section 5(2) to eliminate the criminal penalties for receipt or disclosure of information by persons who are not government personnel.
- Amend section 3 to penalize only conduct that the government can establish poses a real risk to national security.
- Amend section 3(2) to eliminate the use of "known character" as a basis for showing that the defendant's purpose in acting was one prejudicial to the safety or interests of Burma.

Penal Code Section 124A: Sedition

Section 124A of the Burma Penal Code provides criminal penalties for sedition. While sedition has generally been interpreted to require an intention to incite the public to

[260] Judgment of Pokokku District Court, July 10, 2014, Annex IV to the Petition to the UN Working Group on Arbitrary Detention on behalf of Tin San, submitted by Media Defence Law Initiative, http://mediadefence.org/sites/default/files/files/20141211%20Tin%20San%20UNWGAD%20Petition%20FINAL.pdf (accessed June 3, 2016).

violence against constituted authority or to create a public disturbance or disorder against such authority,[261] section 124A is not so limited. The section provides that:

> Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law for the Union or for the constituent units thereof, shall be punished.

There is no requirement that the speech be likely to, or even intended to, incite violence or public disorder, much less that it pose a real risk of causing such impact. Rather, it criminalizes speech that excites "disaffection against" [262] the government regardless of whether or not any of those who feel "disaffection" as a result are inspired to do anything other than sit at home and nurse their discontent. Moreover, speech that "excites disaffection" may be the basis of a prosecution apparently without regard to whether that was the speaker's intent. This effectively permits the imprisonment of citizens who had no intention of "exciting disaffection," much less of undermining national security or public order.

As the Canadian Supreme Court has stated in striking down a sedition statute very similar to section 124A as a violation of freedom of expression:

> There is no modern authority which holds that the mere effect of tending to create discontent or disaffection, but not tending to issue in illegal conduct, constitutes the crime [of sedition], and the reason for this is obvious. Freedom of thought and belief and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of life. The clash of critical discussion on political, social, and religious subjects has too deeply

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[261] The Oxford English Dictionary defines sedition as "(1) a concerted movement to overthrow an established government; a revolt, rebellion, rioting; (2) conduct or language inciting to rebellion against the constituted authority in a state." *Oxford English Dictionary* (Oxford: Oxford University Press, 1971). See also Supreme Court of Canada, *Boucher v. The King,* [1951] S.C.R. 265, 288; Supreme Court of India, *Kedar Nath v. State of Bihar* (1962) SCR Supl. (2) 769, 809.

[262] The statute specifies that "disaffection includes disloyalty and all feelings of enmity." Penal Code, sec. 124A, explanation 1.

> become the stuff of our daily experience to suggest that mere ill-will as a product of controversy can strike down the latter with illegality.[263]

Section 124A is further flawed in that it fails to formulate the restrictions it imposes on speech "with sufficient precision to enable the citizen to regulate his conduct."[264] Terms such as "disaffection" are both vague and subjective.[265] Although the statue provides that "disaffection *includes* disloyalty and all feelings of enmity,"[266] it is not limited to those feelings. A law that is so vague that individuals do not know what expression may violate it creates an unacceptable chill on free speech because citizens may avoid discussing any subject that they fear might subject them to prosecution. Vague provisions not only do not give sufficient notice to citizens, but also leave the law subject to abuse by authorities who may use them to silence dissent.[267]

Section 124A raises particular concern because it restricts discussion of government and judicial actions.[268] The right to freedom of expression includes the right of individuals to criticize or openly and publicly evaluate their government without fear of interference or punishment.[269] Although section 124A provides that speech "expressing disapprobation"

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[263] Supreme Court of Canada, *Boucher v. The King* at 288. See also Supreme Court of India, *Kedar Nath v. State of Bihar* (1962) SCR Supl. (2) 769, 809 (finding Indian sedition law must be construed to apply only to "such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence" to prevent conflict with right to freedom of expression under the Indian Constitution).

[264] ECHR, *Sunday Times v. United Kingdom,* para. 49.

[265] See *Mwenda & Eastern Media Institute v. Attorney General* [2010] UGCC 5 (invalidating Uganda's Sedition Law, which is similar to that of Burma: "[T]he way impugned sections were worded have an endless catchment area, to the extent that it infringes one's right [to free speech under Uganda's Constitution].")

[266] Penal Code, sec. 124A, explanation 1 (emphasis added).

[267] See Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, September 2012, UN Doc. A/67/357, para. 32 (expressing concern that "vaguely worded and ambiguous laws" to combat hate speech are frequently used to silence criticism and legitimate political expression). See also United States Supreme Court, *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972), at 170 (law is void for vagueness if it is a "standardless sweep" that allows law enforcement officials to pursue their own predilections.)

[268] See UN Human Rights Committee, General Comment no. 34, para. 38 ("[I]n circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the [ICCPR] on uninhibited expression is particularly high"); European Court of Human Rights, *Nilsen and Johnson v. Norway,* no. 23118/93, Judgment of 25 November 1999, ECHR 1999-VIII, www.echr.coe.int, para. 46 ("[T]here is little scope under Article 10 § 2 of the [ECHR] for restrictions on debate on questions of public interest."); Supreme Court of India, *S. Rangarajan v. P.J. Ram,* [1989] SCR (2) at 231 ("Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.").

[269] See, e.g., UN Human Rights Committee, Decision: *Marques de Morais v. Angola,* Communication No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002 (2005), http://www1.umn.edu/humanrts/undocs/1128-2002.html (accessed April 14, 2014) (finding a breach of article 19 where author was imprisoned for articles he wrote criticizing the President of Angola). See also European Court of Human Rights, *Incal v. Turkey,* (no. 22678/93), Judgment of 9 June 1998, Reports 1998-IV,

of government or administrative actions "without exciting or attempting to excite hatred, contempt or disaffection" are not offenses under the section,[270] the overall impact of the statue is to severely restrict speech critical of the government.

As the New Zealand Law Commission stated in recommending the abolition of New Zealand's sedition laws:

> The heart of the case against sedition lies in the protection of freedom of expression, particularly of political expression, and its place in our democracy. People may hold and express strong dissenting views. These may be both unpopular and unreasonable. But such expressions should not be branded as criminal simply because they involve dissent and political opposition to the government and authority.[271]

New Zealand and the United Kingdom are among the countries that have abolished their sedition laws in recent years.[272] Burma should follow their lead. [273]

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www.echr.coe.int (accessed June 3, 2016) (finding breach of ECHR article 10 when defendant imprisoned for strong criticism of governmental actions against the Kurdish population).

[270] Penal Code, sec. 124A, explanations 2 and 3.

[271] *Law Commission Reforming the Law of Sedition: Consultation Draft* (October 2006), http://www.lawcom.govt.nz/media-release/reforming-law-sedition-%E2%80%93-consultation-draft, para. 18.

[272] See *The Crimes (Repeal of Seditions Offense) Amendment Act of 2007,* http://www.legislation.govt.nz/act/public/2007/0096/latest/whole.html and *The Coroners and Justice Act 2009,* chapter 25, sec. 73, www.legislation.gov.uk/ukpga/2009/25/section73 (accessed June 3, 2016).

[273] Numerous courts have recognized that suppression of discussion of critical issues not only is not required to protect public order, but may well be counter-productive. See, e.g., *Free Press of Namibia (Pty) Ltd. v. Cabinet for the Interim Government of South West Africa,* 1987(1) SA 614 (SWA), p. 624 ("Because people may hold their government in contempt does not mean that a situation exists which constitutes a danger to the security of the State or to the maintenance of public order. To stifle just criticism could as likely lead to these undesirable situations."); *State v. Ivory Trumpet Publishing Company Limited,* (1984) 5 NCLR 736, p. 748 ("The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the … rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion… "). See also La Rue Report, September 2012, UN Doc. A/67/357, para. 36 ("[F]reedom of expression is essential to creating an environment conducive to critical discussions of religious and racial issues and also to promoting understanding and tolerance by deconstructing negative stereotypes."); UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights ("Siracusa Principles"), UN Doc. E/CN.4/1985/4, Annex (1985), para. 32 ("The systematic violation of human rights undermines true national security and may jeopardize international peace and security.").

Prosecution of San Sint

The abusive possibilities of Penal Code section 124A are demonstrated by the sedition prosecution of former religious affairs minister San Sint. On June 19, 2014, President Thein Sein dismissed San Sint as head of the Ministry of Religious Affairs. His firing followed a controversial raid on a monastery in Rangoon by the state-backed Buddhist clergy, which had been in an ownership dispute with a group of monks who refused to leave the monastery. Local media reported that San Sint and other cabinet members had disagreed with the plan to raid the monastery.[274]

San Sint was charged with corruption for allegedly misusing about $10,000 to build a pagoda in late 2013 and was denied bail. He claimed that the real reason for the charges was that he had defied the president's orders.[275] On July 22, the government added a charge of sedition, claiming that San Sint was "sowing discord" between the government and monks in the aftermath of the raid.[276] He was convicted on both charges and, on October 17, 2014, was sentenced to 10 years in prison for sedition and three years on the graft charge. On April 8, 2015, the Supreme Court agreed to hear his appeal of his conviction.[277]

Prosecution of Activist Su Su Nway

Section 124A was also used against those critical of the prior military government. In November 2007, activist Su Su Nway traveled with colleague Bo Bo Wing Hlaing to the hotel where the visiting UN special rapporteur on human rights in Burma, Paulo Pinheiro, was staying. She raised a banner criticizing the then ruling State Peace and Development Council, using language that mockingly echoed the SPDC's own crude propaganda

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[274] San Yamin Aung, "Burma's Ex-Religion Minister Gets 13 Years for Graft, Sedition," *The Irrawaddy,* October 17, 2014. http://www.irrawaddy.com/burma/burmas-ex-religion-minister-gets-13-years-graft-sedition.html (accessed December 10, 2015).

