HUMAN RIGHTS WATCH

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Summary

> This is the time to talk about freedom of expression. We expected it to become better, but it's becoming worse and worse.
>
> —Maung Saungkha, activist and poet, Yangon, April 2018

> They are not using the law to protect the people but to restrict the people.
>
> —Khin Sandar Tun, civic educator, Yangon, June 2018

The National League for Democracy (NLD) took office in March 2016 as the first democratically elected, civilian-led government in Myanmar since 1962, generating tremendous optimism that the country would see a significant shift toward openness. Parliament itself included 100 new members who were former political prisoners, and there was reason to hope the government would implement far-reaching reforms to laws and policies that had long restricted freedom of expression and assembly in the country.

That optimism has proved unfounded. With limited exceptions, parliament has thus far failed to make substantive changes to most of the laws used against speech and assembly. Instead, it has often done the opposite, strengthening some abusive laws and enacting at least one law imposing new restrictions on speech. As one member of the Protection Committee for Myanmar Journalists put it, "If the government doesn't like what you say, they can charge you with any law. If there is no law, they can make a new one and charge you with that."

While discussion of a wide range of topics now flourishes in both the media and online, those speaking critically of the government, government officials, the military, or events in Rakhine State frequently find themselves subject to arrest and prosecution. "When we talk in the media [about controversial topics], anything can happen, but we have to keep speaking," said Thinzar Shunlei Yi, advocacy director of Action Committee for Democracy Development. "We say it is like the lucky draw. You don't know when it will happen."

The decline in freedom of the press under the new government has been particularly striking. As Zayar Hlaing, editor of the investigative magazine *Mawkun* and executive member of the Myanmar Journalist Network, said, "Before the 2015 election, the NLD said

it would protect press and promote independent media. After two years, press freedom is worse day by day."

This report—based largely on interviews in Myanmar and analysis of legal and policy changes since 2016—assesses the NLD government's record on freedom of expression and assembly in its more than two years in power. It updates Human Rights Watch's prior report, *"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma*, issued in June 2016, focusing on the laws most commonly used to suppress speech. We conclude that freedom of expression in Myanmar is deteriorating, directly affecting a wide range of people, from Facebook users critical of officials to students performing a satirical anti-war play. Domestic journalists are particularly at risk.

* * *

In the past two and a half years, an increasing number of journalists have been arbitrarily arrested, detained, imprisoned, and physically attacked. They have been denied access to both conflict areas and information about government policies and programs. Unsurprisingly in this environment, a 2018 survey of journalists by Free Expression Myanmar found that "the government, including the military, is the greatest threat to media freedom in Myanmar, both through its continued use of old oppressive laws which it has no real plans to amend, and its adoption of new oppressive laws."

The authorities have arrested journalists under a range of laws including the Telecommunications Law, the Unlawful Associations Act, and the Official Secrets Act. According to numbers compiled by Athan, a local organization working to improve freedom of expression in Myanmar, at least 43 journalists had been arrested under the NLD-led government as of September 30, 2018. "It has a chilling effect on journalists and those who work with them," said Zayar Hlaing.

Certain topics are viewed as particularly risky to cover. According to journalist Aung Naing Soe, "Criticism of 'the Lady' [Aung San Suu Kyi] or the NLD can cause problems. The most dangerous issue is the Rohingya." A leading member of the Protection Committee for Myanmar Journalists said the Rohingya and the military are "untouchable" issues: "If a journalist wants to report on human rights abuses by the military, it is a big issue. In the past we had these issues, but there are more now. It is very damaging for us."

The result has been a climate of fear among local journalists. Said one: "We are more afraid than international journalists because we are more vulnerable—we are living in the country. For us as local journalists, there is no guarantee of our work security or our safety."

As journalist Lawi Weng put it, "I often say that journalists in Burma don't have a parent or father to look after them. We are orphans. We don't know who will help us. We are still working despite the risks, but there is no one who can protect us."

Journalists who tackle difficult topics also face threats from ultranationalists and militant supporters of the government or army, with little support from the authorities against such threats. The Myanmar Journalist Network was evicted from their office by their landlord after a large group of ultranationalists gathered at the office to protest a planned press conference. Pulitzer Prize-winning journalist Esther Htusan of the Associated Press left the country after serious threats by government supporters who were displeased with her reporting on Aung San Suu Kyi.

One result for many journalists and media outlets is self-censorship. After the government arrested *Irrawaddy* reporter Lawi Weng under the Unlawful Associations Act for his reporting, the paper no longer let him report from the military front lines. "They wouldn't send any reporters to the front line," he said. "So we no longer know what is going on on the ground."

It is not only journalists who are facing prosecution for peaceful speech. Arrests and prosecutions under section 66(d) of the Telecommunications Law have soared. The authorities have prosecuted individuals for criticizing the military, for live-streaming a satirical anti-war play, and for social media posts that other private citizens deemed insulting. "Among friends we even joke, 'If you say that, 66(d) is waiting for you,'" said Thinzar Shunlei Yi. "It makes us censor ourselves. It creates fear in the youth community. We are still living in fear."

The government has also continued to prosecute peaceful speech under other abusive laws identified in our 2016 report, including criminal defamation and section 505(b) of the Penal Code, which criminalizes speech that "is likely to cause fear or alarm in the public." The authorities have used section 505(b) to prosecute a former child soldier for talking

about his experiences, a music group for a song calling for changes in the constitution, and an activist who alleged human rights abuses by the military. The newly enacted Law Protecting Privacy and Security of Citizens has also been used to prosecute speech.

Individuals are still being prosecuted for organizing or participating in peaceful assemblies, with those protesting against the military most often subject to arrest. In May 2018, police arrested at least 45 people involved in a series of protests against the armed conflict in Kachin State, with most facing charges under the Peaceful Assembly and Peaceful Procession Law.

Human Rights Watch reiterates its call for the Myanmar government to cease using criminal laws against peaceful speech and assembly, and to bring its laws, policies, and practices in line with international human rights law and standards for the protection of freedom of expression and assembly. Friendly governments should privately and publicly weigh in with their concerns on these important issues.

Methodology

Research for this report began in March 2018 and continued through November 2018. It is based on interviews in Myanmar in March and April 2018, with additional telephone interviews in July and August 2018. Information from interviews was supplemented by an in-depth analysis of Myanmar's laws used to restrict freedom of expression and assembly. The report also draws on court judgments and news reports concerning criminal proceedings in relevant cases, and public statements by government spokespersons and officials.

For this report, Human Rights Watch interviewed 38 lawyers, journalists, students, activists, members of nongovernmental organizations, and individuals or family members of individuals prosecuted for speech or assembly. In-person interviews were conducted in English or in Burmese using an interpreter. Telephone interviews were conducted in Burmese by native Burmese speakers. All of those interviewed were informed of the purpose of the interviews; some declined to be named in the report because of security concerns. No incentives were offered or provided to interviewees.

Whenever possible, we have used official translations of laws. In situations where no "official" English translation exists, we have used translations by reputable organizations. In some cases, we have 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 our analysis of any of the laws.

This report is not meant to offer a comprehensive examination of all laws that criminalize free speech in Myanmar. The report instead focuses on laws that have proven most prone to misuse. The report also does not set out to offer a comprehensive review of all cases filed under those laws since our previous report was issued in June 2016, but rather focuses on the most egregious and illustrative examples.

I. Background

Myanmar established its independence from British colonial rule in 1948. In March 1962, after only 14 years of democratic civilian governance, General Ne Win seized power in a military coup.[1] From the time of that coup until elections in November 2015, Myanmar was run by a series of military or military-backed rulers who severely repressed freedom of speech, association, and assembly using various methods, including through overly broad and vaguely worded laws.

On November 8, 2010, Myanmar held its first parliamentary elections in 20 years. The opposition National League for Democracy (NLD), whose leader Aung San Suu Kyi remained under house arrest, boycotted the election, and the military-backed Union Solidarity and Development Party (USDP) won over three-quarters of the available seats.[2] Following the election, the junta took steps to formally relinquish control of the administration to a quasi-civilian government. In March 2011, Thein Sein, a retired senior general who had served as prime minister from 2007 to 2011, was sworn in as president.[3]

The Thein Sein administration oversaw a significant shift in policies relating to freedom of expression, assembly, and association. In August 2012, the Press Scrutiny and Registration Division announced that reporters were no longer required to submit work to state censors prior to publishing, ending a 48-year policy of pre-publication censorship.[4] In addition, the Thein Sein government scaled back other media controls and restrictions. Exiled media outlets such as the *Democratic Voice of Burma (DVB)* began operating within

[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-winex-burmese-military-strongman-dies-at-81.html (accessed March 31, 2016).

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

[3] International Crisis Group, "Myanmar's Post-Election Landscape," Asia Briefing No. 118, March 7, 2011, https://reliefweb.int/sites/reliefweb.int/files/resources/8DF02C5A26D07FD1C125784C004F5E84-Full_Report.pdf (accessed March 31, 2018).

[4] "Burma Abolishes Media Censorship," *BBC News*, August 20, 2012, http://www.bbc.com/news/world-asia-19315806/ (accessed March 31, 2016).

the country in 2012.[5] In April 2013, the government allowed privately owned daily newspapers to operate for the first time in decades.[6]

Even as privately owned media organizations proliferated and some old restrictions were lifted, the process of liberalization was uneven. New laws that had positive implications for speech and assembly often failed to meet domestic and international expectations for the protection of rights.[7] At the same time, the Thein Sein government continued to use existing laws to punish peaceful expression. Journalists, activists, and ordinary citizens were imprisoned using laws such as the Telecommunications Law, the Peaceful Assembly and Peaceful Procession Law, the Official Secrets Act, and provisions of the Penal Code criminalizing defamation, sedition, and offenses against religion.[8]

A countrywide parliamentary election was held in 2015, with the NLD participating under the leadership of Aung San Suu Kyi. On November 8, 2015, the NLD won a landslide victory, taking nearly 80 percent of contested seats and winning a clear majority in both houses of parliament.[9] On March 30, 2016, the country swore in its first elected president, Htin Kyaw, while Aung San Suu Kyi, who was barred from the presidency by the 2008 constitution put in place by the military, became state counsellor.[10]

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

[6] Doha Center for Media Freedom, "Private Daily Newspapers Launched in Myanmar," April 1, 2013, https://www.dc4mf.org/en/content/private-daily-newspapers-launced-myanmar (accessed March 31, 2016).

[7] See, for example, "Myanmar: Disappointment Surrounds Amendment to Assembly Law," Article 19 news release, June 27, 2014, https://www.article19.org/resources/myanmar-disappointment-surrounds-amendment-assembly-law (accessed March 31, 2016).

[8] Human Rights Watch, *"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma*, June 2016, https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma.

[9] International Crisis Group, "The Myanmar Elections: Results and Implications," Asia Briefing No. 147, December 9, 2015, https://reliefweb.int/sites/reliefweb.int/files/resources/b147-the-myanmar-elections-results-and-implications.pdf (accessed March 31, 2018).

[10] Htin Kyaw resigned on March 21, 2018, and Win Myint was elected as the new president on March 28. Under 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 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 late husband was British, and her two children have British citizenship.

The NLD's electoral mandate notwithstanding, the military retains significant power. Under the terms of the 2008 constitution, 25 percent of the seats at both the union-level and the state-level parliaments are reserved for the military.[11] The military commander-in-chief appoints members of the military to fill those seats. This arrangement gives the military the ability to block changes to the constitution, since such changes require more than 75 percent of the votes in the union legislature. However, the military does not have the ability to block normal legislation, which requires only a simple majority.

The military commander-in-chief also has the power to appoint the ministers of defense, home affairs, and border affairs.[12] Of principal concern for the administration of justice is the Ministry of Home Affairs, which is responsible for the Myanmar Police Force, Bureau of Special Investigation, Fire Services Department, General Administration Department, and Prisons Department.[13] This gives a member of the military, under the direction of the commander-in-chief of the military, effective control over the basic levels of law enforcement, including the prison system.

Despite these limitations, hopes that the new administration would ensure better protection for freedoms of speech and assembly were high. Instead, the government has made only marginal changes to some of the abusive laws used by prior administrations, has continued to use those laws to prosecute peaceful speech and assembly, and has passed at least one new law used to prosecute speech. This report describes some of those laws, with examples of how they have been used by the current administration to penalize those reporting and speaking out on the current situation in Myanmar.

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[11] Constitution of the Republic of the Union of Myanmar (2008), arts. 109(b), 141(b), and 161(b).

[12] Ibid., art. 232(b)(iii).

[13] Kyi Pyar Chit Saw and Matthew Arnold, "Administering the State in Myanmar: An Overview of the General Administration Department," Asia Foundation, October 2014, https://asiafoundation.org/resources/pdfs/GADEnglish.pdf (accessed March 31, 2016), pp. 13-14.

II. Section 66(d) of the Telecommunications Law

The law most commonly used to penalize peaceful expression in Myanmar is section 66(d) of the Telecommunications Law, which, as amended in August 2017, provides for up to twoyears in prison for one who "defames" any person using a telecommunications network. In the past two years, this law has opened the door to a wave of criminal prosecutions of individuals for peaceful communications on Facebook and other social media and has increasingly been used to stifle criticism of the authorities by both the media and ordinary citizens. "The Telecommunications Law was aimed to regulate telecommunications, but it is being used as a weapon to control the media," said Kyaw Min Swe, chief editor of *The Voice Daily*. "It is also used to control freedom of expression in general." Thinzar Shunlei Yi spoke for many when she said, "Whenever I give an interview, 66(d) is in my heart."[14]

According to Athan, a Myanmar civil society organization, as of September 2018, approximately 140 cases had been filed under section 66(d) since the NLD government took power, at least half of which involve prosecution for peaceful speech.[15] The organization Free Expression Myanmar conducted an analysis of all complaints filed under 66(d) between November 2015 and November 2017 and concluded that 55 percent of the complaints were by powerful people trying to censor or punish others for criticism or making allegations.[16] Even members of the ruling NLD have used the law to go after their critics, particularly in the wake of the case filed by Yangon Chief Minister Phyo Min Thein against the chief executive officer and chief editor of *Eleven Media* over an article alleging corruption. "Before his case, many in the NLD thought 66(d) was not good," said Maung Saunghkha, founder of Athan. "But after he filed his case, they changed their minds because they saw it [the law] could protect the NLD."[17]

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[14] Human Rights Watch interview with Thinzar Shunlei Yi, Yangon, April 3, 2018.

