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## THE SITUATION OF HUMAN RIGHTS DEFENDERS

# MYANMAR

UPR Briefing Paper - March 2015

In its last Universal Periodic Review (UPR) in November 2011, the Republic of the Union of Myanmar (Myanmar), also known as Burma, received two recommendations directly relating to human rights defenders (HRDs). One was to take immediate steps to end the prosecution of HRDs and the other concerned the immediate and unconditional release of all detained HRDs. Myanmar also received 15 recommendations calling for the release of political prisoners. While merely noting the recommendations in relation to HRDs, Myanmar did commit to take steps to guarantee freedom of expression, association and assembly; align national law and policy with international obligations; and adopt participatory and inclusive processes following the UPR. Four years on, the commitments Myanmar did make remain largely unfulfilled, while there has been regression in key areas.

### RISKS FACING HUMAN RIGHTS DEFENDERS

- Notwithstanding President Thein Sein's pledge that all political prisoners would be released by the end of 2013, many remain imprisoned. In fact, the number of political prisoners in detention has nearly doubled since the start of 2014.<sup>1</sup> Those prisoners that have been released frequently face harassment and restrictions on their civil rights, including on their freedom of movement via the denial of passports.<sup>2</sup>
- HRDs continue to be repeatedly subject to arbitrary arrest and disproportionate sentencing under oppressive laws.<sup>3</sup> Cases of unfounded charges have been reported, such as that of Phyu Hnin Htwe, a member of the All Burma Federation of Student Unions.<sup>4</sup>
- According to the Special Rapporteur on Myanmar, journalists face regular intimidation and harassment. A notable example is the death of freelance journalist Ko Par Gy, who was arrested while reporting in Mon State. While the details remain unknown, the military issued a statement that he was shot and killed attempting to escape from military detention.<sup>5</sup>
- 11 oppressive laws identified by the UN as incompatible with international standards (Law 5/96 and Printers and Publishers Registration Act 1962).<sup>6</sup>
- Although the Peaceful Assembly and Peaceful Procession Law was amended in June 2014, peaceful protestors are repeatedly charged and sentenced,<sup>7</sup> including for protesting without authorisation (article 18) and outside officially designated areas (article 19).<sup>8</sup> Though the amendments halve the maximum prison sentence for causing unrest (to 1 year) and failing to seek permission for protesting (to 6 months), the Act still requires prior approval of protest and allows approval to be rejected for 'valid reasons'.<sup>9</sup>
- Peaceful protesters are also regularly charged under the Penal Code, including for obstructing certain areas,<sup>10</sup> interfering with public servants,<sup>11</sup> causing harm by disobeying a public servant,<sup>12</sup> rioting, obscenity, offences against public tranquillity and intimidation.<sup>13</sup>
- The Association Registration Law enacted in June 2014<sup>14</sup> replaced the draconian 1988 Associations Law, which effectively banned the registration of civil society organisations unless they maintained close ties to the government.<sup>15</sup> While the 2014 Act is a step in the right direction, civil society organisations consider the new framework will continue to restrict their freedom to operate, such as by limiting activities if they are registered to a township but not to an administrative region.<sup>16</sup>

### OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

- Since first convening in January 2011, Myanmar's Parliament has repealed only two of the

- In addition to repressive legislation, the judiciary lacks independence; there is an absence of effective and accessible redress mechanisms<sup>17</sup> and fair trials are undermined by a lack of law enforcement.<sup>18</sup> Corruption within the system continues to be a serious problem and HRDs are repeatedly denied access to counsel.<sup>19</sup>
- While journalists now operate with relatively fewer restrictions, legislation continues to restrict media freedom and should be brought in line with international standards. Section 505(b) of Myanmar's Penal Code provides imprisonment for anyone making, publishing or circulating information which may cause public fear or alarm, and which may incite people to commit offences 'against the State or against the public tranquillity'.<sup>20</sup>
- The Official Secrets Act 1923 makes it unlawful for any person to possess classified information from the State and has been used to impose sentences of 10 years with hard labour on five journalists for 'disclosing state secrets' in publishing an article on the building of a chemical weapons factory.<sup>21</sup>
- In 2013 the Ministry of Information drafted its own press law, the Printing and Publishing Enterprise Law. While a step forward compared to the draconian 1962 law, as it abolishes prison sentences and reduces financial penalties for organisations that publish without prior governmental approval,<sup>22</sup> the law maintains criminal sanctions as well as excessively high fines and requires a copy of publications to be sent to the Ministry for 'registration and copyright procedures'.<sup>23</sup>