[275] "U San Sint makes emotional plea for freedom at court hearing," *The Myanmar Times,* July 7, 2014, http://www.mmtimes.com/index.php/national-news/10931-u-san-sint-makes-emotional-plea-for-freedom-at-court-hearing.html (accessed December 11, 2015).

[276] Phae Thet Phyo, "U San Sint slapped with additional sedition charge," *Myanmar Times,* July 25, 2014, http://www.mmtimes.com/index.php/national-news/11131-u-san-sint-meets-family-charged-with-sedition.html (accessed February 11, 2016); San Yamin Aung, "Burma's Ex-Religion Minister Gets 13 Years for Graft, Sedition," *The Irrawaddy,* October 17, 2014, http://www.irrawaddy.com/burma/burmas-ex-religion-minister-gets-13-years-graft-sedition.html (accessed December 11, 2015).

[277] Aung Kyaw Min, "Supreme Court agrees to hear U San Sint appeal," *Myanmar Times,* April 8, 2015, http://www.mmtimes.com/index.php/national-news/13980-supreme-court-agrees-to-hear-u-san-sint-appeal.html (accessed February 12, 2016).

slogans.[278] Authorities immediately arrested her. In November 2008 a special court inside Insein prison sentenced her to 12-and-a-half years in prison on charges including sedition (section 124(a)) and making statements that cause fear or alarm to the public or induce others to commit offenses against the state or public tranquility (section 505(b)). This sentence was later reduced to eight-and-a-half years.[279] Su Su Nway was released in a presidential amnesty on October 12, 2011.

Recommendations to the Burmese Government

- Repeal section 124A of the Penal Code in its entirety (consistent with decisions by the United Kingdom and New Zealand to repeal their sedition laws and mounting calls on countries including India, Malaysia, and Singapore to do the same).

News Media Law

In 2014, the Burmese parliament enacted a News Media Law to govern the behavior of the media.[280] A free, uncensored and unhindered media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other rights, and constitutes one of the cornerstones of a democratic society.[281] Laws that restrict the media must thus be drafted with particular care.

While the News Media Law has some positive aspects, including the recognition that "publications of the news media industry shall be free from censorship,"[282] it contains very troubling content-based restrictions, enforced by criminal fines that have already been used to prosecute members of the media.

The law sets forth a broadly worded code of conduct for the media. Section 9(g) of that code of conduct prohibits writing that "deliberately affects the reputation of a person or organization or that disrespects their human rights, unless the writing is in the public interest."[283] Violation of this provision can lead to a fine of up to 1 million kyat (US$834)

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[278] Human Rights Watch, *Burma's Forgotten Prisoners,* September 2009, p. 12.

[279] Ibid.

[280] Pyidaungsu Hluttaw Law No. 12/2014, March 14, 2014.

[281] UN Human Rights Committee, General Comment no. 34, para. 13.

[282] News Media Law, sec. 5.

[283] News Media Law, sec. 9(g).

under section 25(b) of the law. Section 9(g) is, in essence, a broadly worded criminal defamation law, but one without any of the exceptions or defenses provided in Burma's existing criminal defamation law.[284] The News Media Law's "defamation" provision has already been used to harass and silence critical voices in the media.

Prosecutions of Myanmar Herald Staff

In November 2014, the Ministry of Information served 11 staff members of the *Myanmar Herald*, ranging from the chief editor to two members of the distribution staff, with notice that they were being charged with criminal defamation under the News Media Law for writing news "that deliberately affects the reputation of a specific person or organization."[285] The charges were based on an article quoting critical comments made by a member of the National League for Democracy about President Thein Sein.[286]
The Ministry of Information first complained to the new Press Council, as required under the News Media Law.[287] Aung Kyaw Min, chief editor of the *Myanmar Herald,* said that they offered to print an apology in the paper*,* but the Ministry of Information "said we had to apologize in the government paper, and had to use their words. We said no." According to Aung Kyaw Min:

> We said we would apologize in our paper not because we were wrong but because Thein Sein is head of the country, so if we harmed him we will apologize on a personal basis. We sent a draft apology letter to them. The Press Council said it should be enough. The government did not respond.[288]

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[284] Section 9(h) of the News Media Law states that "ways of writing which may inflame conflicts regarding nationality, religion and race shall be avoided." This provision merely duplicates existing law, as the News Media Law provides that any news media worker who violates this provision is to be dealt with, not under the News Media Law, but under applicable existing laws.

[285] The defendants were Kyaw Swar Win (CEO/chief editor), Aung Kyaw Min (deputy chief editor), San Win Tun (deputy chief editor), Ant Khaung Min (deputy chief editor and author of the article); Aung Ko Ko (public relations), Aung Tun Lin (editor-in-charge), Shein Wai Naung (news editor), Chit Ko Ko (online editor), Khin Mg Lin (translator), Myaint Zaw (distributor), and Zeyar Moe (distributor). Human Rights Watch interview with Aung Kyaw Min, Rangoon, January 18, 2016.

[286] Shwe Aung, "MOI Serves Herald with Summons," *Democratic Voice of Burma,* November 7, 2014, https://www.dvb.no.news/moi-serves/summons-to-herald-burma-myanmar/45720 (accessed December 9, 2014).

[287] News Media Law, sec. 21.

[288] Human Rights Watch interview with Aung Kyaw Min, Rangoon, January 18, 2016.

A week later, the Ministry of Information announced that the *Herald's* draft apology was not sufficient and that they would sue.[289] In November 2014, 11 members of the *Herald* were charged with violating section 25(b) of the News Media Law.[290] The trial lasted eight months. When asked about the impact of the case on the paper, Aung Kyaw Min said:

> Trial days were often close to deadlines, and the trial was in Naypyidaw. So we had to stay overnight and pay for living and food for everyone…. We had to carry work with us to court or do it in court. All who do the work were in it [the case].[291]

The case was also extremely costly for the paper. When asked to estimate what the case cost the paper, Min estimated 300 lakh kyat (US$25,168): "We took out 15 lakh kyat for each trip for food, living, transportation. The lawyer's fees were very expensive because there were 11 people."[292]

The defense argued that the statements quoted were not defamatory and the article was in the public interest:

> Our argument is that the government is important and the opposition is important. Criticism of the government by the opposition is important. People should know the perspective of the opposition on the current government.[293]

On July 21, 2015, the court found the chief editor, Kyaw Saw Win, and the author of the article, Ant Khaung Min, guilty, and dismissed the charges against the other nine defendants. In its ruling, the court commented that "Thein Sein is like our parent. This is

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[289] Nyein Nyein, "Burma's Govt to Bring Defamation Charges Against 2 Publications," *The Irrawaddy,* September 23, 2014, http://www.irrawaddy.com/burma/burmas-govt-bring-defamation-charges-2-publications.html (accessed December 10, 2015).

[290] "Myanmar Government Slaps Defamation Charges on Local Weekly," *Radio Free Asia,* November 7, 2014, http://www.rfa.org/english/news/myanmar/defamation-11072014164628.html (accessed February 16, 2016).

[291] Human Rights Watch interview with Aung Kyaw Min, Rangoon, January 18, 2016.

[292] Ibid. A lakh is 100,000.

[293] Human Rights Watch interview with Aung Kyaw Min, Rangoon, January 18, 2016.

like children insulting their parents."[294] Both men were sentenced to the maximum permitted fine of 1 million kyat (US$834).

In another case, a Pegu-based reporter for the *Myanmar Herald,* Myat Soe, was charged under the News Media Law in December 2014 for allegedly defaming the local police force in an article that included allegations that the force was taking bribes from illegal gambling rings.[295] According to Aung Kyaw Min, that trial is still in progress nearly 18 months later and, although the reporter is out on bail, "it is difficult and stressful."[296]

As discussed above, Human Rights Watch, along with an increasing number of governments and international authorities, believes that criminal defamation laws should be abolished, as criminal penalties are always disproportionate punishments for reputational harm and infringe on the right to free expression. While the penalties under the News Media Law do not include imprisonment, they include significant fines and the involvement of criminal justice institutions. As the cases above show, moreover, the law can easily be abused by powerful individuals to intimidate the media and suppress criticism of their actions.