[15] Athan, "Mid-Term Report on Freedom of Expression," October 2018, https://drive.google.com/open?id=1Mwbw55iv3SDGiVamWvjvmbGg4D32CRCf (accessed November 1, 2018).

[16] Free Expression Myanmar, "66(d): No Real Change," December 2017, http://freeexpressionmyanmar.org/wp-content/uploads/2017/12/66d-no-real-change.pdf (accessed November 1, 2018).

[17] Human Rights Watch interview with Maung Saungkha, Yangon, April 2, 2018.

According to Yin Yadanar Thein, founder of Free Expression Myanmar, "The government, instead of stopping the criminalization of speech, is using the courts to complain against human rights activists and critics. Because it has become so well known, now people are using the law also. It is affecting ordinary people's freedom of expression."[18]

While section 66(d) contains a range of grounds for prosecution, almost all of the cases filed under the law have cited defamation as the grounds for the complaint.[19] The problem is not only that defamation should be exclusively a civil offense, not a criminal offense, but also that "defamation" as defined by the Myanmar courts outlaws far more speech than allowed for under international standards. According to Free Expression Myanmar, two-thirds of the cases brought under section 66(d) involved opinion rather than statements of fact.[20] Yet under international law, expressions of opinion cannot be the basis for criminal charges.[21]

Much of what is currently prosecuted is speech that is viewed as somehow "insulting." For example, Aung Win Hlaing was sentenced to nine months in prison for calling then-President Htin Kyaw "crazy" and "an idiot" on social media.[22] Such a statement is not defamatory because it is not a statement of fact that impairs reputation, and moreover it is protected speech under international law, which covers even speech that might be considered offensive.[23] This is particularly true when the person allegedly subject to insult is a public figure like the president of the country. The mere fact that forms of expression are considered to be insulting to a public figure is not legally sufficient to justify the imposition of penalties.[24]

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[18] Human Rights Watch interview with Yin Yadanar Thein, Yangon, April 4, 2018.

[19] In its analysis of the use of 66(d), Free Expression Myanmar found that 93 percent of cases filed under the law were for defamation, while the remaining 7 percent were for threatening, extorting, or disturbing speech. Free Expression Myanmar, "66(d): No Real Change," p. 21.

[20] Human Rights Watch interview with Yin Yadanar Thein, April 4, 2018.

[21] United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34 (2011), para. 9. It states: "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 [of article 19 of the ICCPR] to criminalize the holding of an opinion."

[22] "Man Jailed for Calling President 'Crazy' on Facebook," *Frontier Myanmar,* September 30, 2016, https://frontiermyanmar.net/en/news/man-jailed-for-calling-president-crazy-facebook (accessed September 30, 2016).

[23] UN Human Rights Committee, General Comment No. 34, para. 11.

[24] Ibid., para. 38.

The Telecommunications Law requires that all prosecutions under section 66(d) be authorized by the Ministry of Transport and Communications, formerly the Ministry of Communications and Information Technology.[25]

2017 Amendments to the Telecommunications Law

After much pressure from Myanmar civil society groups and international human rights organizations to amend the law, parliament did so in 2017.[26] The results were extremely disappointing for those who had campaigned for change.[27] Journalist Swe Win said that he "was furious about the 66(d) amendments. I agree there should be a law to govern online conduct, but the legislators did not take into account how the law will be applied on the ground."[28]

While parliament made several amendments to section 66(d), it rejected widespread calls to repeal the provision in its entirety. In a positive development, parliament amended the law to reduce the maximum penalty from three to two years, to require defamation complaints to be filed by the person allegedly defamed or by a "legal representative" of that person, and to make offenses under the law bailable.[29] According to Maung Saungkha, the restriction on complaints by third parties has reduced the number of cases somewhat, particularly cases alleging defamation of Aung San Suu Kyi. "Her supporters would bring cases when someone said something about her, but no such cases have been brought since the law was amended," he said.[30]

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[25] Telecommunications Law, No. 31/2013, http://www.burmalibrary.org/docs23/2013-10-08-Telecommunications_Law-en.pdf (accessed December 1, 2018), sec. 80(b); Law Amending the Telecommunications Law, No. 26/2017, http://www.burmalibrary.org/docs23/2017-08-29-Communication_Law-26-bu.pdf (accessed December 1, 2018), sec. 2. In March 2016, the Ministry of Communications and Information Technology was merged with the Ministry of Transport to form the Ministry of Transport and Communications, reflected in the 2017 amendment. The current minister for transport and communications is Thant Sin Maung, a member of the NLD.

[26] Free Expression Myanmar et al., "Joint Statement by 61 Myanmar and International Human Rights Organizations," June 29, 2017, http://freeexpressionmyanmar.org/joint-statement-with-amnesty-to-repeal-66d (accessed November 10, 2018); Letter from Human Rights Watch to the Myanmar government, "Section 66(d) of the Telecommunications Law," May 10, 2017, https://www.hrw.org/news/2017/05/10/burma-letter-section-66d-telecommunications-law.

[27] Oliver Slow, Zar Chi Oo, and Yin Yadanar Thein, "The 66(d) Amendment: Tinkering at the Edges," *Frontier Myanmar,* September 15, 2017, https://frontiermyanmar.net/en/the-66d-amendment-tinkering-at-the-edges (accessed May 22, 2018).

[28] Human Rights Watch interview with Swe Win, Yangon, April 6, 2018.

[29] Prior to the August 2017 amendments, charges under section 66(d) were "non-bailable," meaning that bail was not available as of right but subject to the discretion of the court. As a result, many 66(d) defendants were denied bail pending trial.

[30] Human Rights Watch interview with Maung Saunghka, April 2, 2018.

Disappointingly, while the amendments removed several causes of action from the provision, they left intact the criminal defamation provision that serves as the basis for almost all complaints made under the law.[31] As a result, complaints continue to be filed, with at least 48 cases filed under section 66(d) between when parliament amended the law and the end of September 2018.[32]

Use of Section 66(d) Against Journalists

Section 66(d) is one of the many laws that have been used against journalists in Myanmar since the new government took power, leading to serious concern about the deterioration of freedom of the press. Below are a few examples.

Prosecution of Journalist Swe Win

The prosecution of Swe Win, co-founder of *Myanmar Now,* typifies how section 66(d) can be abused by powerful individuals to silence their critics. The news agency *Myanmar Now*, which distributes articles to news outlets around the country, is one of the few that has consistently reported on the ultranationalist movement in Myanmar for the past several years. *Myanmar Now* also did a series of investigative reports on the killing of Muslim lawyer U Ko Ni.[33]

Swe Win described what happened to him when the Ministry of Home Affairs held a press conference about the case: "I asked Kyaw Swe, an army general, if the army was behind the assassination. I asked if the detained suspects had any assistance from nationalist groups. I asked if anyone in the USDP was involved. I asked difficult questions and it was broadcast live.… Right after that I was attacked online, especially on Facebook. There were calls to kill me, to attack me."[34]

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[31] As amended, the law prohibits "extorting, defaming, disturbing or threatening." Law Amending the Telecommunications Law, No. 26/2017, http://freeexpressionmyanmar.org/wp-content/uploads/2017/01/Telecommunications-Law-Amendment-EN.pdf (accessed December 1, 2018), sec. 3.

[32] Athan, *Mid-Term Report on Freedom of Expression,* October 2018, https://drive.google.com/open?id=1Mwbw55iv3SDGiVamWvjvmbGg4D32CRCf.

[33] U Ko Ni was shot in the head at Yangon airport on January 29, 2017. A taxi driver who chased the assassin was also killed. "Ko Ni Death: Thousands Mourn Shot Myanmar Lawyer," *BBC News,* January 30, 2017, https://www.bbc.co.uk/news/world-asia-38793972 (accessed January 30, 2017).

[34] Human Rights Watch interview with Swe Win, April 6, 2018.

Swe Win, chief editor of *Myanmar Now*, is escorted to court by police in Mandalay, July 31, 2017. © 2017 Stringer/AFP/Getty Images

A week after the press conference, ultranationalist monk Wirathu applauded the lawyer's murder on Facebook, "thanking" the suspects in the case.[35] According to Swe Win:

> Normally we don't cover what he [Wirathu] says or preaches. He is trying to get attention and we don't give it to him. But we were emotional because of the assassination. I had just met with family members of U Ko Ni and of the driver, and I was getting angry. The family was still wiping their tears and a monk says the murder is good. I said that we can't keep silent.[36]

Swe Win assigned a reporter to produce a story on the interpretation of Wirathu's statement under the criminal law and under the rules of Buddhism. "We asked Wirathu for an interview but he didn't respond," he said. "We interviewed his lawyer, some nationalist

[35] "U Wirathu Takes to Social Media to Thank Suspects in U Ko Ni's Murder," *Irrawaddy,* March 1, 2017, https://www.irrawaddy.com/news/u-wirathu-takes-to-social-media-to-thank-suspects-in-u-ko-nis-murder.html (accessed June 1, 2018).

[36] Human Rights Watch interview with Swe Win, April 6, 2018.

monks in his groups, and a monk that did not support him. That monk, from Mandalay, said that Wirathu should be defrocked because his behavior encourages more assassinations. We included that quote in our article, along with all of the other information and quotes."[37]

Swe Win shared the article on his personal Facebook page on February 28, 2017, highlighting the monk's comment that Wirathu should be defrocked. On March 7, Kyaw Myo Shwe, a follower of Wirathu, filed a complaint in Mandalay stating that the monk had been defamed by Swe Win's post. No mention was made of the original article or the monk who made the original statement.[38] On March 20, another follower of Wirathu's filed a complaint against Swe Win in Yangon, accusing him of defamation and insulting Buddhism at a March 8 press conference where he had discussed the case against him in Mandalay, and calling on the court to charge Swe Win under a "suitable provision" of the Penal Code.[39]

Two weeks later, the Ministry of Religious Affairs and Culture issued a statement saying that Swe Win had not violated any laws because his post was based on facts and did not insult Buddhism.[40] In the meantime, a group of ultranationalist monks organized a signature campaign calling for legal action against Swe Win, collecting 40,000 signatures, which they submitted to the religious affairs ministry.[41]

The court in Yangon dismissed the case against Swe Win.[42] However, in July 2017, the police notified him that the Ministry for Transport and Communications had authorized the

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[37] Ibid.

[38] Ye Mon and Than Naing Soe, "Ma Ba Tha Files Suit Against Myanmar Now Chief Reporter," *Myanmar Times,* March 9, 2017, https://www.mmtimes.com/national-news/25237-ma-ba-tha-files-suit-against-myanmar-now-chief-reporter.html (accessed May 8, 2018).

[39] Kyaw Kha, "Myanmar Now Journalist Faces Another Lawsuit," *Irrawaddy*, March 21, 2017, https://www.irrawaddy.com/news/burma/myanmar-now-journalist-faces-another-lawsuit.html (accessed March 21, 2017).

[40] Lawi Weng, "Religious Affairs Ministry: Journalist Ko Swe Win Has Not Violated the Law," *Irrawaddy,* April 5, 2017, https://www.irrawaddy.com/news/burma/religious-affairs-ministry-journalist-ko-swe-win-has-not-violated-the-law.html (accessed April 6, 2017).

[41] Than Naing Soe, "Monks' Union Calls for Action on Ko Swe Win," *Myanmar Times,* April 6, 2017, https://www.mmtimes.com/national-news/mandalay-upper-myanmar/25604-monks-union-calls-for-action-on-ko-swe-win.html (accessed July 30, 2018); Human Rights Watch interview with Swe Win, April 6, 2018.

[42] "Judge Dismisses Second Defamation Case Against Myanmar Now Editor," *Coconuts Yangon,* April 24, 2017, https://coconuts.co/yangon/news/judge-dismisses-second-defamation-case-myanmar-now-editor/ (accessed May 9, 2018).

Mandalay prosecution under section 66(d).[43] On July 30, Swe Win was arrested at Yangon airport and taken to Mandalay.[44] He was released on bail the following day.

There has been little progress in the case since August 2017, when the plaintiff, a Wirathu supporter, was arrested and jailed in connection with an anti-government protest held at a Mandalay pagoda.[45] Swe Win travels 630 kilometers to Mandalay every two weeks with his lawyer. Under his bail conditions, if he misses a single court appearance his bail will be revoked. He said:

> Since the complainant is in prison in Mandalay, he can give excuses, or the prison authorities can give excuse, for him not to appear. Sometimes he is "not well enough" to appear. Sometimes it is an administrative problem. I have made 22 or 23 court appearances and nothing has happened. Most appearances last two or three minutes. It has hugely disrupted my personal, family and professional life.[46]

In February 2018, the prosecution said it would drop the case if Swe Win would apologize to Wirathu, but he refused to do so.[47] According to Swe Win, "Anyone with common sense knows that I did not violate the law. In any society, a monk who encourages murder would have been arrested. Instead, I have been arrested." He added, "My case has instilled a sense of fear in all news rooms for covering the Buddhist monks and the nationalist movement."[48]

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43 Human Rights Watch interview with Swe Win, April 6, 2018.

44 Shoon Naing, "Myanmar Detains Another Journalist among Press Freedom Concerns," Reuters, July 31, 2017, https://www.reuters.com/article/myanmar-journalist-idUSL4N1KM28N (accessed July 31, 2017).

45 Mratt Kyaw Thu, "Plaintiff in Ko Swe Win Case Arrested after Evading Police, Returning for Hearing," *Frontier Myanmar,* August 7, 2017, https://frontiermyanmar.net/en/plaintiff-in-ko-swe-win-case-arrested-after-evading-police-returning-for-hearing (accessed August 8, 2017). He was charged with incitement under section 505(b) of the Penal Code and, on July 25, 2018, was sentenced to 18 months in prison for incitement. Zarni Mann, "Plaintiff in Myanmar Now Lawsuit Sentenced," *Irrawaddy,* July 25, 2018, https://www.irrawaddy.com/news/burma/plaintiff-in-myanmar-now-lawsuit-sentenced.html (accessed July 25, 2018).