## INTIMIDATION AND REPRISALS AGAINST DEFENDERS ACCESSING INTERNATIONAL HUMAN RIGHTS MECHANISMS

- Reprisals against those who seek to expose injustice and seek accountability through international mechanisms continue to occur in Myanmar. Recent cases include the arrest of U Sein Than while en route to the UN office in Myanmar to submit information on land confiscations,<sup>24</sup> and the prosecution of U Brawn Shawng in connection with allegedly providing 'false information' to the Myanmar National Human Rights Commission' when he called for an investigation into the shooting of his 14 year old daughter.<sup>25</sup> The beating of a UN national staff member on 30 December 2014 by military authorities in Northern Rakhine during the course of performing his duties is another disturbing case.<sup>26</sup>
- The response to the second official visit of the Special Rapporteur on the Situation of Human Rights in Myanmar, Ms Yanghee Lee, to Myanmar was deeply disturbing, marked by a demonstration of 100 Buddhist Rakhine residents against Ms Lee's alleged bias toward Muslim Rohingya,<sup>27</sup> a protest

by 500 Buddhist monks against Ms Lee's visit,<sup>28</sup> and sexist and insulting personal slurs by a prominent monk.<sup>29</sup>

## HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- Women HRDs are particularly targeted by sexual harassment.<sup>30</sup> On 19 January 2015, Tatmadaw troops raped and murdered two female Kachin volunteer schoolteachers in Kawng Hkar Village, Shan State.<sup>31</sup> Numerous civil society organisations condemned the deaths<sup>32</sup> and called for an impartial investigation. The United States and the United Kingdom also called for an investigation.<sup>33</sup> The Women's League of Burma claimed the incident was further evidence that the Tatmadaw still use sexual violence as a 'weapon of war' against ethnic communities.<sup>34</sup>
- Lesbian, gay, bisexual, and transgender (LGBT) persons, as well as HRDs working on LGBT issues, are frequently targeted by hate speech. Section 377 in the Penal Code is often interpreted as a prohibition on homosexuality and conservative norms make it difficult for LGBT persons to live openly and without fear of persecution.<sup>35</sup>
- In combination with continued ethnic violence in Myanmar that spread from the western state of Arakan to the central regions of Mandalay and Pegu (Bago),<sup>36</sup> Rohingya Muslims remain at risk of mass atrocity crimes.<sup>37</sup> Discriminatory state policies and proposed laws as part of the 'National Race and Religion Protection' package,<sup>38</sup> that would ban religious conversions and interfaith marriages, threaten to legitimise anti-Muslim extremism.<sup>39</sup> Those working to promote rights of the Rohingya and the Muslim populations face intimidation, harassment and persecution.<sup>40</sup>
- People protesting land confiscation and major development projects have been met with excessive force and charged with trespass and obstruction, attracting harsh prison sentences. On 22 December 2014 evicted farmers protesting against the controversial Wanao copper project were met with excessive force by authorities, resulting in a number of arrests, several protestors being injured and one woman's death from a bullet wound.<sup>41</sup> Two years earlier dozens of people protesting that same project were injured and some suffered chemical burns from white phosphorous used by police to disperse the crowd.<sup>42</sup>
- Those protesting against problematic education reforms have also been targeted. At least 100 students and others have been arrested and charged under various laws in March 2015, including article 18 of the Peaceful Assembly and Peaceful Procession Law. The students had been protesting against amendments to the National Education Law, which introduces undue restrictions on forming

student and teacher unions, eradicates teaching in minority languages and overly centralises decision-making.<sup>43</sup>

## THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

- In 2011 the Government released more than 1000 political prisoners, including HRDs. However, many were released conditionally under Article 401 of the Code of Criminal Procedure with outstanding criminal records, meaning they can be re-arrested at any time for any violation of existing sentences.<sup>44</sup> HRDs that have been released from prison report restrictions on their work, access to employment, housing and education.<sup>45</sup>
- The Prisoner Review Committee responsible for scrutinising the remaining political prisoners, which met only three times in 2014 and did not issue any reports, was reconstituted in January 2015 and replaced by the 28-member Prisoners of

Conscience Affairs Committee.<sup>46</sup> The replacement Committee has not yet convened any meetings or adopted a work programme.<sup>47</sup>

- In August 2013 the Myanmar National Human Rights Commission Enabling Law was approved to enable the future work of the Commission.<sup>48</sup> Civil society groups claim that the Commission has not successfully investigated 'any case submitted to it' since its formation in 2011.<sup>49</sup> Further, civil society were not properly consulted on the Enabling Law and some elements pose threats to the independence and effectiveness of the Commission, such as the failure to guarantee that Commission members are selected by an independent body.<sup>50</sup> Notwithstanding the above, it is worth noting that on 14 January 2015 the Commission recommended action be taken against the police responsible for the killing of a woman protesting the Wanao copper project.<sup>51</sup> It is essential that the Government responds adequately to the Commission's recommendation

## RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

- Myanmar should amend legislation on the right to freedom of expression and assembly, which is used to criminalise HRDs and censor journalists, in line with international human rights standards. This should include amending the Peaceful Assembly and Peaceful Procession Act by repealing the article 4 requirement for organisers of a protest to seek permission from police, together with article 18, which criminalises participation in an unauthorised protest.
- Myanmar should enact specific laws and policies to recognise and protect the work of HRDs and give full force and effect to the UN Declaration on Human Rights Defenders at the national level.
- Myanmar should cooperate promptly, substantively and fully with the Special Procedures of the Human Rights Council, including the Special Rapporteur on the Situation of Human Rights in Myanmar.
- Myanmar should end reprisals and the use of force against HRDs, in particular those who promote corporate respect for human rights and protest major development projects and associated land grabs.
- Myanmar should refrain from intimidation and reprisals against those who seek to cooperate or submit information to the UN or national human rights authorities, and should investigate and ensure accountability for any such acts.
- Myanmar should ensure a prompt, independent and impartial investigation into all violations against

HRDs (including the use of excessive force against protesters), the prosecution of perpetrators, and access to effective remedies for victims, and prosecute those responsible.

- Myanmar should provide safe space for meaningful civil society participation in the development and implementation of legislation and public policy, in particular guaranteeing the free, prior and informed consultation of communities affected by economic and development projects and civil society in legislation such as the Enabling Act.
- Myanmar should ensure that the National Human Rights Commission is fully independent, effective, adequately resourced, adheres to the Paris Principles and includes a focal point for HRDs.
- Civil society is gravely concerned about laws which unreasonably restrict the right to freedom of expression and assembly and which appear to be increasingly used to criminalise HRDs and censor journalists, as well as the use of reprisals and force against those who promote corporate respect for human rights or protest major development projects. This represents a significant backslide to the minimal progress made in transitioning to democracy. Myanmar's UPR coincides with general elections and a Constitutional referendum in 2015. The Government must ensure that the rights to freedom of expression, assembly and association are protected, respected and can be exercised if democratic processes are to be meaningful, genuine and effective.

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## ABOUT THIS BRIEFING PAPER

ISHR encourages States to consult UPR submissions by local activists and national NGO coalitions, and to make recommendations to the Republic of the Union of Myanmar regarding the protection of Human Rights Defenders. For further information on this briefing paper, contact Pooja Patel (p.patel@ishr.ch).

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