Recommendations to the Burmese Government

- Repeal section 9(g) of the News Media Law, which prohibits writing that "deliberately affects the reputation of a person or organization or that disrespects their human rights, unless the writing is in the public interest."
- Repeal the "code of conduct" and penalties for violating it; the media should independently establish its own voluntary code of ethics.

Penal Code Sections 295A and 298: Offenses Relating to Religion

The Penal Code also contains provisions that criminalize speech that wounds religious feelings or "insults" religion. Section 298 of the Penal Code criminalizes expression of any kind that is "deliberately intended to wound the religious feelings of any person" and carries a possible penalty of up to one year in prison. Section 295A criminalizes language

[294] Ibid.

[295] Nobel Zaw, "Pegu Police Sue Myanmar Herald Reporter," *The Irrawaddy,* December 8, 2014, http://www.irrawaddy.org/burma/pegu-police-sue-myanmar-herald-reporter.html (accessed January 14, 2015).

[296] Human Rights Watch interview with Aung Kyaw Min, Rangoon, January 18, 2016.

that "with deliberate and malicious intention of outraging the religious feelings of any class of persons resident in the Union … insults or attempts to insult the religion or the religious beliefs of that class" and carries a sentence of up to two years in prison.

These provisions effectively criminalize speech that may offend others or be viewed as insulting to their religion. Laws that prohibit "outraging religious feelings" were specifically cited by the UN special rapporteur on the right to freedom of expression, Frank La Rue, as an example of overly broad laws that can be abused to censor discussion on matters of legitimate public interest.[297]

Freedom of expression is applicable not only to information or ideas "that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population."[298] A prohibition on speech that wounds someone's religious feelings or is perceived as insulting someone's religion, reinforced by criminal penalties, is neither necessary to protect a legitimate interest nor is it proportionate to the supposed interest being protected.[299]

Sections 295A and 298 enable prosecutions based on the subjective response of those who hear the speech, and can be and often are used by the majority to silence those with whom they disagree. In recent years, they have been used on behalf of powerful groups of monks against those claimed to have insulted the majority Buddhist religion. The stifling of the discussion of religious differences is likely to lead to discrimination and efforts to silence dissenting voices, rather than to communal harmony. Rather than prosecuting "insulting" speech, government and religious leaders should "actively promote tolerance and understanding towards others and support open debates and exchange of ideas."[300] The Burmese government should counter speech viewed as "insulting" to religion through affirmative or non-punitive measures, including public education, promotion of tolerance, publicly countering libelous, or incendiary misinformation.

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[297] La Rue Report, September 2012, UN Doc. A/67/357, para. 52.

[298] European Court of Human Rights, *Handyside v. United Kingdom,* para. 49. See also UN Human Rights Committee, General Comment no. 34, para. 11.

[299] UN Human Rights Committee, General Comment no. 34, para. 34. See also UN Human Rights Committee, Decision: *Ballantyne v. Canada,* para. 11.4 (restriction on advertising in English not necessary to achieve stated aim of protecting the francophone population of Canada).

[300] La Rue Report, September 2012, UN Doc. A/67/357, para. 85.

Prosecution of Htin Lin Oo

On October 23, 2014, columnist and former NLD information officer Htin Lin Oo gave a speech in which he openly criticized the racist rhetoric of some monks, saying that it was not consistent with Buddhist teaching. Among other things, he said that "Buddha is not Burmese, not Shan, not Karen—so if you want to be an extreme nationalist and if you love to maintain your race that much, don't believe in Buddhism."[301] After a 10-minute excerpt of his 100 minute speech was circulated on social media, he was arrested and charged with violating sections 295A and 298 of the Penal Code. The case was filed at the behest of township Buddhist clergy, who claimed the speech insulted their religion.[302]

Htin Lin Oo denied having insulted Buddhism, noting that he was instead criticizing the actions of certain members of the Buddhist community. [303] According to his lawyer, Thein Than Oo, "his intention was to expose things that are bad for Buddhism, like extremism and racism. His actual intention was to ask for more tolerance."[304]

Bail was denied under pressure from the Committee for Protection of Nationality and Religion, commonly known as Ma Ba Tha, and the trial itself was conducted under an atmosphere of intimidation. According to his defense lawyer, members of Ma Ba Tha "were surrounding the court every day, intimidating everyone, including me. They would surround me and bar entry to the court and shout 'long live race and religion.'"[305]

Despite the government's failure to establish at trial that anything Htin Lin Oo said was contrary to Buddhist teachings,[306] he was convicted of insulting religious feelings "with malicious intent" under section 295A on June 2, 2015 and sentenced to two years in prison

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[301] Zarni Mann, "2 Years Hard Labor for Htin Lin Oo in Religious Offense Case," *The Irrawaddy,* June 2, 2015, http://www.irrawaddy.com/burma/2-years-hard-labor-for-htin-lin-oo-in-religious-offense-case.html (accessed December 3, 2015).

[302] Human Rights Watch interview with attorney Thein Than Oo, Naypyidaw, January 20, 2016.

[303] San Yamin Aung, "NLD Member Prosecuted for 'Wounding Religious Feelings,'" *The Irrawaddy,* December 8, 2014, http://www.irrawaddy.org/burma/nld-member-prosecuted-wounding-religious-feelings.html (accessed January 14, 2015).

[304] Jared Ferrie, "Myanmar court jails former opposition official accused of insulting Buddhism," *Reuters,* December 17, 2014, http://uk.reuters.com/article/uk-myanmar-religion-idUKKBNoJV1HB20141217 (accessed February 11, 2016).

[305] Human Rights Watch interview with Thein Than Oo, Naypyidaw, January 20, 2016.

[306] Ibid.

at hard labor.[307] His appeal was rejected on July 2, 2015.[308] Htin Lin Oo was released in the prisoner amnesties ordered by the new government in April 2016.

VGastro Bar Prosecutions

Pressure from organizations of monks played a similar role in the prosecution of New Zealander Philip Blackwood, the general manager of the VGastro Bar in Rangoon, and his two Burmese partners, Tun Thurein and Hut Ko Ko Lwin.

In December 2014, Blackwood placed an advertisement on the bar's Facebook page that depicted Buddha wearing headphones. Although the image was taken down and an apology posted in its place, police arrested Blackwood, the bar owner Tun Thurein, and the bar manager Htut Ko Ko Lwin, after an outcry by militant Buddhist groups.[309] All three were charged with violating section 295A and section 188 of the Penal Code. They were denied bail, and members of Ma Ba Tha were frequently present outside the courthouse during their court appearances.

All three men were convicted and, on March 17, 2015, sentenced to two years in prison at hard labor. They were sentenced to an additional six months in prison for illegally operating a bar after 10 p.m. Blackwood was released in a presidential amnesty on January 22, 2016, but his two co-defendants were believed to be still in prison at the time of writing.[310]

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[307] Zarni Mann, "2 Years Hard Labor for Htin Lin Oo in Religious Offense Case," *The Irrawaddy,* June 2, 2015, http://www.irrawaddy.com/burma/2-years-hard-labor-for-htin-lin-oo-in-religious-offense-case.html (accessed December 3, 2015). Htin Than Oo was acquitted of the charge under Penal Code section 298.

[308] Zarni Mann, "Htin Lin Oo's Appeal Rejected in Religious Offense Case," *The Irrawaddy,* July 2, 2015, http://www.irrawaddy.com/burma/htin-lin-oos-appeal-rejected-in-religious-offense-case.html (accessed December 3, 2015).

[309] Kyaw Zayar Win, "NZ Bar Manager Arrested in Buddha Insult Storm," *DVB,* December 11, 2014, https://www.dvb.no/news/nz-bar-manager-arrested-over-buddha-insult-storm-burma-myanmar/46442 (accessed January 20, 2015); Helen Regan, "A New Zealander is Facing 4 Years in a Burmese Prison for 'Insulting Buddhism ," *Time*, December 24, 2014, http://time.com/3646432/burma-myanmar-new-zealander-insulting-buddhism-vgastro/ (accessed December 27, 2014); Wai Moe and Austin Ramzy, "Myanmar Sentences 3 to Prison for Depicting Buddha Wearing Headphones," *The New York Times,* March 17, 2015, http://www.nytimes.com/2015/03/18/world/asia/myanmar-sentences-3-to-prison-for-defaming-buddhism.html?_r=0 (accessed February 11, 2016).

[310] Ye Mon, "Blackwood pardoned but Myanmar co-workers still detained: monitoring groups," *Myanmar Times,* January 26, 2016, http://www.mmtimes.com/index.php/national-news/18646-blackwood-pardoned-but-myanmar-co-workers-still-detained-monitoring-groups.html (accessed January 26, 2016).

While the advertisement was culturally insensitive and may well have been considered offensive by many, the criminal prosecution of individuals for offensive or insensitive speech is inconsistent with international standards for the protection of freedom of expression.

Recommendations to the Burmese Government

- Repeal both section 295A and section 298 of the Penal Code.