46 Human Rights Watch interview with Swe Win, April 6, 2018.

47 Lawi Weng, "Prosecution Offers to Drop Charges Against Swe Win If He Apologises to U Wirathu," *Irrawaddy*, February 13, 2018, https://www.irrawaddy.com/news/burma/prosecution-offers-drop-charges-swe-win-apologises-u-wirathu.html (accessed February 14, 2018).

48 Human Rights Watch interview with Swe Win, April 6, 2018.

Prosecution of The Voice Daily

On March 26, 2017, *The Voice Daily* published a satirical review of a movie entitled "Union Oath," produced by the military's art department and shown on Myanmar television.[49] The review, written by columnist Kyaw Zwa Naing, also known as British Ko Ko Maung, was titled "Oath in a Nation of Bullets."

According to Kyaw Min Swe, chief editor of *The Voice Daily*:

> A general who runs the public relations department of the military telephoned me and complained about the article and said we had to apologize. He was not happy with the satire, saying it would harm military unity. I explained that that was not our purpose—we were just making a satire about a movie. It was a movie shown to the public, and everyone can say freely their feelings on the movie. He did not accept my explanation.[50]

Yangon Region Command's Lt. Col. Tun Tun Oo filed a complaint with the Press Council.[51] "Someone in the Press Council suggested I could end the problem by apologizing, but I didn't want to," said Kyaw Min Swe. "I never aimed to hurt the military, so no need to apologize."[52]

In early June 2017, the police contacted Kyaw Min Swe's lawyer about the case. "They said they wanted me to come to the police station for questioning, but that I could go home afterward," Kyaw Min Swe said.[53] On June 2, Kyaw Min Swe and British Ko Ko Maung went to the police station. After waiting for several hours, they were told that they were under arrest.[54]

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[49] "Military Files Complaint over Satirical Article Published by Local Daily," *DVB,* April 28, 2017, http://www.dvb.no/news/military-files-complaint-satirical-article-published-local-daily/75297 (accessed March 15, 2018).

[50] Human Rights Watch interview with Kyaw Min Swe, Yangon, March 29, 2018.

[51] "Military Files Complaint over Satirical Article Published by Local Daily," *DVB*.

[52] Human Rights Watch interview with Kyaw Min Swe, March 29, 2018.

[53] Ibid.

[54] "Independent Newspaper Editor, Satirist Detained in Myanmar After Army Lawsuit," Radio Free Asia, June 2, 2017, https://www.rfa.org/english/news/myanmar/editor-detained-06022017154730.html/ (accessed July 11, 2018).

Kyaw Min Swe (center left) and columnist British Ko Ko Maung are escorted by police after arriving at the township court in Yangon, June 16, 2017. © 2017 AP Photo

Both men were held for a week at the police station before being sent to Insein Prison. The case against British Ko Ko Maung was dismissed on June 16 because he had nothing to do with posting the article, which originally came out in print form, on the website.[55]

On July 21, Lt. Col. Tun Tun Oo filed an additional charge against both Kyaw Min Swe and British Ko Ko Maung under section 25(b) of the News Media Law.[56]

Kyaw Min Swe was detained for more than two months before finally being released on bail on August 4, 2017.[57] On September 1, the military announced that it was withdrawing the

[55] Moe Myint, "Satirist Released But Detention of Chief Editor Continues in Article 66(d) Case," *Irrawaddy*, June 16, 2017, https://www.irrawaddy.com/news/burma/satirist-released-detention-chief-editor-continues-article-66d-case.html (accessed May 21, 2018).

[56] San Yamin Aung, "Voice Daily's Editor, Columnist Charged Under Media Law," *Irrawaddy,* July 21, 2017, https://www.irrawaddy.com/news/voice-dailys-editor-columnist-charged-media-law.html (accessed July 22, 2018).

66(d) case.[58] The court formally dropped the case under the News Media Law on September 14, and the 66(d) case on September 30, 2017.[59]

Prosecution of Eleven Media

In November 2016, police charged the chief executive officer and chief editor of *Eleven Media* with violating section 66(d) after Yangon Chief Minister Phyo Min Thein filed a complaint about an editorial that appeared to suggest a link between an expensive watch he allegedly wore and the winner of a tender for a city building project. The article was published by members of the Asian News Network, of which Eleven Media Group is a member, and on the Facebook pages of chief executive officer Than Htut Aung and chief editor Wai Phyo.

Rather than seek a correction or retraction of the article, Phyo Min Thein held a press conference to deny any wrongdoing and announced that he was filing a section 66(d) complaint against the journalists.[60] On November 11, both men were detained and ordered held without bail.

According to Wai Phyo:

> Since before the NLD government, we have written articles criticizing the government. When this case happened, they sued and sent us to prison.... We did not think they would just arrest us, without even investigating. Also we have the media law, but they used 66(d) so there would be no bail. We

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[57] San Yamin Aung, "Voice Editor Released on Bail," *Irrawaddy*, August 4, 2017, https://www.irrawaddy.com/news/burma/voice-editor-released-bail.html (accessed August 4, 2017).

[58] Kyaw Ye Lynn, "Military Agrees to Withdraw Cases Against 6 Journalists, 2 Activists," *Frontier Myanmar*, https://frontiermyanmar.net/en/military-agrees-to-withdraw-cases-against-6-journalists-2-activists (accessed September 1, 2017).

[59] San Yamin Aung, "Media Law Charges Dropped Against Voice Daily Editor and Columnist," *Irrawaddy,* September 14, 2017, https://www.irrawaddy.com/news/burma/media-law-charges-dropped-voice-daily-editor-columnist.html (accessed September 15, 2017); Linn Satt Aung, "Military Drops Remaining Charges Against the Voice Daily Duo," *DVB,* September 30, 2017, http://www.dvb.no/news/military-drops-remaining-charges-voice-daily-duo/77687 (accessed July 10, 2018).

[60] Shoon Naing and Ye Mon, "Yangon Govt Sues Eleven over Story Implying Chief Minister Took Bribe," *Myanmar Times,* November 10, 2016, https://www.mmtimes.com/national-news/yangon/23583-yangon-govt-sues-eleven-over-story-implying-chief-minister-took-bribe.html (accessed November 12, 2106).

Detained journalists Wai Phyo (center left), chief editor of Eleven Media Group, and Than Htut Aung, chief executive officer, arrive at court escorted by police in Yangon, November 25, 2016. © 2016 Romeo Gacad/AFP/Getty Images

> were shocked and disappointed—this is not a military government, and yet this happened.[61]

While in prison, Than Htut Aung suffered a back injury and a heart attack.[62] His application for bail based on his medical condition was denied.[63]

On December 27, *Eleven Media* published an apology, stating:

> With an understanding that Eleven Media Group will abstain from doing similar things in future, the CEO and all senior personnel from Eleven Media Group would like to humbly apologize to chief minister of Yangon Region [U

[61] Human Rights Watch interview with Wai Phyo, Yangon, March 27, 2018.

[62] Ibid.

[63] Ye Mon, "Bail Denied for Eleven Media CEO, Editor," *Myanmar Times,* December 23, 2017, https://www.mmtimes.com/national-news/24348-bail-denied-for-eleven-media-ceo-editor.html (accessed January 5, 2018).

> Phyo Min Thein], the Regional government of Yangon and all persons affected by that wrongly reported editorial.[64]

According to Wai Phyo, the apology "was published in our newspapers and also in *The Nation*, which had picked up the story. We felt this was consistent with media ethics—if you made a mistake you apologize in the newspaper."[65] Apology notwithstanding, the case continues.[66]

On January 6, 2017, both men were released on bail of 50 million kyat (US$35,000), with the court citing health reasons for the release.[67] "Now we have to go [to court] every two weeks," said Wai Phyo. "It will probably take six months to a year longer. There are 20 prosecution witnesses and sometimes they don't show."[68] The case was ongoing at time of writing.

Use of Section 66(d) Against Non-Journalists

Section 66(d) has also been used against politicians and ordinary citizens who have criticized the military or government on social media. Below are a few examples of such cases.

Prosecution for Criticism of the Commander-in-Chief

Myo Yan Naung Thein is the secretary of the NLD Central Committee for Research and Strategic Studies. In late 2016, Myo Yan Naung Thein criticized Min Aung Hlaing, commander-in-chief of the armed forces, on Facebook for failing to fulfill his responsibility to protect the country after the Arakan Rohingya Salvation Army (ARSA) launched attacks

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[64] Ye Mon, "Eleven Media Apologizes for Defamation-Hit Editorial," *Myanmar Times,* December 27, 2016, https://www.mmtimes.com/national-news/24366-eleven-media-apologizes-for-defamation-hit-editorial.html (accessed May 21, 2018).

[65] Human Rights Watch interview with Wai Phyo, March 27, 2018.

[66] Reports about the apology indicate that the article at issue remained on the Eleven Media website at the time of the apology. Oliver Slow, "Eleven Issues Apology over Defamation Case," *Frontier Myanmar*, December 28, 2016, https://frontiermyanmar.net/en/eleven-issues-apology-over-defamation-case (accessed May 21, 2018).

[67] San Yamin Aung, "Detained Eleven Media CEO and Editor Released on Bail," *Irrawaddy*, January 6, 2017, https://www.irrawaddy.com/news/burma/detained-eleven-media-ceo-and-editor-released-on-bail.html (accessed January 6, 2017).

[68] Human Rights Watch interview with Wai Phyo, March 27, 2018.

on government outposts in Rakhine State. “They had sticks, you had guns, yet there was no security,” he said. He called on the commander-in-chief to resign, saying he would be “shameless” if he failed to do so.[69]

Myo Yan Naung Thein was arrested on November 3, 2016, based on a complaint filed by Lt. Col. Lynn Tun of the military’s Yangon Region Command, and held without bail. Two weeks later he was formally charged with violating section 66(d).[70] “When I wrote the post, I hoped to catch the attention of the people,” he said. “But I was arrested later, in a meeting on the peace process. When they came, I was surprised.”[71]

After more than five months in detention, Myo Yan Naung Thein was convicted on April 7, 2017, and sentenced to six months in prison.[72] He was released on April 13.

Myo Yan Naung Thein is critical of the law under which he was convicted:

> We need to protect people from being abused on social media—like nude photos of a former girlfriend. But laws are to protect people, not to use to take action for political reasons…. I don’t agree with those in the NLD who sued members of the USDP for making comments about Aung San Suu Kyi. What is wrong with posting against her? It is their right. Our own party doesn’t really understand freedom of expression or it wouldn’t sue in those cases.[73]

Prosecution for Live-Streaming Anti-War Play

In January 2017, nine high school and university students performed a satirical comedy at a peace conference in Pathein township in Ayeyarwady Region. During the play, a news

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[69] Human Rights Watch interview with Myo Yan Naung Thein, Yangon, March 26, 2018.

[70] Thu Thu Aung, “NLD Researcher Formally Charged with Defamation over Facebook Critique,” *Myanmar Times,* November 17, 2016, https://www.mmtimes.com/national-news/yangon/23764-nld-researcher-formally-charged-with-defamation-over-facebook-critique.html (accessed November 17, 2016).

[71] Human Rights Watch interview with Myo Yan Naung Thein, March 26, 2018.

[72] Su Myat Mon and Sean Gleeson, “NLD Official Gets Six Month Sentence in Latest Telco Law Case,” *Frontier Myanmar,* April 7, 2017, https://frontiermyanmar.net/en/nld-official-gets-six-month-sentence-in-latest-telco-law-case (accessed November 7, 2017).

[73] Human Rights Watch interview with Myo Yan Maung Thein, March 26, 2018.

agency called *Oxygen* interviewed supporters of conflict in Myanmar. One character, a soldier's wife, claimed to support war because wives can have affairs while their soldier husbands are away fighting.[74]

According to Aung Khant Zaw, the lead organizer of the drama, "The message of our drama is that we don't want wars."[75] Htun Htun Oo, leader of the Pathein-based organization Human Rights Activists Association and father of one of the students in the play, streamed the play live on Facebook.[76]

"The military supporters just took some parts of the play, and it went viral," Htun Htun Oo said. "I think the military didn't like what the young men were saying on the stage. They were mentioning the lives of soldier's wives. They said that those wives can be happy with other men while their husbands are going to battle. They also mentioned that soldiers can rape if the wars are going on. That's the part the military didn't like."[77]

Lt. Col. Aung Myo Khaing, stationed in the army's Southwestern Command, subsequently filed a criminal complaint accusing the students of defaming the army and, on January 25, nine students were charged with criminal defamation under section 500 of the Penal Code.[78] Htun Htun Oo was arrested on June 4 and charged with violation of section 66(d) for streaming the play online. According to a police officer quoted in the media, the lieutenant colonel lodged the complaint because he claimed the play "could disgrace and destroy the image of the Tatmadaw [Myanmar armed forces]" and their families.[79]

On May 7, 2018, a court convicted Htun Htun Oo of defaming the army in violation of section 66(d) and sentenced him to three months in prison.[80] The case against the students is discussed in more detail below.

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[74] Salai Thant Zin, "Burma Army Sues Students for Defamation," *Irrawaddy,* January 23, 2017, http://www.irrawaddy.com/news/burma/burma-army-sues-students-for-defamation.html (accessed January 23, 2017).

[75] Ibid.

[76] Salai Thant Zin, "Activist Jailed for Streaming Anti-Conflict Drama on Facebook," *Irrawaddy,* May 8, 2018, https://www.irrawaddy.com/news/burma/activist-jailed-streaming-anti-conflict-drama-facebook.html (accessed May 8, 2018).

[77] Human Rights Watch telephone interviews with Htun Htun Oo, August 16, 17, and 20, 2018.

[78] The prosecution of the students under section 500 is discussed below in the section on criminal defamation.

[79] Salai Thant Zin, "Burma Army Sues Students for Defamation," *Irrawaddy*.

[80] Salai Thant Zin, "Activist Jailed for Streaming Anti-Conflict Drama on Facebook," *Irrawaddy*.

Prosecution for Insulting Aung San Suu Kyi, Min Aung Hlaing, and Wirathu

In some cases, individuals have been prosecuted for posts they assert they did not make—a defense that can be hard to prove given the prevalent lack of technical knowledge on the part of lawyers, police, and judges.

Activist Ko Yar Pyae was convicted under section 66(d) for allegedly posting photoshopped images ridiculing Aung San Suu Kyi, Min Aung Hlaing, and Wirathu and was sentenced to six months in prison.[81] He denied having posted the images. He explained he is a strong supporter of Aung San Suu Kyi and campaigned for the NLD during the 2015 elections. Ko Yar Pyae also said he helped organize rallies around the country to support Aung San Suu Kyi when she was "under pressure on Rakhine" in 2017. "My friends and others who know me know I didn't create this," he said.[82]

Ko Kar Pyae explained that while the offending Facebook page used his profile picture and cover photo, it was not his page. "As soon as I saw this post, I called the police station and said I would come to the station immediately and explain," he said. "I showed them my real Facebook account on my phone. The police said that the profile on the post was in my name and detained me.... In my real profile on my phone, the post was not there. I showed the police. They still detained me."[83]

Police arrested Ko Kar Pyae on May 22, 2016, and held him in pretrial detention without bail.[84] "I discussed with friends who know tech and my lawyers told the court it was not my account. The court did not accept that. The whole country knows this was not my account," he said.[85] "The problem is that lawyers, police, and judges don't really know technology. In

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[81] According to Ko Yar Pyae, the post included sexual photos of Wirathu, an image of Aung San Suu Kyi as a beggar, and a photo of Min Aung Hlaing captioned with an expletive. Human Rights Watch interview with Ko Yar Pyae, Yangon, April 5, 2018; Hein Ko Soe and Thomas Kean, "66(d): The Defamation Menace," *Frontier Myanmar,* January 13, 2017, https://frontiermyanmar.net/en/66d-the-defamation-menace (accessed January 13, 2017).

[82] Human Rights Watch interview with Ko Yar Pyae, April 5, 2018.

[83] Ibid.

[84] Aung Kyaw Min, "Bail Denied in Facebook Case," *Myanmar Times,* May 24, 2016, https://www.mmtimes.com/national-news/20478-bail-denied-in-facebook-case.html (accessed June 1, 2018).

[85] Human Rights Watch interview with Ko Yar Pyae, April 5, 2018.

the phone you can check when I took or saved photos. They didn't even know how to do that."[86]

Yin Yadanar Thein of Free Expression Myanmar was among many who raised concerns about the ability of the police and the courts to understand the technical aspects of cases involving the internet:

> MIDO [Myanmar ICT for Development Organization] sometimes sends experts to testify about how things are fake or photoshopped, but the judges never reflect that testimony in their decisions. The court and the lawyers don't know how to use Facebook or Twitter. They don't know basic points about the internet. The court needs to have guidelines and training on electronic evidence.[87]

Ko Yar Pyae said he does not object to imprisoning people for insulting posts such as the one he was accused of making. "We should have freedom of expression to express our feelings, but we can't be misusing democracy to insult other people," he said. "In a case like mine, they should investigate who really created the post and take action against the creators. CID [Criminal Investigation Division] should have knowledge of technology for better investigations. Then they will get the real answer."[88]

Prosecution for Supporting Labor Activists

Section 66(d) has also been used in labor disputes to prosecute those who criticize company employment practices. Myo Aye, an activist with Solidarity of Trade Union Myanmar, uploaded photos of a protest by garment workers over conditions at their factory to her Facebook page. She also uploaded news articles about the protest. The garment

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[86] Ibid. Ko Yar Pyae, an NLD activist, asserts that his phone only has photos of people he admires, and that there were no photos of Min Aung Hlaing or Wirathu on his phone.

[87] Human Rights Watch interview with Yin Yadanar Thein, April 4, 2018.

[88] Human Rights Watch interview with Ko Yar Pyae, April 5, 2018.

company sued her for defamation, alleging violation of section 66(d).[89] The case was still pending with the police at time of writing.

"I would like to call for the government to abolish 66(d)," said Myo Aye. "We have to respect freedom of speech. I must not be sued for posting about labor abuses at the garment factory with 66(d)."[90]

Use of 66(d) in Private Disputes

The use of 66(d) in private disputes has become much more common in recent years. According to Maung Saungkha, founder of the Myanmar freedom of expression group Athan, many people in Myanmar believe that if you are insulted on social media, "you have to show your dignity by suing others."[91] The prosecution of A.B. is one example of the damaging consequences that can ensue.[92]

A.B. posted captioned photos of a relative on Facebook in late 2016. She deleted the post several hours later after the relative called her to complain. Nevertheless, a few days later, the relative filed a defamation complaint with the police and A.B. was called in for questioning. "The police questioned me about why I uploaded the photos, then said I could apologize. At the time, I wanted to apologize and close the case," she said.[93]

After meeting with her relative and agreeing to reimburse the money already spent to hire a lawyer, the two reached an agreement to close the case. However, according to A.B., the police told her they couldn't close the case without payment for "expenses." She paid the local police 20,000 kyat (US$14), followed by an additional 30,000 kyat ($21).[94]

Two months later, A.B. and the relative were called to the police station, then taken by the police to the township attorney general's office. There, according to A.B., who was six

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[89] Human Rights Watch interview with Myo Aye, Yangon, April 28, 2018. The company also filed a civil suit against Myo Aye seeking compensation for losses due to the protests, which the company alleges she organized. Human Rights Watch interview with Myo Aye's attorney Robert San Aung, Yangon, April 6, 2018.

[90] Human Rights Watch interview with Myo Aye, April 28, 2018.

[91] Human Rights Watch interview with Maung Saungkha, April 2, 2018.

[92] These are not the real initials of the individual interviewed.

[93] Human Rights Watch interview with A.B., Yangon, April 3, 2018.

[94] Ibid.

months pregnant at the time, they were told it would cost 1 million kyat ($700) to close the case.[95] She and her relative did not have that much money and so could not pay it.

For more than a year, nothing happened. Then, in February 2018, the relative told A.B. that she had received a call from the police and they were both to appear in court. "We went to the court and I got bail, guaranteed by the property of friends," she said. "If I could not provide that, I would be in jail. Now I am afraid because I have to come to court every two weeks. The law is in my mouth."[96] According to A.B.:

> It has had a big impact on me. When I was pregnant, I worried about being put in jail. Now I have a baby and I worry about being put in jail. I run a small tea shop and it is hard having to come to court.[97]

In April 2018, with the assistance of Maung Saunghka, she met once again with the investigating officer and the township attorney general, who explained to the officer how to write the necessary letter to the Ministry of Transport and Communications to get permission to close the case. The case was finally dismissed the second week of October, more than two years after it was filed.[98]

According to Maung Saunghka, personal cases such as A.B.'s provide repeated opportunities for official corruption. "In Burmese society, people are scared to go to the police, the courts, or the government," he said. "So they are willing to give money to close a case."[99]

When asked what she thought about section 66(d), A.B. said, "I didn't know about the law before the case. Based on my experience coming to court every two weeks, the Myanmar judicial system is all about money. You can't do anything without money."[100]

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[95] Ibid.
[96] Ibid.
[97] Ibid.
[98] Human Rights Watch interviews with Maung Saunghka, April 3 and November 8, 2018.
[99] Human Rights Watch interview with Maung Saunghka, April 3, 2018.
[100] Human Rights Watch interview with A.B., April 3, 2018.

III. Criminal Defamation Charges Using the Penal Code

In Myanmar, defamation is a criminal offense under sections 499-500 of the Penal Code.[101] The penalty for criminal defamation is imprisonment for up to two years, a fine, or both. While used much less frequently than section 66(d) of the Telecommunications Law, which carries a heavier sentence and was, until August 2017, non-bailable, these Penal Code provisions are still invoked when the alleged defamation did not involve use of a telecommunications device.

Prosecution for Satirical Anti-War Play

As discussed above, nine students were prosecuted for defamation under section 500 of the Penal Code for performing a satirical anti-war play as part of a peace movement event at the Pathein Hotel on January 9, 2017. Lt. Col. Aung Myo Khaing filed a defamation complaint against the students who took part in the play.[102]

According to Aung Khant Zaw, one of the organizers and the author of the play, "They don't like how we talked about wives of the soldiers. We said they can be happy with other men when their husband soldiers are at the front line if the wars are going on. But we didn't mention those soldiers are from Myanmar army."[103]

After four months of trial at the Pathein Township Court, the judge decided to charge only lead organizers Aung Khant Zaw and Myat Thu Htet with defamation, acquitting the seven others. The army appealed the acquittals to the Pathein District Court, which overruled the verdict of the township court and sent the case back for trial.[104]

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[101] In addition, as discussed below, both the News Media Law and the Law Protecting the Privacy and Security of Citizens contain defamation provisions, as does the Electronic Transaction Act, discussed in our 2016 report. *They Can Arrest You at Any Time*, p. 65.

[102] Human Rights Watch telephone interview with Aung Khant Zaw, August 16, 2018.

[103] Ibid.

[104] Salai Thant Zin, "Pathein Students Accused of Defamation Face Trial at District Court," *Irrawaddy,* June 15, 2017, https://www.irrawaddy.com/news/burma/pathein-students-accused-of-defamation-face-trial-at-district-court.html (accessed July 10, 2018).

On April 4, 2018, the township court convicted eight students of defamation and imposed fines of 50,000 kyat (US$35) each on the two main organizers. Six others were fined 30,000 kyat ($21) each. The ninth student, Myo Ko Ko, failed to appear in court, and the Pathein Township Court issued an arrest warrant for him.[105]

Prosecution for Statements at Anti-War Protest

On April 30 and May 1, 2018, after renewed fighting in Kachin State between the Myanmar army and the Kachin Independence Army trapped thousands of displaced civilians in areas without access to aid, more than 3,000 ethnic Kachin staged a peaceful protest in Myitkyina to call for their rescue.[106]

Three of the organizers—Lum Zawng, a Kachin lawyer; Nang Pu, a founding member of the Htoi Gender and Development Foundation; and Zau Jat, with the Kachin National Social Development Foundation—made speeches over the course of the two days accusing the military of causing displacement and calling for the evacuation of civilians trapped by the fighting and an end to airstrikes in civilian areas.[107]

On May 8, Lt. Col. Myo Min Oo of the Northern Regional Command filed criminal defamation complaints against all three.[108] "The military filed the lawsuit against us because they were not pleased with us for what we called for at the press conference," Zau Jat said.[109] He was quoted in local media as saying, "We are surprised that they sued us for defamation. We only called for enabling the rescue of trapped civilians. We don't know what was defamatory to them."[110]

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[105] Salai Thant Zin, "Students Fined Over Anti-War Performance," *Irrawaddy,* April 6, 2018, https://www.irrawaddy.com/news/burma/students-fined-anti-war-performance.html (accessed April 6, 2018).

[106] Chan Thar, "5000 March for Trapped Kachin Refugees," *Myanmar Times,* May 1, 2018, https://www.mmtimes.com/news/5000-march-trapped-kachin-refugees.html (accessed June 4, 2018).

[107] "Myanmar: Drop Defamation Cases Against Kachin Anti-War Protest Organizers," Kachin Women's Association of Thailand and Fortify Rights news release, May 21, 2018, https://www.fortifyrights.org/publication-20180521-2.html (accessed June 1, 2018); Human Rights Watch telephone interviews with Zau Jat, August 15 and 16, 2018.

[108] Nan Lwin Hnin Pwint, "Army Sues Kachin Protesters for Defamation," *Irrawaddy,* May 16, 2018, https://www.irrawaddy.com/news/army-sues-kachin-protesters-defamation.html (accessed June 4, 2018); Human Rights Watch telephone interviews with Zau Jat, August 15 and 16, 2018.

[109] Human Rights Watch telephone interviews with Zau Jat, August 15 and 16, 2018.

[110] Nan Lwin Hnin Pwint, "Army Sues Kachin Protesters for Defamation," *Irrawaddy*. On May 9, 2018, Lum Zawng and another protest leader, Sut Seng Htoi, were fined 30,000 kyat ($21) each by the Myitkyina Township Court for breaching section 19 of the Peaceful Assembly and Procession Law.

Nang Pu told local media that "at the press conference [at the end of the rally], I said that the Burmese military denied passage to the trapped civilians and that they are arresting, torturing, and killing them. It wasn't meant to mislead the public when I said that, but I was merely trying to let the world know the plight of the [displaced civilians]."[111]

All three were formally charged with defamation on September 3.[112] On December 7, they were convicted and sentenced to six months in prison and a 500,000 kyat (US$350) fine.[113]

Prosecution for Providing Information about Military Airstrikes to the Media

Police in the town of Myo Ma charged Dumdaw Nawng Lat, a 67-year-old assistant pastor with the Kachin Baptist Convention (KBC), with criminal defamation under section 500 of the Penal Code for providing information to Voice of America during a phone interview on December 1, 2016, alleging a Myanmar military airstrike on a church. He and Langjaw Gam Seng, a 35-year-old KBC youth leader, were also charged under section 17(1) of the Unlawful Associations Act for allegedly supporting the Kachin Independence Army (KIA).[114]

Police brought the charges after the two men assisted visiting journalists documenting damage allegedly caused by airstrikes on a Catholic church and other civilian structures in Muse township, northern Shan State, in late 2016. Following the publication of photos of the damaged church on December 15, Maj. Kyaw Myo Min Latt of Myanmar Army Battalion 99 arrested Dumdaw Nawng Lat and Langjaw Gam Seng on December 24. From December 25 to January 19, the Myanmar military detained the men incommunicado at Kalaya 123 military base in Nampaka township, northern Shan State, and interrogated them repeatedly.[115]

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[111] "Kachin Anti-War Activists to Appeal Defamation Suit: Lawyer," *DVB,* May 21, 2018, http://www.dvb.no/news/kachin-anti-war-activists-to-appeal-defamation-suit-lawyer/80927 (accessed July 11, 2018).