Contempt of Courts Law

Burma's broadly worded Contempt of Courts Law, enacted in 2013, has also been used to penalize reporting on matters of public interest.[311] The law defines criminal contempt to mean intentionally proclaiming, reporting as news, printing or distributing any information that:

i. disgraces or is likely to disgrace the power of the court conferred by law;
ii. affects, meddles in, or disturbs the honest discharge of duties by the court;
iii. by any means diminishes the public trust in an honest and independent judicial inquiry; or
iv. criticizes, writes, prints, or distributes any matter that falls within the jurisdiction of the court prior to the verdict.[312]

Violations of the law can be punished by up to six months in prison or a fine of up to 100,000 kyat (US$83) or both.[313]

The purpose of criminal contempt laws is to prevent interference with the administration of justice. While there is no doubt that courts can restrict speech where that is necessary for the orderly functioning of the court system,[314] the Contempt of Courts Law is too broadly worded to be limited to that purpose and should be amended to narrow its scope.

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[311] Pyidaungsu Hluttaw Law No. 17/2013, July 29, 2013.

[312] Contempt of Court Law, sec. 2(d).

[313] Contempt of Court Law, sec. 10.

[314] UN Human Rights Committee General Comment no. 34, para. 31 (noting that contempt of court proceedings could be warranted in the exercise of the court's power to maintain orderly proceedings, but must not be used to restrict legitimate defense rights).

Lowering the Dignity of the Court

Subsections (2)(d)(i) and 2(d)(iii) of the act, which criminalize speech that somehow lowers the dignity of the court or lessens public trust in the administration of justice, have particularly troublesome implications for freedom of speech. As with other forms of contempt law, these provisions stem from the "scandalising the court" doctrine rooted in the English common law. The primary rationale for this form of contempt is the maintenance of public confidence in the administration of justice.[315]

The Contempt of Courts Law does not prevent all criticism of the court. In fact, it specifically exempts from the definition of contempt a number of categories, including "balanced analysis or criticism of the quality of a court case" for which the court has returned a final verdict,[316] and a "just, valid, and accurate" report concerning an ongoing legal proceeding.[317] Unfortunately, the line between what is considered "just" reporting or "balanced criticism" and what can be considered as criticism that "disgraces" or "diminishes the public trust in" the court is very murky, and the determination of what is, in essence, a subjective test is left to the discretion of the very judges who may have felt offended by the criticism at issue.

The reliance on interpretation by individual judges also makes the scope of the violation extremely uncertain. What one judge may view as tending to disgrace the court may be shrugged off by another judge. The law thus does not give clear guidance to those wishing to express opinions about the conduct of the court, in violation of the requirement that laws restricting expression be formulated "with sufficient precision to enable an individual to regulate his or her conduct accordingly."[318] Moreover, the lack of clarity as to what expression may be considered to disgrace or lower the authority of the court leaves wide scope for the restriction of speech simply on the basis that it is critical of the court and its rulings.[319]

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[315] See, e.g., *Chokolingo v. AF of Trinidad and Tobago* [1981] 1 All ER 244, p. 248 (describing the offense as "a scurrilous attack on the judiciary as whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice").

[316] Contempt of Courts Law, sec. 8.

[317] Contempt of Courts Law, sec. 7.

[318] UN Human Rights Committee, General Comment no. 34, para. 25.

[319] UN Human Rights Committee, General Comment no. 34, para. 25 ("A law cannot confer unfettered discretion for restriction of freedom of expression on those charged with its execution.").

This is of particular concern with respect to the media. As the European Court of Human Rights stated in the seminal case of *Sunday Times v. United Kingdom,* in which the court found that an injunction against reporting on ongoing thalidomide litigation violated article 10 of the European Convention on Human Rights:

> There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialised journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them.[320]

Commenting on Ongoing Legal Proceedings

Restrictions on speech that is likely to prejudice the right to a fair trial in ongoing legal proceedings are permissible under international law to protect the rights of the defendant. As the European Court of Human Rights stated in *Sunday Times,* the defendant's right to a fair trial:

> Must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of justice.[321]

However, no restrictions on reporting on ongoing legal proceedings may be justified unless there is a substantial risk of serious prejudice to the fairness of those proceedings and the

[320] ECHR, Sunday Times v. United Kingdom, para. 65.

[321] ECHR, *Sunday Times v. United Kingdom,* para. 50.

threat to the right to a fair trial or to the presumption of innocence outweighs the harm to freedom of expression.[322]

Section 2(d)(iv) is a broadly worded provision that makes it criminal to comment on "any matter that falls within the jurisdiction of the court prior to the verdict." Section 7 of the act, however, properly excludes from this restriction "just, valid, and accurate" reporting on an ongoing legal proceeding.[323] The line between "valid" reporting on what happened and comments that can be viewed as prejudging the facts of the case can be murky, however, and that murkiness can be exploited by the government to restrict the reporting of ongoing cases. Moreover, fear of falling on the wrong side of the line may cause media to refrain from reporting on ongoing cases deemed "sensitive."

Prosecution of Eleven Media Group

The abusive possibilities of the Contempt of Courts Law are demonstrated by the prosecution of 17 members of the Eleven Media Group. The prosecution arose from a report, published in the *Daily Eleven,* about testimony in an ongoing defamation trial against five staff members of Eleven Media Group. On March 21, 2015, *Daily Eleven* published an article titled "Court started hearing plaintiff's witness on the lawsuit case filed by the Ministry of Information against the *Daily Eleven* and *Weekly Eleven News Journal*; plaintiff Kyaw Soe admitted that the Ministry of Information bought a printing press for 700,000 Euro in 2009."

Kyaw Soe is the general director of News and Periodicals Enterprise under the Ministry of Information. According to Wai Phyo, chief editor of Eleven Media Group, "we published about our experiences at trial all the time. It is okay if you use the exact words. In their testimony, the government witnesses said they didn't buy the machines for more than $1 million. They said they bought them for 730,000 euros." In a press briefing given after the filing of criminal charges, Wai Phyo stated:

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[322] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2002, http://www.osce.org/fom/99558?download=true (accessed June 3, 2016), p. 28.

[323] Contempt of Court Law, sec. 7 ("An act of proclaiming, news reporting, printing or distributing something that is just, correct, accurate and valid concerning an ongoing legal proceeding in court, by oral or written statements, or by symbols or distinctive signs or any other way, shall not be deemed as contempt of court.").

Before writing the story, we formally applied for the official copy of Kyaw Soe's testimony on the purchase of 700,000 euro worth printing press from Pobbathiri Township Court and the exact words in the official copy were used in our story. We also discussed it with our lawyer.[324]

Despite these precautions, on June 15, 2015, the Thein Sein government charged 17 individuals at Eleven Media Group with contempt of court.[325] While Eleven Media Group has a total staff of over 100, "the major management is only 30. So 17 is a threat — squeezing the neck of our organization," said Wai Phyo.[326]

Charges against three defendants were discharged on technicalities, but the remaining 14 defendants were convicted of contempt on December 24, 2015 and sentenced to a fine of 30,000 kyat (US$25) each or one month imprisonment. The 14 defendants are appealing their conviction. "It is a fine, but it is not right," said Wai Phyo. "People in the country understand that it is more than a legal issue.... Our media is strong. They are trying to contain us."[327]

Recommendations to the Burmese Government

- Repeal section 2(d)(i) of the Contempt of Courts Act to eliminate the offense of "disgracing the court".
- Amend section 2(d)(ii) to limit its application to conduct or speech that creates a substantial risk that the course of justice in ongoing proceedings will be seriously impeded or prejudiced.

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[324] "Briefing of the Chief Editor of The Daily Eleven newspaper on the lawsuit against 17 editors filed by Information Ministry," *Eleven Myanmar,* June 16, 2015, http://www.elevenmyanmar.com/local/briefing-chief-editor-daily-eleven-newspaper-lawsuit-against-17-editors-filed-information (accessed January 27, 2016); Human Rights Watch interview with Wei Phyo, Rangoon, January 20, 2016.

[325] The 17 accused persons are the Daily Eleven newspaper's publisher Dr Thein Myint, Chief Editor Wai Phyo, Sayar Myat Thit (Deputy Chief Editor), executive editors Ko Aung Myo Thu, Ko Than Zaw Tun, Ko Kyaw Zaw Linn (now the editor-in-charge), Ko Nay Htun Naing, Ko Oo (Mathematics), Ko Nayi Min, chief reporter Marn Thu Shein, senior editors Ko Zaw Zaw Aung, Ma A Nge Htwe - her name has been written as 'U A Nge Htwe' in the summons letter from the court – Ko Hein Min Latt, Ko Soe Htet Khine, Ko Nay (Mann), Ma Lin Lin Khaing, and Ma Nwe Yin Aye. "Briefing of the Chief Editor of The Daily Eleven newspaper on the lawsuit against 17 editors filed by Information Ministry," *Eleven Myanmar,* June 16, 2015, http://www.elevenmyanmar.com/local/briefing-chief-editor-daily-eleven-newspaper-lawsuit-against-17-editors-filed-information (accessed January 27, 2016).

[326] Human Rights Watch interview with Wei Phyo, Rangoon, January 20, 2016.