[112] "Court Hears from Kachin Protesters Accused of Defaming Military," *Irrawaddy,* September 6, 2018, https://www.irrawaddy.com/news/burma/court-hears-from-kachin-protesters-accused-of-defaming-military.html (accessed September 6, 2018).

[113] "Myanmar: Quash Conviction of Kachin Activists," Human Rights Watch news release, December 8, 2018, https://www.hrw.org/news/2018/12/08/myanmar-quash-conviction-kachin-activists.

[114] "Myanmar: Drop Case Against Kachin Religious Leaders," Human Rights Watch news release, October 26, 2017, https://www.hrw.org/news/2017/10/26/myanmar-drop-case-against-kachin-religious-leaders.

[115] "Burma: Release or Charge Kachin Christians," Human Rights Watch news release, January 24, 2017, https://www.hrw.org/news/2017/01/24/burma-release-or-charge-kachin-christians.

After an international outcry calling on the army to reveal the men's whereabouts, the military handed the two over to the Myo Ma police on January 20, 2017, where they were formally charged.[116] On October 27, a court convicted both men under section 17(1) of the Unlawful Associations Act and section 8 of the Export and Import Law, and sentenced them to two years, three months in prison. Dumdaw Nawng Lat was also convicted of criminal defamation and sentenced to an additional two years, for a total sentence of four years, three months in prison.[117] Both were released in a prisoner amnesty on April 17, 2018, after spending almost 16 months in prison.[118]

Prosecution for Statements about Military Actions in Kachin State

On June 13, 2017, Maj. Kyi Min Htun of Myanmar Army Light Infantry Division 101 filed a criminal defamation complaint against Dashi Naw Lawn, general secretary of the Kachin National Development Foundation (KNDF), in the Hpakant Township Court, Kachin State. The complaint related to the distribution of pamphlets in Hpakant township on June 9 by approximately 25 youths from the KNDF alleging that the Myanmar military raped and killed Kachin women and destroyed villages and religious sites during the conflict in Kachin State.[119] On May 16, 2018, the court convicted him of defamation and levied a fine of 50,000 kyat (US$35).[120]

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[116] "Kachin Pastors Transferred to Police, Charged with Unlawful Association," *DVB,* January 24, 2017, http://www.dvb.no/news/73732/73732 (accessed January 25, 2017).

[117] Sean Gleeson, "Kachin Pastor Duo Jailed after Exposing Alleged Tatmadaw Church Bombing," *Frontier Myanmar,* October 27, 2017, https://frontiermyanmar.net/en/kachin-pastor-duo-jailed-after-exposing-alleged-tatmadaw-church-bombing (accessed October 27, 2017).

[118] Ray Downs, "Myanmar President Grants Amnesty to 8,500 Prisoners," *UPI,* April 17, 2018, https://www.upi.com/Myanmar-president-grants-amnesty-to-8500-prisoners/8441524021364/ (accessed June 4, 2018).

[119] "Myanmar: Drop Criminal Defamation Charges Against Kachin Activist," Fortify Rights news release, November 14, 2017, http://www.fortifyrights.org/publication-20171114.html (accessed November 15, 2017).

[120] "Myanmar: Drop Defamation Cases Against Kachin Anti-War Protest Organizers," Kachin Women's Association of Thailand and Fortify Rights news release.

IV. Other Laws Used against Journalists

The authorities have arrested or threatened to arrest journalists for alleged violations of the Official Secrets Act, the Unlawful Associations Act, the 1934 Aircraft Act, and section 131 of the Penal Code.

Official Secrets Act of 1923

The Official Secrets Act, dating from Myanmar'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. Section 3(1)(c) of the act defines the offense of "spying" extremely broadly to include the making, receipt, or communication of any document that is "calculated to be," "might be," or is "intended to be" "directly or indirectly useful to an enemy." Violation of this section carries a sentence of up to 14 years in prison.

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. 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 an enemy. Being "useful" to an enemy is not the same as being a threat to national security, leaving the Official Secrets Act easily subject to abuse.[121]

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. According to the Global Principles on National Security and the Right to Information (the Tshwane Principles), criminal cases against officials who "leak" information should be considered only if the information disclosed posts a "real and identifiable threat of causing significant harm" to national

[121] Human Rights Watch, *They Can Arrest You at Any Time: The Criminalization of Peaceful Expression in Burma*, June 2016, https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma.

security.[122] Moreover, public interest in the disclosure should be available as a defense in any such prosecution.[123]

Use of such laws against journalists is particularly problematic. According to the Tshwane Principles, 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.[124]

When five journalists from the *Unity Journal* were convicted under the Official Secrets Act in 2014 and sentenced to 10 years in prison, Aung San Suu Kyi, then in opposition, said, "While there are claims of democratic reform [in Myanmar], this is questionable when the rights of journalists [to report] are being controlled."[125] Similarly, President Win Myint, then the NLD spokesperson, criticized the verdict.[126] On April 17, 2016, shortly after the NLD-led government took power, then-President Htin Kyaw ordered the *Unity* journalists released from prison in an amnesty of political prisoners.[127]

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[122] The 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, principles 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 UN special rapporteurs on freedom of expression and media freedom and the special rapporteur on counter-terrorism and human rights.

[123] Tshwane Principles, principle 43(a) states: "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."

[124] Tshwane Principles, principle 47.

[125] "Prison Sentences for Journalists 'Very Excessive': Suu Kyi," *Irrawaddy,* July 14, 2014, https://www.irrawaddy.com/news/burma/prison-sentences-journalists-excessive-suu-kyi.html (accessed September 26, 2018). The *Unity* journalists were prosecuted for a story about a military facility built on land confiscated from farmers. Human Rights Watch, *They Can Arrest You at Any Time.*

[126] Win Myint said at the time: "I am sorry to hear the verdict; the judgment is very harsh. It is only recently that we gained press freedom and it seems the government already viewed the media as its enemy. There should be fairness between the nature of the crime and the verdict. The [military factory] is not a prohibited place. The judge needs to consider the case fair and square." "Shock, Anger at 10-Yr Jail Terms," *Myanmar Times,* July 14, 2014, https://www.scribd.com/doc/233754734/201437737 (accessed September 26, 2018).

[127] "Myanmar President Frees 83 Political Prisoners," Reuters, April 17, 2016, https://www.reuters.com/article/us-myanmar-politics-prisoners-idUSKCNoXE05U (accessed September 26, 2018).

Despite recognizing the potential for abuse, the new government took no steps to amend the Official Secrets Act, and that law has now been wielded, once again, against journalists.

Prosecution of Wa Lone and Kyaw Soe Oo

The case against Reuters reporters Wa Lone and Kyaw Soe Oo shows the military's willingness to penalize reporters who seek information the military would rather keep hidden.

In late 2017, Wa Lone and Kyaw Soe Oo investigated the military's "clearance operations" in Rakhine State following attacks by the ARSA armed group in August 2017. During the investigation, they uncovered evidence of a massacre of villagers in the village of Inn Din. Among those they interviewed in their research were members of the 8th Police Battalion.[128]

On December 12, 2017, the authorities arrested Wa Lone and Kyaw Soe Oo after they met with two police officers, including Lance Corporal Naing Lin from the 8th Battalion, in a restaurant near the 8th Battalion headquarters in Yangon. Wa Lone later testified that at the meeting, the police handed them documents wrapped in newspaper. Wa Lone said that he and Kyaw Soe Oo were arrested by about 20 uniformed and plainclothes officers immediately after exiting the restaurant.[129] Prosecution witnesses claimed police arrested the journalists at a routine traffic stop.[130]

On December 14, the government announced the arrest in state-run newspapers, saying the two journalists would be prosecuted for violating the Official Secrets Act for possessing "important and secret government documents relating to Rakhine State and

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[128] Wa Lone et al., "Massacre in Myanmar," Reuters, February 8, 2018, https://www.reuters.com/investigates/special-report/myanmar-rakhine-events (accessed February 8, 2018).

[129] Shoon Naing and Kanupriya Kapoor, "Myanmar Police Insisted on Meeting, Gave Documents: Reuters Reporter," Reuters, https://www.reuters.com/article/us-myanmar-journalists/myanmar-police-insisted-on-meeting-gave-documents-reuters-reporter-idUSKBN1K50XQ, July 15, 2018, (accessed July 16, 2018).

[130] Shoon Naing and Thu Thu Aung, "Myanmar Policeman Who Arrested Reuters Reporters Tells Court He Burned His Notes," Reuters, February 5, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-policeman-who-arrested-reuters-reporters-tells-court-he-burned-his-notes-idUSKBN1FP2W9 (accessed February 7, 2018).

security forces." The Myanmar Police Force asserted that Wa Lone and Kyaw Soe Oo had "illegally acquired information with the intention to share it with foreign media."[131]

The two were held incommunicado, with no access to lawyers or their families, for more than two weeks.[132] Both Wa Lone and Kyaw Soe Oo testified that they were hooded and deprived of sleep during their interrogations.[133] Wa Lone also testified that the questioning did not focus on the allegedly secret documents, but rather on their investigations in Rakhine State.[134] He said that the interrogating officers criticized him for reporting on the Rohingya: "They said, 'You are both Buddhists. Why are you writing about *kalars* at a time like this? They aren't citizens.'"[135]

When the two journalists were finally brought before a court, the police requested and received an additional 14-day remand.[136] On January 10, 2018, the police formally filed a case accusing them of receiving documents that might be directly or indirectly useful to an enemy, in violation of section 3(1)(c) of the Official Secrets Act. The court declined to grant bail, and both men were placed in pretrial detention in Insein Prison.[137] A motion by the defense to dismiss the case on grounds that the prosecution had failed to make a prima

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[131] "Two Reporters, Two Policemen Arrested in Yangon," *Global New Light of Myanmar,* December 14, 2017, http://www.globalnewlightofmyanmar.com/two-reporters-two-policemen-arrested-yangon/ (accessed December 15, 2017). Given that the Official Secrets Act requires that the documents be useful to "an enemy," this statement would appear to treat foreign media as an enemy of Myanmar.

[132] "Burma: Journalists Feared 'Disappeared,'" Human Rights Watch news release, December 20, 2017, https://www.hrw.org/news/2017/12/20/burma-journalists-feared-disappeared.

[133] "Reuters Reporter Says He Was Hooded, Deprived of Sleep," Agence-France Press, July 18, 2018, https://frontiermyanmar.net/en/reuters-reporter-says-he-was-hooded-deprived-of-sleep (accessed July 18, 2018); Shoon Naing and Thu Thu Aung, "Black Hoods, Kneeling, No Sleep: Reuters Reporter Details Myanmar Custody," Reuters, July 24, 2018, https://www.reuters.com/article/us-myanmar-journalists/black-hoods-kneeling-no-sleep-reuters-reporter-details-myanmar-custody-idUSKBN1KE1PM (accessed July 24, 2018).

[134] Thu Thu Aung and Aye Min Thant, "Myanmar Police Focused Interrogation on Rohingya Story: Reuters Journalist," Reuters, July 17, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-police-focused-interrogation-on-rohingya-story-reuters-journalist-idUSKBN1K71T5 (accessed July 17, 2018).

[135] Ibid. "Kalar" is a derogatory term used to describe people of South Asian origin, especially Muslims.

[136] "Reuters Journalists in Myanmar Appear in Court, Remanded for Another 14 Days," Reuters, December 26, 2017, https://www.reuters.com/article/us-myanmar-journalists/reuters-journalists-in-myanmar-appear-in-court-remanded-for-another-14-days-idUSKBN1EL07Y (accessed July 9, 2018).

[137] "Reuters Journalists Charged under Secrets Act in Myanmar," *BBC News,* January 10, 2018, https://www.bbc.co.uk/news/world-asia-42631277 (accessed January 10, 2018).

facie case that the journalists had violated the Official Secrets Act was dismissed on April 11.[138]

Witness accounts of the arrest suggest government entrapment. On April 20, Capt. Moe Yan Naing of the 8th Police Battalion, called as a prosecution witness, testified that Police Brig. Gen. Tin Ko Ko had ordered the officers to "trap" the journalists by handing them "secret documents" as a pretext for their arrest.[139] He also testified that he had been arrested for violation of the Police Force Maintenance of Discipline Law on December 12 after being questioned about his contact with Wa Lone.[140] The day after his testimony, authorities evicted his family from government housing.[141]
The prosecution moved to have Capt. Moe Yan Naing treated as an unreliable witness, arguing that he "held a grudge" because he was facing charges, but the court rejected the motion on May 2 and ordered that the witness be brought back for further testimony. At the May 2 hearing, an officer told the court that Moe Yan Naing had been sentenced to one year in prison the previous week for violating the police disciplinary law.[142] Moe Yan Naing was brought to the May 9 hearing handcuffed and wearing a prison uniform. At that hearing, he testified that his sentence was intended to intimidate any other officers who were considering telling the truth.[143]

Wa Lone also testified that he and Kyaw Soe Oo had not tried to obtain any secret documents from the police. Rather, police officers unexpectedly handed them rolled-up

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[138] Thu Thu Aung and Shoon Naing, "Myanmar Judge Rejects Request for Dismissal of Case Against Two Jailed Reuters Reporters," Reuters, April 11, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-judge-rejects-request-for-dismissal-of-case-against-two-jailed-reuters-reporters-idUSKBN1HIoFH (accessed May 2, 2018).

[139] Shoon Naing and Antoni Slodkowski, "Myanmar Policeman Describes 'Trap' to Arrest Reuters Reporter," Reuters, April 20, 2018, https://www.reuters.com/article/myanmar-journalists/myanmar-policeman-describes-trap-to-arrest-reuters-reporter-idUSL3N1RW4RX (accessed April 20, 2018).

[140] Shoon Naing and Yimou Lee, "Myanmar Court Accepts Testimony of Policeman Who Said Reuters Reporters Framed," Reuters, May 2, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-court-accepts-testimony-of-policeman-who-said-reuters-reporters-framed-idUSKBN1I30XI (accessed May 2, 2018). The witness testified that he was charged with violating sections 16(b) and 22 of the Police Disciplinary Act. Section 16(b) authorizes up to one year in prison for neglecting "to obey any general, local or other order issued in writing." Section 22 authorizes up to one year in prison for any act or omission that is "pre-judicial to good order and police discipline."

[141] Shoon Naing and Thu Thu Aung, "Family of Myanmar Policeman Who Described Sting on Reuters Reporters Evicted: Family," Reuters, April 21, 2018, https://www.reuters.com/article/us-myanmar-journalists/family-of-myanmar-policeman-who-described-sting-on-reuters-reporters-evicted-family-idUSKBN1HSoFQ (accessed April, 21, 2018).

[142] Ibid.

[143] "Myanmar Police Whistleblower Testifies His Jailing Was Warning," *VOA News,* May 9, 2018, https://www.voanews.com/a/myanmar-police-whistleblower-testifies-warning/4386456.html (accessed November 6, 2018).

documents at the restaurant, and they were arrested on leaving the restaurant before even looking at them.[144]

While the prosecution asserted that Wa Lone and Kyaw Soe Oo were arrested during a routine traffic stop, one arresting officer testified that he was unaware of proper procedures for recording arrests, while another admitted that he had burned his notes about the arrest.[145] An additional witness for the prosecution wrote the location where police claimed the arrest took place on his hand to look at while testifying.[146]

Police submitted as evidence documents they allege were discovered on the reporters' phones, which were searched without a warrant.[147] Meanwhile, defense lawyers asserted that the allegedly "secret" information provided by the police to the reporters was already in the public domain at the time of the arrest.[148]

Despite the evidence of entrapment, on September 3, 2018, the court ruled that Wa Lone and Kyaw Soe Oo were guilty of violating the Official Secrets Act and sentenced them to seven years in prison.[149] The court relied on testimony that the interrogating officers appeared not to know, prior to the arrest, that Wa Lone and Kyaw Soe Oo were investigating the Inn Din massacre to reject the argument that the prosecution was retaliating for their reporting.[150] In a ruling likely to have profound effects on local

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[144] Htet Khaung Linn, "Police Pressured Reuters Journalists to Bury Report on Inn Din Massacre, Says Wa Lone," *Myanmar Now,* July 18, 2018, http://www.myanmar-now.org/news/i/?id=771ab649-dcb9-49a2-89b1-fb06771ea216 (accessed September 26, 2018).

[145] "Myanmar Policeman Who Detained Reuters Pair 'Did Not Know Arrest Procedures,'" Reuters, February 14, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-policeman-who-detained-reuters-pair-did-not-know-arrest-procedures-idUSKCN1FY2DP (accessed February 14, 2018); Shoon Naing and Thu Thu Aung, "Myanmar Policeman Who Arrested Reuters Reporters Tells Court He Burned His Notes," Reuters.

[146] Richard C. Paddock, "They Documented a Massacre. Their Prize Is a Prison Cell in Myanmar," *New York Times,* April 10, 2018, https://www.nytimes.com/2018/04/10/world/asia/myanmar-reuters-journalists-massacre.html (accessed April 10, 2018).

[147] Sam Aung Moon and Yimou Lee, "Myanmar Police Witness Says Searched Reuters Reporters' Phones without Warrant," Reuters, May 28, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-police-witness-says-searched-reuters-reporters-phones-without-warrant-idUSKCN1IT1DC (accessed May 29, 2018).

[148] Thu Thu Aung and Yimou Lee, "Myanmar Defense Lawyers Say Documents from Reuters Reporters' Phones 'Not Secret,'" Reuters, June 5, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-defense-lawyers-say-documents-from-reuters-reporters-phones-not-secret-idUSKCN1J11KM (accessed June 6, 2018).

[149] "Reuters Journalists Jailed in Myanmar over Secrets Act," *BBC News,* September 3, 2018, https://www.bbc.co.uk/news/world-asia-45392972 (accessed September 3, 2018).

[150] *Police Lieutenant Colonel Yu Naing v. Thet Oo Maung (aka) Wa Lone and Kyaw Soe Oo (aka) Moe Aung*, Yangon Northern District Court, 2018 Criminal Regular Case No. 4, September 3, 2018 (unofficial translation).

journalists reporting on armed conflicts in Myanmar, the court also relied on Wa Lone having contact information for two members of ethnic armed groups in a notebook to rule that "it is evident that there are situations and opportunities for the defendants to contact and transmit these security related information to anti-Government groups one way or another."[151]

Several journalists told Human Rights Watch the case is already having a chilling effect on the press. "After the Reuters journalists were arrested, most journalists were asking, 'Who will be the next victim?'" said Zayar Hlaing. "We are always asking ourselves, 'What if we print that story? Will there be a problem for us?'"[152]

Wa Lone and Kyaw Soe Oo appealed their conviction on November 2, 2018, arguing that the court erred as a matter of law and fact by, among other alleged errors, ignoring compelling evidence of a police set-up, serious due process violations, and the prosecution's failure to prove any of the key elements of the crime.[153] Lawyers for Wa Lone and Kyaw Soe Oo announced on November 20 that the High Court had accepted the appeal.[154]

Use of Other Laws in Cases Involving Journalists

Prosecution under the Aircraft Act of 1934

In October 2017, Myanmar nationals Aung Naing Soe and Hla Tin were working with two foreign journalists on a story about hate speech toward Muslim communities in Myanmar for *TRT World*, the Turkish state broadcaster. Aung Naing Soe said, "We interviewed some people in Yangon and an interfaith group in Mandalay before going to Naypyidaw."[155]

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[151] Ibid.

[152] Human Rights Watch interview with Zayar Hlaing, Yangon, April 2, 2108.

[153] *Thet Oo Maung aka Wa Lone and Kyaw Soe Oo aka Moe Aung v. The Republic of the Union of Myanmar*, Yangon Region High Court, Submission of Appeal pursuant to Article 54 of the Union Judiciary Law, November 2, 2018 (unofficial translation).

[154] "Myanmar Court Allows Jailed Reuters Reporters' Appeal to Proceed: Lawyer," Reuters, November 20, 2018, https://www.reuters.com/article/us-myanmar-journalists/myanmar-court-allows-jailed-reuters-reporters-appeal-to-proceed-lawyer-idUSKCN1NP1OF (accessed November 20, 2018).

[155] Human Rights Watch interview with Aung Naing Soe, Yangon, April 5, 2018.

Myanmar journalist Aung Naing Soe (left) and driver Hla Tin look out from a prison transport vehicle after being sentenced by a court in Naypyidaw, November 10, 2017. © 2017 Aung Htet/AFP/Getty Images

On October 27, the journalists had a scheduled meeting with Arakan National Party Member of Parliament Dr. Aye Maung, but the meeting was canceled. After leaving the dorms in which MPs stay while in Naypyidaw, the group stopped outside the fence around the parliament buildings so Malaysian cameraman Mok Choy Lin could get some aerial video footage of the city. According to Aung Naing Soe, a photographer and video journalist who was working as fixer and interpreter for Lin and Singaporean reporter Lau Hon Meng, "We stayed in the car and the cameraman got out and started to fly the drone. After a few minutes the police came over. I jumped out of the car and told him to land the drone and he did."[156] The police detained all four and took them to a police station.

On October 28, the four were remanded for 14 days after authorities accused them of violating the Import and Export Law by bringing the drone into the country without

[156] Ibid.

permission. During the remand period they were not permitted to see either their families or their lawyers.[157] "They interrogated me for 11 days—one day about the drone and 10 days about my entire life," said Aung Naing Soe. "We were held for 14 days with no communication with the outside world."[158]

At their first court appearance on November 10, prosecutors informed them that they were being charged with violating Myanmar's Aircraft Act, a law dating from 1934 that covers "any machine which can derive support in the atmosphere from reactions of the air, and includes balloons whether fixed or free, airships, kites, gliders and flying machines."[159] According to Khin Maung Zaw, who represented the two foreign reporters:

> The case was treated as a summary case. They were told of the charge and directly asked if they were guilty or not. The Malaysian cameraman pleaded guilty because he thought he would just get a fine for a first offense in a minor case, as that is what would happen in his country.[160]

Lau Hon Meng and Hla Tin also pleaded guilty. Although Aung Naing Soe initially pleaded not guilty, he changed his mind and pleaded guilty like the others. When asked why, he said, "If I didn't plead guilty, it would be a trial and the team would be split."[161] All four were sentenced to two months in prison.[162]

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[157] Htet Naing Zaw, "Family Members Are Denied Visit with Detained Journalist in Naypyitaw, *Irrawaddy,* October 30, 2017, https://www.irrawaddy.com/news/burma/family-members-denied-visit-detained-journalist-naypyitaw.html (accessed October 30, 2017).

[158] Human Rights Watch interview with Aung Naing Soe, April 5, 2018.

[159] Myanmar Aircraft Act, 1934 (India Act XXII of 1934), http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar_code/2015/12/22-1934%20Burma%20Aircraft%20Act.pdf (accessed December 5, 2018).

[160] Human Rights Watch interview with Khin Maung Zaw, Yangon, April 5, 2018.

[161] Human Rights Watch interview with Aung Naing Soe, April 5, 2018.

[162] Steve Tickner, "Journalists Sentenced in Capital under Aircraft Act," *Frontier Myanmar,* November 10, 2017, https://frontiermyanmar.net/en/journalists-sentenced-in-capital-under-aircraft-act (accessed November 10, 2017). The government dropped the charge under the Import Export Act and an additional charge against the two foreign journalists under the Immigration Act. Human Rights Watch interview with Khin Maung Zaw, April 5, 2018.

On November 27, while serving their sentence for violation of the Aircraft Act, the two foreign journalists were charged with violating the Immigration Act by overstaying their visas, which had expired on November 17 while they were in police detention.[163]

All four were released from prison on December 28 after serving the full two months in prison and after the charges under the Immigration Act and Import and Export Act were dropped. A police officer told the media that he had been ordered to drop the additional charges because the four had not intended to damage national security and the government wanted to improve Myanmar's relations with the journalists' home countries, Singapore and Malaysia.[164]

Threatened Prosecution under Section 131 of the Penal Code

In June 2016, Lt. Col. Lin Tun filed a case against *7 Day Daily* chief editor Thaung Su Nyein and reporter Min Hein Kyaw under section 131 of the Penal Code. The legal provision carries a 10-year prison sentence for anyone who "abets mutiny or attempts to seduce an officer from his allegiance or duty."

The complaint alleged that an article published by the paper on April 24, which included former general Shwe Mann's message to graduates of the Defense Services Academy urging them to work with the country's newly elected democratic government, "cast the military in a poor light by giving a false impression that it is not willing to cooperate, and implying that the Tatmadaw is not loyal to the country."[165] Ahr Mann, current chief editor of *7 Day Daily*, said, "The military said the report was wrong. We said they should sue the speaker—we just reported what he said."[166]

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[163] "Two Foreign Journalists Charged With Immigration Violation," *Irrawaddy,* November 27, 2017, https://www.irrawaddy.com/news/burma/two-foreign-journalists-charged-immigration-violation.html (accessed July 18, 2018).

[164] "Myanmar Frees Journalists Working for Turkish Broadcaster," Reuters, December 28, 2017, https://af.reuters.com/article/worldNews/idAFKBN1ENoAM (accessed December 28, 2017).

[165] "Military Files Lawsuit Against Local Paper," *Myanmar Times*, June 28, 2016, https://www.mmtimes.com/national-news/yangon/21077-military-files-lawsuit-against-local-paper.html (accessed May 21, 2018). Shwe Mann was expelled from the USDP two days after posting the comments on his Facebook page.

[166] Human Rights Watch interview with Ahr Mann, Yangon, April 5, 2018.

According to Ahr Mann, "The chief editor did not want to fight against them. He met with the army and the Press Council and apologized in the paper. He did not consult us. Many reporters wanted to resign."[167] The statement published in the paper said the following:

> We are very sorry that the story has caused misunderstanding which led to the current situation. We *7 Day Daily* would like to inform the Tatmadaw and fellow citizens with respect that we had no intention of harming anyone in our publishing of the story and we just published it honestly.[168]

After publication of the apology, the military complainant dropped the case.

Unlawful Associations Act of 1908

The colonial-era Unlawful Associations Act is an overly broad law that has long been used to punish those suspected of having any contact with an armed ethnic group.[169] Section 17(1) of the act authorizes up to two years in prison for anyone who "is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association." An unlawful association is defined as one that "encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts" which the president has declared to be unlawful.

Prosecution of Lawi Weng, Aye Nai, and Pyae Phone Aung

In June 2017, authorities used the Unlawful Associations Act to arrest three reporters who traveled to cover and report on a drug burning ceremony held by the Ta'ang National

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[167] Ibid.

[168] "Military, 7 Day Daily Settle Libel Case," *Irrawaddy,* June 28, 2016, https://www.irrawaddy.com/news/burma/military-7-day-daily-settle-libel-case.html (accessed May 21, 2018).

[169] The act was used to convict and sentence two interfaith activists in Mandalay, Pwint Phyu Latt and Zaw Zaw Latt, to two years with hard labor in April 2016 for visiting the headquarters of the Kachin Independence Army in 2013. "Interfaith Activists Convicted, Given Two Years in Prison," *Myanmar Times,* February 29, 2016, https://www.mmtimes.com/national-news/mandalay-upper-myanmar/19211-interfaith-activists-convicted-given-two-years-in-prison.html (accessed July 11, 2018). In addition, as discussed above, it was used against two Kachin pastors who provided information on military airstrikes in that state.

Journalists Aye Nai (left) and Lawi Weng speak to reporters from inside a prison transport vehicle outside the courthouse in Hsipaw, Shan State, July 28, 2017. © 2017 STR/AFP/Getty Images

Liberation Army (TNLA) marking the United Nations International Day Against Drug Abuse and Illicit Trafficking.[170]

Arresting journalists who are gathering news about an armed group is a serious infringement of media freedom with wide-ranging impact. While the government may place restrictions on the media for national security reasons, international human rights law provides these restrictions must be strictly necessary for a legitimate purpose and not be overbroad. They may not be used to suppress or withhold information of legitimate public interest not harmful to national security, or to prosecute journalists for reporting such information.[171]

[170] The TNLA is among more than a dozen ethnic minority armed groups that for decades have been fighting the Myanmar military, and has been designated an "unlawful armed group" by the Myanmar authorities. While the TNLA is not a signatory to the Nationwide Ceasefire Agreement signed in October 2015, representatives of the armed group attended the second round of the Panglong Peace Conference held by the Myanmar government in the capital, Naypyidaw, in May 2017.