[327] Ibid.

Recommendation to the Supreme Court

- Instruct all judges that fair and accurate reports of ongoing legal proceedings not be considered contempt of court.

Printing and Publishing Enterprise Law

On March 4, 2014, the same day on which it passed the News Media Law, Burma's Parliament passed a new Printing and Publishing Enterprise Law to replace the repressive 1962 Printing and Publishers Registration Act. The new law is a significant improvement, eliminating the possibility of prison sentences and ending the open prior censorship authorized by the 1962 law. However, it still requires registration of printers and publishers, and contains overly broad and vague content restrictions, reinforced by criminal fines, that are incompatible with a free press.

Registration Requirements

Section 4 of the Printing and Publishing Enterprise Law (PPE) requires printers, publishers and those who wish to establish a news agency to apply for a "certificate of recognition" from the Ministry of Information. The law does not specify what information must be contained in the application, nor what the criteria are for obtaining such a certificate. Printing, publishing, or operating a news agency without a certificate from the ministry is punishable by a fine of up to five million kyat (US$4,173).[328]

As noted in UN Human Rights Committee General Comment no. 34, the criteria for any licensing of the media should be "reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance" with the right to freedom of expression.[329] In a joint declaration on regulation of the media, the UN special rapporteur for freedom of expression, the OSCE representative on freedom of the media, and the OAS special rapporteur on freedom of expression stated that:

> Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose

[328] Printing and Publishing Enterprise Law, sec. 19.

[329] UN Human Rights Committee, General Comment 34, para. 39.

substantive conditions on the print media or which are overseen by bodies which are not independent of the government, are particularly problematical.[330]

Content Restrictions

Section 8 of the Printing and Publishing Enterprise Law imposes a series of broad and vaguely worded restrictions on the content of publications. The same restrictions apply to websites run by publishers and news agencies and to the import and distribution of foreign publications.[331]

According to section 8, printers or publishers may not publish any of the following:

1. matters that can tarnish the ethnicity, religion, or culture of an ethnic group or a citizen;
2. matters that can undermine national security, the rule of law, community peace and tranquility, or the equality, freedom, justice and rights of every citizen;
3. pornography; or
4. matters that encourage and incite crimes, brutality, violence, gambling, and offences relating to narcotic drugs and psychotropic substances.

Violation of any of these provisions can lead to a fine of between one million (US$834) and three million kyat (US$2,504).[332]

To the extent that these content restrictions duplicate those in existing laws, they are unnecessary and may well lead to abuse.[333] Moreover, many of the restrictions in the law are so broad and vaguely worded that printers, publishers, and news agencies cannot predict what content is forbidden, leading to a chilling effect as they avoid printing

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[330] International Mechanisms for Promoting Freedom of Expression Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, April 18, 2003, http://www.article19.org/resources.php/resource/3046/en/ (accessed January 29, 2015).

[331] Printing and Publishing Enterprise Law, sec. 14 and 17.

[332] Printing and Publishing Enterprise Law, sec. 20.

[333] Joint Declaration, April 18, 2003, http://www.article19.org/resources.php/resource/3046/en/ (accessed January 29, 2015).

material that they fear may lead to prosecution.[334] A publisher will be unable to ascertain what may be viewed as "tarnishing" an ethnic group: a news article on corruption in a monastery might be viewed as "tarnishing" Buddhists, but that is not a basis on which to prohibit an article that deals with a matter of public interest. Similarly, an article on casinos could be argued to "incite" gambling, impeding coverage of issues of public interest.

The broad and ill-defined language of the statute also gives insufficient guidance to those charged with its enforcement, and leaves it open to abuse by government officials who simply do not like the content of a publication.[335]

Prosecution for "Rohingya" Calendar

Section 8 of the Printing and Publishing Enterprise Law was used in November 2015 to prosecute five men who were involved in the printing of a 2016 calendar that stated that the largely stateless Rohingya minority has historical roots in Burma. The local police chief was quoted as saying "The calendar contained words and photos saying the Rohingya are an ethnic minority of Myanmar. That is against the law and such activity threatens the law and order of the country."[336]

The five men, named as Kyaw Kyaw, Ye Thu Aung, Win Naing, Saw Min Oo, and Win Htwe, admitted publishing the calendar and were each fined one million kyat (US$834) on November 23, 2015.[337] A sixth defendant, who allegedly asked the others to prepare and print the calendar, has not been arrested.

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[334] The inclusion of printers in section 8 means that, even if the paper is willing to publish an article, the printer may decide it is too risky. According to Than Htaik Thu, editor in chief of the *Myanmar Herald,* during the government crackdown on student protesters in March 2015, the paper wanted to run an article condemning the crackdown, but the printer refused to print it, so the paper ran a black space instead. Human Rights Watch interview with Than Htaik Thu, Rangoon, January 13, 2016.

[335] The total prohibition on the import or distribution of foreign publications that contain material prohibited by section 8 is also overly broad. A total ban on a particular publication is an impermissible restriction on freedom of expression unless content that can be legitimately restricted under international law is not severable from the remainder of the publication. Where, as is generally the case, the restricted content can be redacted, there is no basis to ban the import or distribution of the entire publication.

[336] "Five Myanmar men fined for Rohingya calendar," *The Express Tribune,* February 12, 2015, http://tribune.com.pk/story/997505/five-myanmar-men-fined-for-rohingya-calendar/ (accessed February 11, 2016).

[337] "Five Myanmar men fined for Rohingya calendar," *The Express Tribune,* February 12, 2015, http://tribune.com.pk/story/997505/five-myanmar-men-fined-for-rohingya-calendar/ (accessed February 11, 2016).

The men were subsequently rearrested and charged with violating section 505(b) of the Penal Code. "Myanmar Rohingya calendar men jailed on new charges: Police," *Channel News Asia,* November 25, 2015,

Recommendations to the Burmese Government

- Repeal sections 4-7 of the Printing and Publishing Enterprise Law to eliminate the requirement that printers, publishers and news agencies register with the Ministry of Information.
- Repeal the content restrictions in section 8 other than those related to incitement to violence.

http://www.channelnewsasia.com/news/asiapacific/myanmar-rohingya-calendar/2293104.html (accessed February 11, 2016).

IV. Other Laws that Restrict Freedom of Expression

LESS USED OR SUPERSEDED LAWS	DEFINITION OF OFFENSE	MAXIMUM PENALTY
"INSULTING" SPEECH Section 504 of the Burmese Penal Code	Intentionally insulting, and thereby giving provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence	2 years in prison and fine
HATE SPEECH Section 153A of the BPC	Attempting to promote feelings of enmity or hatred between different classes of [persons resident in the Union] through words, either spoken or written, or signs, or visible representations or otherwise	2 years in prison and fine
HATE SPEECH Section 505(c) of the BPC	Making, publishing or circulating any statement, rumour or report with intent to incite or which is likely to incite any class or community of persons to commit any offence against any other class or community of persons	2 years in prison and fine
CRIMINAL INTIMIDATION Section 503 of the BPC	"Whoever threatens another with injury to his person, reputation or property, or to the person or reputation of anyone in whom the person is interested, with intent to cause alarm to that person, *or* to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation"	2 years in prison and fine; 7 years in prison and fine if "impute unchastity to a woman"
INSULTS TO MODESTY Section 509 of the BPC	Statement or gesture "intended to insult the modesty of any woman"	1 year in prison and fine
COMPUTER SCIENCE DEVELOPMENT LAW Section 35	Carrying out any act using a computer network which undermines State Security, prevalence of law and order and community peace and tranquility, national unity, State economy or national culture; or obtaining or sending and distributing any information of State secret relevant to State security, prevalence of law and order and community peace using a computer network	15 years in prison and fine
MOTION PICTURE LAW Section 33	Showing a motion picture film that has not been approved by the censorship board	1 year in prison and fine
TELEVISION AND VIDEO LAW Section 32	Showing a television program or video that has not been approved by the censorship board	3 years in prison and fine

There are various other criminal laws in place in Burma that are inconsistent with international freedom of expression standards. While not all of the laws are currently being

used to restrict freedom of speech, they are all subject to abuse and should be repealed or amended to conform to international standards. Some of the laws seem to be superseded by more recently enacted laws, but they have never been officially repealed.

Penal Code Section 504: "Insults" that Provoke a Breach of the Peace

Section 504 of the Penal Code states that:

> Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment for a term which may extend to two years, with a fine, or with both.

While it is legitimate under international law to impose restrictions on speech to protect public order, the limitations imposed must be "appropriate to achieve their protective function" and be "the least intrusive instrument amongst those which might achieve their protective function."[338] Section 504 is a very broad provision that, while purporting to protect public order, may actually encourage those who disagree with a speaker to threaten public disorder to instigate criminal investigations of the speaker.