[171] Tshwane Principles, principles 3 and 47.

For the government to fulfill this responsibility, journalists should be able to speak to and meet with a variety of people without fear of arrest or harassment—including those who are in conflict with the government or military.

Lawi Weng, a reporter for the *Irrawaddy* who has frequently covered conflict areas in the country, traveled to the Palaung area to cover the drug burning ceremony. "I arrived quite late," he said. "There was huge fighting going on, with the military and the Palaung shelling each other." A TNLA member took him to the front lines. "The military was not happy to know there was a journalist on the front line," he said. "They worried about what I would report—that when my story came out they would look bad."[172]

Lawi Weng, along with Aye Nai and Pyae Phone Aung from *DVB,* witnessed and photographed the drug burning ceremony before getting in a car to return to Yangon. On the way back to Yangon, the military stopped the car and detained the three men, as well as three Palaung villagers accompanying them. "I tried to hide my memory stick, but they found it. They deleted all of the photos of the drug burning ceremony, but left my photos of other places," said Lawi Weng.[173] The six were held by the military for several days before being turned over to the police.

"I didn't think they would arrest me," said Lawi Weng. "I am a reporter. I often went to the front line where the fighting was going on, but I never thought I would be arrested." On June 27, the police charged the three journalists and the three villagers with violating section 17(1) of the Unlawful Associations Act.[174] Lawi Weng said he was shocked: "How could they charge me with Unlawful Associations Act? I am a journalist. I can go to conflict areas to report."[175]

The court denied bail to the six suspects and ordered them detained in Hsipaw Prison in Shan State. On September 1, 2017, the military unilaterally withdrew the complaint against

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[172] Human Rights Watch interview with Lawi Weng, Yangon, March 31, 2018.

[173] Ibid.

[174] The arrest of the three journalists appears to conflict with Myanmar's 2014 News Media Law. Section 7(a) of the law states that a journalist "shall be exempt from being detained by a certain security related authority, or his/her equipment being confiscated or destroyed" while gathering news in areas "where wars break out, and where conflicts or riots and demonstrations take place."

[175] Human Rights Watch interview with Lawi Weng, March 31, 2018.

them, along with complaints against several other journalists, and all were released from jail.[176]

The impact of the arrests, however, has been a severe chilling in the atmosphere for journalists to report in conflict areas. "They arrested us to give a message to other journalists—if you travel to conflict areas you will be arrested," said Lawi Weng.[177] "The arrest of the three journalists was a warning," said Zayar Hlaing. "Don't touch these issues."[178]

The paper for which Lawi Weng works took that message to heart. "After I was arrested and released, the office would not let me go to the front line anymore," he said. "They wouldn't send any reporters to the front line. So we no longer know what is going on on the ground."[179]

News Media Law

Myanmar's News Media Law, enacted in 2014, sets forth a broadly worded "code of conduct" for news media in Myanmar and makes it a criminal offense to violate four of the provisions in that code.[180] One of those provisions, section 9(g), is essentially a broadly worded criminal defamation law, prohibiting 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." Those found guilty of violating section 9(g) can be fined up to 1 million kyat (US$700).[181]

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[176] "Military Withdraws Cases Against Detained Journalists," *Irrawaddy,* September 1, 2017, https://www.irrawaddy.com/news/burma/military-withdraw-cases-detained-journalists.html (accessed September 1, 2017). In Lawi Weng's opinion, "If the ARSA attack hadn't happened [in Rakhine State], they would not have dropped my case. The Tatmadaw doesn't want two front lines. They were under pressure for my arrest and got credit for releasing me, so could focus on the ARSA case." Human Rights Watch interview with Lawi Weng, March 31, 2018.

[177] Human Rights Watch interview with Lawi Weng, March 31, 2018.

[178] Human Rights Watch interview with Zayar Hlaing, April 2, 2018.

[179] Human Rights Watch interview with Lawi Weng, March 31, 2018.

[180] News Media Law, sec. 9 and 25. Section 25(a) authorizes imposition of a fine of up to 300,000 kyat ($210) for violation of section 9(b), which requires that corrections be published in an "eye-catching" position. Section 25(b) authorizes the imposition of a fine of up to 1 million kyat ($700) for violation of sections 9(d) (improper modification of photos, voices and pictures using technology), 9(f) (publication of intellectual property of others without permission), or 9(g) (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).

[181] News Media Law, sec. 25(b).

Whether because the provision is less well known or because it does not allow imposition of a prison sentence, those who believe they have been defamed by a news report have rarely resorted to prosecution under the News Media Law. According to Myint Kyaw, there have only been two or three cases of people being sued under the News Media Law since the law was enacted.[182]

Prosecution of Tanintharyi Weekly

The only recent case using the News Media Law has been against the *Tanintharyi Weekly* over a satirical article that allegedly defamed the Tanintharyi Region chief minister and her family.[183] The article "Electioneering Smile," which appeared under the byline Mu Say Ooh in the journal's November 20, 2017 issue, referred to an unnamed incumbent female administrator who planned to contest the election for ward and village administrators, describing her feelings and actions and her efforts to get re-elected.[184]

A regional government official filed the complaint on November 23, saying that the satirical piece had created a negative impact on the image of the chief minister as well as the regional government.[185] The complainant did not seek mediation by the Press Council before filing the criminal complaint.[186]

On December 21, the court ruled that the case could proceed under the News Media Law.[187] On January 2, 2018, the chief editor of the journal, Myo Aung, also known as Han Htet, was granted bail in the case.[188] The publication appealed to the Tanintharyi Region High Court seeking dismissal of the case, but the appeal was rejected on July 31.[189] On October 1, the

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[182] Human Rights Watch interview with Myint Kyaw, Yangon, March 30, 2018.

[183] Su Phyo Win, "Court Allows Case to Proceed Against Tanintharyi Weekly," *Myanmar Times,* December 22, 2017, https://www.mmtimes.com/news/court-allows-case-proceed-against-tanintharyi-weekly.html (accessed June 4, 2018).

[184] Zue Zue, "Regional Govt Says Weekly Journal Violated Media Ethics with Satirical Piece," *Irrawaddy,* March 13, 2018, https://www.irrawaddy.com/news/burma/tanintharyi-govt-sues-journal-satirical-piece.html (accessed March 14, 2018).

[185] Ibid.

[186] Human Rights Watch telephone interview with Ben Hardman, December 5, 2018.

[187] Su Phyo Win, "Court Allows Case to Proceed Against Tanintharyi Weekly," *Myanmar Times*.

[188] Assistance Association for Political Prisoners (Burma), "January Chronology 2018," http://aappb.org/wp-content/uploads/2018/02/January-Chronology-2018.pdf (accessed December 1, 2018).

[189] "Local Weekly Newspaper Charged for Satirical Article," *Irrawaddy,* October 1, 2018, https://www.irrawaddy.com/news/burma/local-weekly-newspaper-charged-satirical-article.html (accessed October 1, 2018).

Dawei Township Court charged Han Htet with violating section 25(b) of the News Media Law.[190] His trial was ongoing at time of writing.

[190] Naw Betty Han, "Editor of Tanintharyi Weekly Indicted Under Media Act," *Myanmar Times,* October 3, 2018, https://www.mmtimes.com/news/editor-tanintharyi-weekly-indicted-under-media-act.html (accessed November 1, 2018). Section 25(b) is the provision of the News Media Law that makes it an offense to violate section 9(g) of the law.

V. Penal Code Section 505(b)

Penal Code Section 505(b) is a legal provision heavily used by past military and quasi-military governments to penalize critical speech. Section 505(b) imposes sentences of up to two years in prison 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."

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.[191] Such restrictions hand those offended what is known as a "heckler's veto" that stifles public 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.

Rather than repealing this overly broad provision, the NLD government continues to use it against critical voices.

Prosecution of Former Child Soldier

Aung Ko Htwe was 14 years old when a Myanmar army sergeant abducted him at a Yangon train station in 2005. In 2007, he tried to flee from the army with two other child soldiers. During their escape, they allegedly killed a motorbike owner while attempting to rob him.[192] All three children were arrested on murder charges. Aung Ko Htwe signed a confession after months in an army prison camp, but later stated he had no involvement in the killing.[193] The three children were sentenced to death, but the sentence was commuted to

[191] European Court of Human Rights, *Sunday Times v. United Kingdom* (6538/74), April 26, 1979, para. 59.

[192] "Former Myanmar Child Soldier Given Two-Year Prison Term for Describing Forced Abduction," Radio Free Asia, March 28, 2018, https://www.rfa.org/english/news/myanmar/abduction-03282018135909.html (accessed June 5, 2018).

[193] "Former Myanmar Child Soldier Describes Long Struggle to Turn Life Around," Radio Free Asia, August 18, 2017, https://www.rfa.org/english/news/myanmar/former-myanmar-child-soldier-describes-long-struggle-to-turn-life-around-08172017154924.html (accessed April 3, 2018).

10 years in prison.[194] Aung Ko Htwe was released on July 15, 2017, and returned home. He then started a business with his sister's help selling cotton clothing in Yangon Region's Thanlyin township.[195]

A month after his release, he gave an interview to Radio Free Asia in which he described his experiences as a child soldier and explained how he was trying to turn his life around.[196] A few days later, Lt. Col. Myo Myint Aung filed a complaint against him under section 505(b), and Aung Ko Htwe was arrested on August 18.[197] Because offenses under section 505(b) are non-bailable, authorities detained him prior to and during his trial.

A foreign journalist who has worked in Myanmar since the country began to open up to journalists in 2012 expressed views made by other reporters: "There were dozens of stories in the past few years with former child soldiers talking about their experiences. It was okay to talk about it—then suddenly it wasn't."[198]

In February 2018, the court sentenced Aung Ko Htwe to six months in prison for contempt of court under section 228 of the penal code for criticizing the presiding judge.[199] On March 28, he was convicted of violating section 505(b) and sentenced to two years in prison with hard labor.[200]

After Aung Ko Htwe's sentencing, the court announced he would face additional charges under the Union Seal Law, which carries a maximum sentence of three years in prison, for allegedly damaging the seal of Myanmar when stepping on a copy of the 2008

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[194] Hein Ko Soe, "Former Child Soldier Punished for Speaking Out," *Frontier Myanmar,* September 7, 2017, https://frontiermyanmar.net/en/former-child-soldier-punished-for-speaking-out (accessed June 5, 2018).

[195] "Former Myanmar Child Soldier Describes Long Struggle to Turn Life Around," Radio Free Asia.

[196] Radio Free Asia Burmese Facebook page, August 10, 2017, https://www.facebook.com/rfaburmese/videos/vb.39218993127/10156477752228128. An English language article on the interview, "Former Myanmar Child Soldier Describes Long Struggle to Turn Life Around," was published on August 18, 2017.

[197] "Man Arrested for Speaking to Media About His Past as a Child Soldier," *Coconuts Yangon,* August 21, 2017, https://coconuts.co/yangon/news/former-child-soldier-arrested-speaking-life-military/ (accessed August 22, 2017).

[198] Human Rights Watch interview with foreign journalist (name withheld), Yangon, March 29, 2018.

[199] "Judge Sentences Former Child Soldier to 6 Months in Prison for Contempt of Court," *DVB,* February 15, 2018, http://www.dvb.no/news/judge-sentences-former-child-soldier-6-months-contempt-court-ongoing-incitement-trial/79734 (accessed June 5, 2018).

[200] "Myanmar: Quash Conviction of Former Child Soldier," Human Rights Watch news release, April 2, 2018, https://www.hrw.org/news/2018/04/02/myanmar-quash-conviction-former-child-soldier.

constitution.[201] At a hearing in that case on June 19, Aung Ko Htwe called on the military to be transparent about child recruitment. He also said that he had been arrested and jailed because the military fears him speaking out about its injustices and human rights violations.[202] On October 31, Aung Ko Htwe was acquitted of the charge of violating the Union Seal Law after the court found the prosecution had failed to prove the charge.[203]

Two activists who participated in protests outside the courthouse in support of Aung Ko Htwe were convicted of violating section 505(b) and section 153 of the Penal Code and sentenced to a year in prison on September 11, 2018.[204]

Prosecution for Exposing Military Abuses

In April 2016, the Arakan Liberation Party (ALP) released a statement alleging the military had forced ethnic Rakhine civilians to act as porters during clashes with the Arakan Army earlier that year.[205] Later that month, Khaing Myo Htun, a spokesman for the ALP and experienced human rights defender with civil society organizations, was summoned to the office of the Rakhine State minister for security and border affairs, Col. Htein Lin, and told he would be prosecuted if he could not substantiate the allegations.[206]

On May 1, Khaing Myo Htun submitted to the authorities in Sittwe township, Rakhine State, evidence that formed the basis of the ALP's allegations, including video files documenting allegations of forced labor, torture, and other abuses. On May 5, Lt. Col. Tin Naing Tun from the military's Sittwe Regional Operations Command filed charges against Khaing Myo Htun

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[201] Ibid.

[202] "Jailed Former Child Soldier Calls on Myanmar Military to Disclose Forced Recruiting of Minors," Radio Free Asia, June 19, 2018, https://www.rfa.org/english/news/myanmar/jailed-former-child-soldier-calls-on-myanmar-military-06192018160845.html (accessed July 25, 2018).

[203] Lawi Weng, "Ex-Child Soldier Aung Ko Htwe Acquitted of Latest Charge," *Irrawaddy,* October 31, 2018, https://www.irrawaddy.com/news/ex-child-soldier-aung-ko-htwe-acquitted-latest-charge.html (accessed October 31, 2018).

[204] Lawi Weng, "Activists Jailed for a Year for Protesting on Behalf of Ex-Child Soldier for Tatmadaw," *Irrawaddy,* September 12, 2018, https://www.irrawaddy.com/news/activists-jailed-year-protesting-behalf-ex-child-soldier-tatmadaw.html (accessed September 12, 2018). They received one year for the 505(b) charge and six months for the section 153 charge, with the sentences to be served concurrently. Section 153 of the Penal Code prohibits "provocation with intent to provoke a riot."