As discussed earlier in this report, while civil penalties may be appropriate for false statements that defame and cause harm to another person, insulting someone should never be a criminal offense, regardless of whether or not the person insulted threatens to, or does, break the public peace. Criminalizing speech not because it urges unlawful action but simply because it is likely to alarm or offend others, causing them to protest or otherwise disturb public order, is an extreme measure that generally cannot be justified as "necessary" in a democratic society.[339] Such restrictions hand those offended a "hecklers veto" that stifles public debate. Indeed, as discussed in connection with section 505(b) of the Penal Code, some types of provocative and disturbing speech—such as criticism of

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[338] UN Human Rights Committee, General Comment 34, para. 34. See also Supreme Court of India, *Chintaman Rao v. State of Madhya Pradesh,* 1950 SCR 759 ("The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness.")

[339] ECHR, *Sunday Times v. United Kingdom,* para. 59.

government or public figures—are vital to a democratic society and should be protected even if inaccurate.

Section 504 also fails to meet the requirement that any restriction on speech be formulated with sufficient precision to enable an individual to know what speech would violate the law.[340] An individual cannot know what statements are "likely" to cause someone to break the public peace, as that would require knowing in advance another person's subjective response to the alleged insult. The provisions thus do not provide an individual with sufficient guidance to enable them to regulate their conduct accordingly,[341] or provide clear limitations on those who are charged with enforcing it.[342]

This lack of clarity also leaves the provisions subject to abuse by officials looking for a way to silence government critics or others who are making statements to which officials object.

Recommendations to the Burmese Government

- Repeal section 504 of the Penal Code to eliminate the criminal penalties for "insulting" speech.

Penal Code Sections 153A and 505(c): Hate Speech

Burma's Penal Code contains two broadly worded provisions aimed at "hate speech." Section 153A imposes a two-year sentence for speech that "attempts to promote feelings of enmity or hatred between different classes of [persons resident in the Union]." Section 505(c) prohibits expression "with intent to incite or which is likely to incite any class or community of persons to commit any offence against any other class or community of persons." While the goal of preventing inter-communal strife is an important one, it should be done in ways that restrict speech as little as possible.

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[340] UN Human Rights Committee, General Comment 34, para. 25.

[341] Ibid; ECHR, *Sunday Times v. United Kingdom,* para. 49.

[342] UN Human Rights Committee, General Comment 34, para. 25 ("Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.")

UN human rights experts have stated that:

> It is absolutely necessary in a free society that restrictions on public debate or discourse and the protection of racial harmony are not implemented at the detriment of human rights, such as freedom of expression and freedom of assembly.[343]

Burma's overly broad definition of "hate speech" opens the door for arbitrary and abusive application of the law, and creates an unacceptable chill on the discussion of issues relating to race and religion.[344] The Camden Principles on Freedom of Expression and Equality note that:

> Limiting discussion of contentious issues such as race and religion will not address the underlying social roots of the prejudice that undermines equality.... Instead of restrictions, open debate is essential to combating negative stereotypes of individuals and groups and exposing the harm created by prejudice.[345]

While certain types of hate speech can be restricted under international law, the threshold for such restrictions is very high. It has been the view of the UN General Assembly, UN special mechanisms, and other experts on international law that the criminalization of hate speech is acceptable only where speech is intended to motivate not just bad feeling in the abstract, but to actually threaten the rights of others. Applying sections 153A or

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[343] Joint submission by Mr. Heiner Bielefeldt, special rapporteur on freedom of religion or belief; Mr. Frank La Rue, special rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Mr. Githu Muigai, special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to the OHCHR Expert Workshop on the prohibition of incitement to national, racial or religious hatred (July 6-7, 2011, Bangkok), http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Bangkok/SRSubmissionBangkokWorkshop.pdf (accessed June 3, 2016) (discussing similar provision in Singapore's Penal Code).

[344] UN Office of the High Commissioner for Human Rights (OHCHR), Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitements to discrimination, hostility or violence ("Rabat Plan of Action"), October 2012, para. 15, http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf (accessed August 16, 2015).

[345] Article 19, Camden Principles on Freedom of Expression and Equality ("Camden Principles"), http://www.refworld.org/docid/4b5826fd2.html, p. 4. ("The Camden Principles were prepared by Article 19 on the basis of discussions involving a group of high-level UN and other officials, and civil society and academic experts in international human rights law on freedom of expression and equality issues at meetings held in London on 11 December 2008 and 23-24 February 2009. The Principles represent a progressive interpretation of international law and standards, accepted State practice (as reflected, inter alia, in national laws and the judgments of national courts), and the general principles of law recognised by the community of nations.")

505(c) to "stirring up prejudice" where no intention to provoke acts of violence or discrimination or other unlawful acts that threaten the rights of members of such groups can be demonstrated, and indeed, where no such acts have taken place, is incompatible with freedom of expression.

Recommendations to the Burmese Government

Amend section 153A to limit application of the provision to speech intended to and likely to incite imminent violence or discrimination against an individual or clearly defined group of persons, and when alternative measures to prevent such conduct are not reasonably available.

- "Imminent" harm is not possible or potential harm, but harm that is or is likely to be directly or immediately caused or intensified by the speech in question. For this purpose, "violence" refers to physical attack, while "discrimination" refers to the actual deprivation of a benefit to which similarly situated people are entitled or the imposition of a penalty or sanction not imposed on other similarly situated people.
- Repeal section 505(c) since, even if amended to conform to international standards, it would be duplicative of section 153A.
- Counter hate speech through affirmative or non-punitive measures, including public education, promotion of tolerance, publicly countering libelous or incendiary misinformation, and strengthening security to protect any threatened population.

Penal Code Section 503: Criminal Intimidation

Penal Code section 503, the provision on criminal intimidation, provides that anyone who:

> Threatens another with injury to his person, reputation, or property, or to the person or reputation of anyone in whom the person is interested, with intent to cause alarm to that person, *or* to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation [emphasis added].

Generally speaking, the crime of intimidation involves the threat of violence or injury to person or property as a means of coercing that individual to commit acts they otherwise would not commit.[346] In many countries, criminal intimidation is limited to threats intended to influence witnesses or others in judicial proceedings,[347] and intimidation for other purposes is dealt with by civil orders.

Section 503, which dates from the colonial era and appears not to be currently in use, not only is not limited to intimidation in the judicial sphere, it criminalizes speech in very broad terms. Rather than limiting the restriction to speech that threatens harm to persons or property, as is generally the case, the statute also penalizes speech that threatens reputational harm. The breadth of the restriction on speech is demonstrated by the explanation contained in the Penal Code itself, which notes that a threat to injure the reputation of a deceased person can constitute criminal intimidation.[348]

Moreover, by criminalizing speech that is intended "to cause alarm," rather than only speech intended to incite action, the Burma Penal Code sets a very low standard for restriction on speech. Under section 503, an individual could be imprisoned simply for threatening to report that a person is corrupt, as such a threat could be viewed as having been made with "the intent to alarm" the person.

Recommendations to the Burmese Government

- Amend section 503 of the Penal Code to limit the offense to intimidation in relation to ongoing criminal proceedings.

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[346] See, e.g., section 45-5-203 of the Montana (US) Code 2013, http://leg.mt.gov/bills/mca/45/5/45-5-203.htm (accessed June 3, 2016) ("A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, the person communicates to another, under circumstances that reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts: (a) inflict physical harm on the person threatened or any other person; (b) subject any person to physical confinement or restraint; or (c) commit any felony."). See also Criminal Code of Canada, sec. 423, http://yourlaws.ca/criminal-code-canada/423-intimidation (accessed June 3, 2016).

[347] See, e.g., section 51 of the United Kingdom Criminal Justice and Public Order Act 1994, c. 33, Part III, http://www.legislation.gov.uk/ukpga/1994/33/part/III/crossheading/intimidation-etc-of-witnesses-jurors-and-others (accessed June 3, 2016).

[348] Penal Code, section 503, explanation.

Penal Code Section 509: Insults to Modesty

Section 509 of the Penal Code is a colonial-era provision that criminalizes use of language "intended to insult the modesty of any person," providing a possible sentence of up to one year of imprisonment, a fine, or both. The provision is antiquated and does not appear to be used, and should be repealed.

Recommendations to the Burmese Government

- Repeal section 509 of the Penal Code to eliminate the criminal penalties for speech that "insults modesty."

Computer Science Development Law

The Computer Science Development Law,[349] passed by the military State Law and Order Restoration Council in 1996, asserts that its purpose is to advance the development of the state through computer science.[350] However, much of the statute is focused on control of the use of computers by the populace. While the law would appear to have been superseded by the Electronic Transactions Act 2004 and the 2013 Telecommunications Act, it has never formally been repealed and thus remains in force.

Section 27(a) of the statute allows the Ministry of Communications, Posts, and Telegraphs to determine that certain types of computers may be imported, possessed, or used only with the prior permission of the ministry, with a particular focus on those computers that can "transmit or receive data."[351] Anyone who imports, possesses, or uses such a computer without prior approval can be sentenced from 7 to 15 years in prison, as can anyone who sets up a computer network or "connects a link inside a computer network" without the prior approval of the ministry. The law thus enables the government to control access to computers by the population, and to deny such access to those whose views it does not like.

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[349] Computer Science Development Law (CSDL), http://www.burmalibrary.org/docs6/Computer_Science_Development_Law.pdf.

[350] CSDL, sec. 3.

[351] CSDL, sec. 27(b).

Section 35, which criminalizes certain acts carried out using a computer network or other information technology, further restricts freedom of expression. The section provides a minimum sentence of seven years' imprisonment to anyone:

a) carrying out any act which undermines State Security, prevalence of law and order and community peace and tranquility, national unity, State economy, or national culture; or

b) obtaining or sending and distributing any information of State secret relevant to State security, prevalence of law and order and community peace.

These provisions, which resemble sections 33 and 34 of the Electronic Transactions Act (discussed above), are inconsistent with international standards for the same reasons: they restrict an unduly broad and vaguely defined range of speech on the Internet.

Recommendations to the Burmese Government

- Repeal the Computer Science Development Law because it violates the right to freedom of expression and has been effectively superseded by more recent laws.

Television and Video Law and the Motion Picture Law

In 1996, the military State Law and Order Restoration Council passed the Television and Video Law[352] and the Motion Picture Law[353] to enable the censorship of movies, videos, and television programs. Under the laws, censorship boards review all television programs, videos, and movies produced in Burma or imported from abroad, and can order deletions or totally prohibit the showing of programs. The laws further provide that the showing of any material that has not been approved by the censorship boards is punishable by up to three years in prison with respect to television and video programs and up to one year in prison with respect to movies.

The standards by which the censorship boards are to make their decisions are not clearly specified in the laws. Instead, the statutes say simply that the boards should examine materials to see "if they are in conformity with the policies laid down."[354] The "policies" are

[352] SLORC, Television and Video Law, Law No. 8/96.

[353] SLORC, Motion Picture Law, Law No. 9/96.

[354] Television and Video Law, sec. 24; Motion Picture Law, sec. 13.

not specified, but may relate to the stated objectives of the laws, which include prohibiting "decadent" video tapes and motion pictures "which will undermine Myanmar culture and Myanmar tradition."[355] Decisions by the censorship boards can be appealed only to the Ministry of Information, whose decision is final.[356]

The lack of clear guidance leaves the determination of whether the work of a filmmaker or television producer can be shown at all to the subjective judgment of an appointed board, which can use the law to prevent the showing of anything to which the government objects. It also leaves filmmakers and television producers uncertain what programs or films fall within the bounds of the law, leading to self-censorship as they try to avoid making programs that the government will not allow to be shown.

The Television and Video Law would appear to have been effectively superseded by the 2015 Broadcast Law, but remains in force.

Recommendations to the Burmese Government

- Repeal the Television and Video law in its entirety because it has been effectively superseded by the 2015 Broadcast Law.
- Repeal sections 33 and 34 of the Motion Picture Law to eliminate criminal penalties for showing an unapproved film.

[355] The Television and Video Law, sec. 3(d); The Motion Picture Law, sec. 3(e).

[356] The Television and Video Law, sec. 28-30; The Motion Picture Law, sec.30-32.

V. Recommendations

To the Government of Burma

- Amend Burma's criminal laws to conform to international human rights standards for freedom of expression, association, and peaceful assembly.
- Sign and ratify the International Covenant on Civil and Political Rights and other core international human rights treaties.
- Develop a clear plan and timetable for the repeal or amendment of the laws identified below; where legislation is to be amended, consult fully and transparently with the Myanmar National Human Rights Commission and civil society groups.
- Legislative Drafting Unit
    - To ensure the quality and clarity of newly drafted legislation, create a centralized technical legislative drafting unit, attached to the president's office or within the attorney general's office, that is responsible for drafting all legislation, including amendments to existing legislation, as has also been recommended by the UN Development Program.
    - Staff the legislative drafting unit with a core group of competent and experienced domestic and international experts to ensure that legislation is clearly worded, narrowly drawn, and complies with the Burmese Constitution and international human rights law.
    - Authorize the legislative drafting unit to receive instructions from ministries and members of Parliament, and referrals from a Law Reform Commission.
    - Instruct the legislative drafting unit to issue official drafts of legislation for consultation and review, and to consult publicly and transparently with the Myanmar National Human Rights Commission and civil society groups on all legislation, providing sufficient time for such groups to analyze and provide input.
- 2016 Peaceful Assembly and Peaceful Procession Law

- Amend the 2016 Peaceful Assembly and Peaceful Procession Law to specifically recognize the government's obligation to facilitate peaceful assemblies even if prior notification has not been given.
- Amend article 4 to delete the requirement that organizers specify the topic and purpose of the assembly, the slogans that will be used, and the personal details of the speakers. The notice requirements should be limited to those essential for the authorities to facilitate the assembly and protect public order, public safety and the rights of others.
- Provide an explicit exception to the notice requirements where giving such notice is impracticable due to the spontaneous nature of the assembly.
- Repeal article 17 of the statute, removing criminal liability for organizing or participating in an assembly for which notice was not given.
- Repeal article 9(g) to eliminate the restriction on display of signs or posters containing slogans not specified in the notice.
- Amend article 9(h) to eliminate the restriction on expressing slogans not contained in the notice.
- Repeal the overbroad and vague restrictions on speech during peaceful assemblies contained in articles 9(a), 9(e), and 9(f). Restrictions on speech at assemblies should be limited to speech intended to and likely to incite imminent violence or discrimination against an individual or clearly defined group of persons where alternative measures to prevent such conduct are not reasonably available.
- Repeal article 18 of the statute to eliminate criminal penalties for (a) holding a peaceful protest at other than the location specified in the notice, (b) deviating from the specified route of a procession, or (c) violating any of the restrictions imposed on assemblies under article 9.
- Amend article 10 and article 12 to make clear that the police may only order dispersal of an assembly as a measure of last resort, and only when there is an imminent threat of violence.
- Repeal article 15 to preclude the ability to disperse a peaceful assembly simply for failure to give notice.
- Amend article 4 to eliminate the restrictions on the rights of non-citizens to peacefully assemble.

- Penal Code sections 141-147: Unlawful Assembly
    - Amend section 141 of the Penal Code to narrow the definition of "unlawful assembly" to assemblies for which there is compelling and demonstrable evidence that those organizing or participating in the assembly intend to use or incite imminent violence.
    - Amend sections 142 and 143 of the Penal Code to limit criminal prosecution for participation in an unlawful assembly to those who the government can demonstrate used or incited imminent violence.
    - Repeal section 146 of the Penal Code, which deems every participant in an assembly guilty of rioting if any member of the assembly uses unlawful force or violence.
    - Repeal section 147 of the Penal Code to eliminate the ill-defined offense of "rioting" and prosecute any individual who engages in violence or force during an assembly under the provisions of the Penal Code dealing with assault or other violent acts.
- Penal Code sections 499-502 and 130B: Criminal Defamation
    - Repeal sections 499-502 and section 130B of the Penal Code to eliminate the offense of criminal defamation. Defamation should be solely a civil matter, as recommended by the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression.
        - Public figures should have to prove that the defendant knew the information was false.
        - Pecuniary rewards should be strictly proportionate to the actual harm caused, and the law should give preference to the use of non-pecuniary remedies, including, for example, apology, rectification, and clarification.
- Other problematic provisions of the Penal Code
    - Either repeal section 505(b) of the Penal Code in its entirety, or amend the provision to criminalize only speech that is intended to and likely to incite violence.
    - Repeal section 124A of the Penal Code to eliminate the offense of sedition.
    - Repeal section 295A of the Penal Code to eliminate offense of insulting religion.

- Repeal sections 298 and 509 of the Penal Code to eliminate the criminal penalties for "offensive" speech.
- Repeal section 504 of the Penal Code to eliminate the criminal penalties for "insulting" speech.
- Amend section 503 of the Penal Code to limit the offense to intimidation in relation to ongoing criminal proceedings.
- Repeal section 509 of the Penal Code to eliminate the criminal penalties for speech that "insults modesty."
- Amend section 153A of the Penal Code to limit application of the provision to speech intended to and likely to incite imminent violence or discrimination against an individual or a clearly defined group of persons where alternative measures to prevent such conduct are not reasonably available.
    - "Imminent" harm is not possible or potential harm but harm that is or is likely to be directly or immediately caused or intensified by the speech in question.
    - For this purpose, "violence" refers to physical attack, and "discrimination" refers to the actual deprivation of a benefit to which similarly situated people are entitled or the imposition of a penalty or sanction not imposed on other similarly situated people.
- Repeal section 505(c) of the Penal Code because, even if amended to conform to international standards, it would be duplicative of section 153A.

- Telecommunications Law 2013
    - Significantly narrow section 66(d) of the Telecommunications Law to eliminate duplication with other laws and to remove improper restrictions on freedom of expression.
        - The references to "defaming" and "disturbing" another person should be deleted.
        - To the extent that the restrictions on blackmail, wrongful restraint and exerting undue influence refer to criminal actions that are not otherwise already penalized in the Burma Penal Code, those terms should be clearly defined to ensure that telecommunications users

can determine what communications fall within the bounds of the law.

        - Where actions are already prohibited under the Burma Penal Code, eliminate duplicative language in the Telecommunications Law.

- News Media Law
    - Repeal section 9(g), which imposes criminal penalties for defamation.
    - Repeal the "code of conduct" and the penalties for violation of the code of conduct so that the media can independently establish their own voluntary code of ethics.
- Official Secrets Act
    - Amend section 5(1) to criminalize only disclosures of clearly defined categories of documents, to require proof by the government that the disclosure poses a real and identifiable threat risk of causing significant harm to national security, and to allow for a defense of public interest.
    - Repeal section 5(2) to eliminate the criminal penalties for receipt or disclosure of information by persons who are not government personnel.
    - Amend section 3 to penalize only conduct that the government can establish poses a real risk to national security.
    - Amend section 3(2) to eliminate the use of "known character" as a basis for showing that the defendant's purpose in acting was one prejudicial to the safety or interests of Burma.
- Electronic Transactions Act
    - Amend section 33 to only criminalize speech that incites imminent violence or discrimination against an individual or clearly defined group of persons and where alternative measures to prevent such conduct are not reasonably available.
    - Repeal section 34(d) to eliminate the effective offense of criminal defamation using electronic means.
- Contempt of Courts Law
    - Repeal section 2(d)(i) of the Contempt of Courts Act to eliminate the offense of "disgracing the court."

- Amend section 2(d)(ii) to limit its application to conduct or speech that creates a substantial risk that the course of justice in ongoing proceedings will be seriously impeded or prejudiced.
- The Supreme Court should instruct all judges that fair and accurate reports of ongoing legal proceedings cannot be considered contempt of court.

- Printing and Publishing Enterprise Law
  - Repeal sections 4-7 of the Printing and Publishing Enterprise Law to eliminate the requirement that printers, publishers, and news agencies register with the Ministry of Information.
  - Repeal the content restrictions in section 8 other than those related to incitement to violence.
- Computer Science Development Law
  - Repeal the Computer Science Development Law because it violates the right to freedom of expression and has been effectively superseded by the Electronic Transactions Act of 2004 and the 2013 Telecommunications Act.
- Television and Video Law
  - Repeal the Television and Video law in its entirety because it has been effectively superseded by the 2015 Broadcast Law.
- Motion Picture Law
  - Repeal sections 33 and 34 of the Motion Picture Law to eliminate the criminal penalties for showing an unapproved film.
- Freedom of Information Law
  - Enact a federal Freedom of Information law in which government information is presumed to be subject to disclosure.
  - The right to information should be interpreted and applied broadly, and the burden of demonstrating the legitimacy of any restriction on disclosure should rest with the public authority seeking to withhold information.
  - The law should not restrict the right to information on the basis of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The law should designate specific and

narrow categories of information which would materially damage national security if publically released.

- Government denial of a request for information should specify the reasons in writing and be provided as soon as reasonably possible. It should provide for a right of review of the denial by an independent authority. All oversight, ombudsmen, and appeal bodies, including courts and tribunals, should have access to all information, including national security information, regardless of classification level, relevant to their ability to discharge their responsibilities.

- Law Reform Commission
  - Create an independent Law Reform Commission, the membership of which should include lawyers, academics, human rights advocates, and technical experts, to consider areas requiring law reform, conduct comparative research, and public consultations, and provide detailed recommendations on law reform to the Offices of the President, the State Counsellor and the Attorney General, and to the Parliamentary Bills Committee.
    - All recommendations made by the Law Reform Commission should be publically available.
  - Authorize the Law Reform Commission to provide detailed drafting assistance to the legislative drafting unit once the policy decision has been made to implement recommended law reform.
- Hate Speech
  - Counter hate speech through affirmative or non-punitive measures, including public education, promotion of tolerance, publicly countering libelous or incendiary misinformation, and strengthening security to protect any threatened population.

To the Attorney General's Chambers

- Recommend that the Burmese government sign and ratify the International Covenant on Civil and Political Rights, and other core human rights treaties.
- Work to strengthen the rule of law in Burma in accordance with international human rights standards, as set forth in the Strategic Plan for the office launched in January 2016, including:

- Establish an enforceable code of ethics and accountability for law officers based on international standards;
- Ensure that all officers are empowered to investigate and prosecute criminal offenses with impartiality and functional independence, consistent with the principles set out in the UN Guidelines on the Role of Prosecutors.

To the Director General of Police

- Direct all police departments to facilitate peaceful assemblies, not hinder them, and appropriately protect the safety of all participants. Persons and groups organizing assemblies or rallies should not be prevented from holding their events within sight and sound of their intended audience.
- Instruct all police departments that participation in peaceful assemblies should never be the basis for charges under Penal Code sections 143, 145 or 147, or Peaceful Processions and Peaceful Assembly Act section 18.

To the Minister of Foreign Affairs

- Extend a standing invitation to all UN Special Procedures, and promptly approve requests to visit from all special rapporteurs, working groups, and independent experts.
- Seek visits from the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression and the special rapporteur on the rights of freedom of peaceful assembly and of association.
- Implement recommendations on the rights to freedom of expression, association and peaceful assembly, among other fundamental rights, made by UN member states to Burma during its Universal Periodic Review session at the UN Human Rights Council in November 2015.
- Appoint an independent and impartial human rights expert as the next Burmese Commissioner to the ASEAN Inter-Government Commission on Human Rights (AICHR) and invite the AICHR to visit Burma to examine issues of free expression, association, and assembly, in consultation with Burmese civil society.

To the Myanmar National Human Rights Commission

- Recommend that the Burmese government sign and ratify the International Covenant on Civil and Political Rights, and other core international human rights treaties.
- Initiate an investigation into the use of criminal laws to harass and arrest civil society activists, members of the media, and ordinary citizens in violation of their rights to freedom of expression, association, and peaceful assembly.
- Provide policy memos and advice to the government on important steps that should be taken in law and policy to address issues raised in this report and urge the government to ensure that it complies with international standards for the protection of freedom of expression, association, and peaceful assembly.
- Issue prompt public statements criticizing harassment, threats, and arbitrary arrests and detention of individuals exercising their rights to freedom of expression, association, or peaceful assembly.
- Systematically engage with human rights groups, trade unions, and other civil society organizations to investigate and report on violations of human rights, and seek justice for the victims of these abuses.

To the UN Country Team and UN Resident Coordinator

- Engage with the Burmese government at all levels, but especially the Ministry of Home Affairs, the Union Attorney General's Office, and the Ministry of Foreign Affairs, to urge Burma's compliance with international human rights standards on freedom of expression, association, and peaceful assembly.
- Urge the government to extend a standing invitation to the UN Human Rights Council Special Procedures and to promptly approve requests to visit from all special rapporteurs, working groups, and independent experts.
- Encourage high-level engagement and visits by the Office of the High Commissioner on Human Rights to engage with the Burmese government on promoting respect for the rights to freedom of expression, association, and assembly, and to offer technical assistance as needed to bring Burmese law and policy into compliance with international standards.

To the International Community

- Urge Burma to protect the rights to peaceful expression and assembly, including through the reforms detailed in the recommendations above.
- Raise the freedom of speech concerns outlined in this report during Burma's next Universal Periodic Review.
- Offer assistance to train judges at all levels of court in international laws on rights to freedom of expression and assembly.

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Recent years have seen historic change in Burma. The opposition National League for Democracy (NLD) won national elections, most political prisoners have been released, and an independent media and civil society have sprung to life. Yet many of those who have embraced the new freedoms to criticize or protest against the military or the previous military-dominated government have continued to face arrest and imprisonment.

Criminal charges against critics have been facilitated by a range of overly broad and vaguely worded laws that violate internationally protected rights to freedom of expression and peaceful assembly. *"They Can Arrest You at Any Time"* documents how successive Burmese governments have used and abused these laws to imprison hundreds of journalists, activists and others.

Focusing largely on the period since retired general Thein Sein assumed the presidency in 2011, the report provides an in-depth analysis of the Peaceful Assembly and Peaceful Processions Act, the Telecommunications Act, the News Media Law, the Electronic Transactions Act, and various Penal Code provisions, among other laws. It draws from interviews with individuals facing charges, former political prisoners, journalists, students, activists, and members of civil society organizations.

The new NLD-led government has taken strong first steps to release political prisoners and repeal abusive laws, but with Burma's constitution giving the military control of the police, arrests under these abusive laws continue. Human Rights Watch calls on the government to drop all pending and new charges against peaceful critics and protesters and make it a priority to dismantle the legal infrastructure of repression in Burma by amending or repealing all laws that criminalize peaceful expression and bringing them into line with international human rights standards.

(above) A student protester peers out of a prison vehicle as he waits to be transported to court in Letpadan.

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(front cover) Shwe Hmone and other Burmese journalists pray at Sule Pagoda in Rangoon for colleagues killed or imprisoned for their work, November 2, 2014 (International Day to End Impunity for Crimes against Journalists). For this "protest in an unauthorized location," she was later sentenced to 15 days in jail or a 10,000 kyat fine.

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