[205] The ALP's armed wing, the Arakan Liberation Army (a separate group from the Arakan Army), signed a bilateral ceasefire agreement with the Myanmar military in 2012 and the Nationwide Ceasefire Agreement in 2015.

[206] Sean Gleeson, "'It's Not Fair': Khaing Myo Htun Sentenced After Controversial Sittwe Trial," *Frontier Myanmar,* October 12, 2017, https://frontiermyanmar.net/en/its-not-fair-khaing-myo-htun-sentenced-after-controversial-sittwe-trial (accessed October 13, 2017).

under sections 505(b) and (c) of the Penal Code, and authorities arrested him on July 25.[207] He was repeatedly denied bail, ultimately spending more than 15 months in prison before the court reached a verdict on October 12, 2017.[208]

Although two witnesses from Rathedaung township, Rakhine State, testified that in 2016 the Myanmar military had forced them to carry supplies and weapons during clashes with the Arakan Army, the court convicted Khaing Myo Htun and sentenced him to 18 months in prison.[209] He was released from prison on February 22, 2018.[210]

Prosecution for Song about the Constitution

A lieutenant colonel in the military's Southern Command filed a section 505(b) complaint against musicians Ko Aung Htet and Ko Victor after they performed songs advocating for amendment of the military-drafted 2008 constitution. The traditional Myanmar *Thangyat* songs, which they composed and sang with the group Kaytu Oh-Way, were performed during the Thingyan water festival in Taungoo in April 2017.[211]

Ko Aung Htet was quoted in local media as saying, "I don't think they liked a line in our lyrics which said, 'The Student Union will not agree with the [2008] constitution until it is amended.'"[212] He was arrested on August 2, 2017, and a warrant was issued for the arrest of Ko Victor, who was traveling at the time. While in jail, Ko Aung Htet was attacked and injured by another prisoner. As a result, the court released him on bail on August 15. The

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[207] "Myanmar: Release Rakhine Rights-Defender Khaing Myo Htun," Fortify Rights news release, August 4, 2016, http://www.fortifyrights.org/publication-20160804.html (accessed October 13, 2017).

[208] Liza Yosephine, "Myanmar Human Rights Activist Denied Bail for Second Time," *Jakarta Post,* March 1, 2017, http://www.thejakartapost.com/news/2017/03/01/myanmar-human-rights-activist-denied-bail-for-second-time.html (accessed July 18, 2018).

[209] "Myanmar: Free Khaing Myo Htun, Uphold Right to Freedom of Expression," Fortify Rights news release, October 11, 2017, http://www.fortifyrights.org/publication-20171011.html (accessed October 13, 2017); "Member of Arakan Liberation Party Leadership Gets 18 Months for incitement," *DVB,* October 12, 2017, http://www.dvb.no/news/member-arakan-liberation-party-leadership-gets-18-months-incitement/77870 (accessed October 13, 2017).

[210] "Human Rights Activist Released from Prison," *DVB,* February 22, 2018, http://www.dvb.no/news/human-rights-activist-released-prison/79866 (accessed February 22, 2018).

[211] Zarni Mann, "Military Sues Taungoo Student Union Members," *Irrawaddy,* August 2, 2017, https://www.irrawaddy.com/news/burma/military-sues-taungoo-student-union-members.html (accessed August 3, 2017).

[212] Ibid.

case against both men was dropped on August 29 when the military dropped a number of pending cases in the wake of the attacks in Rakhine State.[213]

Prosecution for Corruption Allegations

Michael Kyaw Myint faced multiple criminal charges after he alleged corruption by an associate of Yangon Chief Minister Phyo Min Thein. On June 3, 2017, after two hotels refused to allow him to hold a press conference on their premises, he attempted to hold a press conference at the Hit Tine protest grounds in Yangon's Tamwe township. According to his wife, he ended up holding the press conference in front of the gates because the gates were locked.[214]

At the press conference, Michael Kyaw Myint alleged that he had paid 1.2 million kyat (US$840) as a bribe to Phyo Min Thein's associate to speed up a deal for land promised to two farmers, but the land was later given to a construction company.[215] He also made allegations against Phyo Min Thein, including that he was a swindler who did not keep his promises and cared only for his own image, and that he had selected companies he knew for the project.[216]

Neither Phyo Min Thein nor his aide responded publicly to the allegations. Instead, authorities brought criminal charges against Michael Kyaw Myint in several townships. Tamwe police charged him with violating section 19 of the Peaceful Assembly and Peaceful Procession Law. Dagon township police charged him with violating section 66(d) by having posted an image on social media of Phyo Min Thein compared to a monkey.[217] He was also charged in Dagon township with violating section 211 of the Penal Code by "falsely charging" Phyo Min Thein with having committed an offense, and in North Dagon township with being a "habitual offender."[218]

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[213] Human Rights Watch interview with Robert San Aung, attorney, Yangon, April 6, 2018.

[214] Human Rights Watch telephone interviews with Aye Aye Thin, August 14 and 15, 2018.

[215] Moe Myint, "Rangoon Govt Allegedly Reneges on Land Agreement," *Irrawaddy,* June 3, 2017, https://www.irrawaddy.com/news/burma/rangoon-govt-allegedly-reneges-on-land-agreement.html (accessed June 5, 2018).

[216] Video of press conference, June 3, 2017, YouTube, unofficial translation, https://www.youtube.com/watch?v=ql1Gly-sJWg&app=desktop (accessed August 15, 2018).

[217] Human Rights Watch telephone interviews with Aye Aye Thin, August 14 and 15, 2018.

[218] Michael Kyaw Myint served a six-month sentence in 2014 under the Overseas Employment Law, and a sentence of one year in 2015 under the Public Property Protection Act. Su Myat Mon, "At the Michael Kyaw Myint Trial, Intrigue and

On October 23, a Yangon government official filed a complaint with the Tamwe Township Court alleging that Michael Kyaw Myint's statements on June 2 were intended to encourage people to oppose the government and defame its reputation.[219] He was brought to Tamwe township police station, where the police charged him with violating section 505(b) of the Penal Code.[220] He was denied bail and held in pretrial detention.[221]

On January 18, 2018, the Dagon Township Court convicted Michael Kyaw Myint of violating section 66(d) and Penal Code section 211 and sentenced him to nine months in prison.[222] On March 16, the Tamwe Township Court convicted him of violating section 505(b) of the Penal Code and sentenced him to a year in prison. Ten days later, the Tamwe Township Court also convicted him under section 19 of the Peaceful Assembly and Peaceful Procession Law and sentenced him to one month in prison.[223]

Retribution," *Frontier Myanmar,* July 28, 2017, https://frontiermyanmar.net/en/at-the-michael-kyaw-myint-trial-intrigue-and-retribution (accessed August 15, 2018); "Michael Kyaw Myint Case Adjourns Due to Plaintiff's Leave of Absence," *Eleven Myanmar,* November 1, 2017. http://www.elevenmyanmar.com/local/12240 (accessed August 15, 2018).

[219] "Michael Kyaw Myint Case Adjourns Due to Plaintiff's Leave of Absence," *Eleven Myanmar*.

[220] Human Rights Watch telephone interviews with Aye Aye Thin, August 14 and 15, 2018.

[221] Su Myat Mon, "Michael Kyaw Myint Denied Bail after Sedition Arrest, "*Frontier Myanmar,* October 24, 2017, https://frontiermyanmar.net/en/michael-kyaw-myint-denied-bail-after-sedition-arrest (accessed May 12, 2018).

[222] Pyae Phone Aung, "Michael Kyaw Myint Sentenced to 9 Months for Defamation," *DVB,* January 18, 2018, http://www.dvb.no/news/michael-kyaw-myint-sentenced-9-months-defamation/79304 (accessed January 20, 2018).

[223] Human Rights Watch telephone interviews with Aye Aye Thin, August 14 and 15, 2018.

VI. Penal Code Section 124A

Penal Code section 124A, Myanmar's sedition law, is another broadly worded law used by prior Myanmar governments to suppress critical speech. The law imposes a sentence of up to life in prison for any statement that "brings or attempts to bring into contempt or excites or attempts to excite disaffection toward the Government established by law for the Union or for the constituent units thereof." The explanation to the provision states that disaffection "includes disloyalty and all feelings of enmity."

Once again, rather than repeal the law, the authorities are using it against critics of the government.[224]

Prosecution of Ngar Min Swe

On September 19, 2018, Ngar Min Swe was sentenced to seven years in prison and a 100,000 kyat (US$70) fine under section 124A for social media posts critical of State Counsellor Aung San Suu Kyi.[225] Ngar Min Swe, a well-known critic of the country's de facto leader, was arrested on July 12 at his home in Hlaing township in Yangon.

While Ngar Min Swe's posts, which Human Rights Watch has not seen, were reported to have been offensive, the right to freedom of speech "embraces even expression that may be regarded as deeply offensive."[226] The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify criminal penalties.[227]

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[224] Human Rights Watch, *"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma*, June 2016, https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma.

[225] "Former Columnist Sentenced to 7 Years for Facebook Post on Suu Kyi," Radio Free Asia, September 19, 2018, https://www.rfa.org/english/news/myanmar/former-columnist-jailed-for-social-media-criticism-09192018163944.html (accessed September 20, 2018).

[226] UN Human Rights Committee, General Comment No. 34, para. 11.

[227] Ibid., para. 38.

VII. Law Protecting the Privacy and Security of Citizens

In March 2017, Myanmar's parliament passed the Law Protecting the Privacy and Security of Citizens ("Privacy Law").[228] Section 8(f) of the Privacy Law states that "no one shall unlawfully interfere with a citizen's personal or family matters or act in any way to slander or harm their reputation." Violation of the law carries a penalty of up to three years in prison and a fine of up to 1.5 million kyat (US$1,050).[229]

This broadly worded provision is, in effect, Myanmar's fourth criminal defamation law. Than Zaw Aung of the Myanmar Media Lawyers' Network views the law as very dangerous to freedom of speech, noting that politicians could use it to mute criticism or allegations of corruption, particularly during election periods.[230]

Unlike the amended Telecommunications Law, the Privacy Law does not limit those who can file complaints to those whose reputations were allegedly damaged, thus providing an avenue for third-party defamation complaints. Since the amendment of the Telecommunications Law in August 2017, several individuals have filed third-party complaints about comments critical of government officials under the Privacy Law.

Prosecution for Criticizing the Mon State Chief Minister

In January 2018, Aung Ko Ko Lwin, a resident of Thaton town in Mon State, posted a video clip of the Mon State chief minister, Dr. Aye Zaw, urging residents of Thaton to "eat only a dish of curry" at mealtime to bring down food prices. He also posted comments criticizing the minister for failing to respond to requests for an electrical transformer for the town's central market and for LED safety signals at a railway crossing that is the site of frequent accidents.[231]

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[228] Law Protecting the Privacy and Security of Citizens, No. 5/2017, http://www.myanmar-responsiblebusiness.org/pdf/Law-Protecting-Privacy-and-Security-of-Citizens_en_unofficial.pdf (accessed December 5, 2018).

[229] Privacy Law, sec. 10.

[230] Human Rights Watch interview with Than Zaw Aung, Yangon, April 27, 2018.

[231] Nyan Soe Win, "Netizen Sued After Criticizing Mon State Chief Minister on Facebook," *Irrawaddy,* January 8, 2018, https://www.irrawaddy.com/news/burma/netizen-sued-criticizing-mon-state-chief-minister-facebook.html (accessed January 10, 2018); "Burma: Privacy Law Used to Prosecute Critics," Human Rights Watch news release, January 12, 2018, https://www.hrw.org/news/2018/01/12/burma-privacy-law-used-prosecute-critics.

A member of the ethnic affairs committee of the Mon State parliament, Saw Kyaw Moe, filed a complaint against Aung Ko Ko Lwin under section 8(f) of the Privacy Law, saying that the comments "spoil the image of the town."[232] Aung Ko Ko Lwin was arrested in June and detained pending trial.[233] On September 27, he was convicted and sentenced to a year in prison.[234]

Prosecution for Criticizing State Government Official

Aung Than Wai was sentenced to six months in prison for social media comments critical of the Rakhine State government's handling of a disturbance in Mrauk U in which seven protesters were killed by security forces.[235] On June 18, 2018, he posted on his Facebook page: "Former Secretary of Rakhine State government Tin Maung Swe, who has weapons for killing. Who is the culprit of the Mrauk U massacre?" The Rakhine State government filed a complaint, and he was arrested on June 21.[236] On October 26, he was convicted of violating the Privacy Law and sentenced to six months in prison. He was also sentenced to six months for criminal intimidation in violation of section 506 of the Penal Code. The court ordered that the two sentences be served concurrently.[237]

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[232] "Burma: Privacy Law Used to Prosecute Critics," Human Rights Watch news release.

[233] Assistance Association for Political Prisoners (Burma), "Facing Trial List June 2018," http://aappb.org/wp-content/uploads/2018/07/206-facing-trial-list-updated-on-June-30-2018-Updated.pdf (accessed October 1, 2018).

[234] "Man Gets Year in Jail for Criticizing State Minister," *Myanmar Times,* October 1, 2018, https://www.mmtimes.com/news/man-gets-year-jail-criticising-state-minister.html (accessed October 1, 2018).

[235] Security forces opened fire on protesters in Mrauk U on January 16, 2018, killing seven Rakhine Buddhists. "7 Rakhine Buddhists Killed as Myanmar Police Fire on Riot," *Channel News Asia,* January 17, 2018, https://www.channelnewsasia.com/news/asia/7-rakhine-buddhists-killed-as-myanmar-police-fire-on-riot-9868894 (accessed January 18, 2018).

[236] "Police Arrest Dr. Aye Maung's Supporter in Sittwe Under Two Charges," *BNI,* June 22, 2018, https://www.bnionline.net/en/news/police-arrests-dr-aye-maungs-supporter-sittwe-under-two-charges (accessed December 8, 2018).

[237] Naung Naung, "Critic of Rakhine State Government Given Six Months' Prison Time," *Mizzima,* October 27, 2018, http://mizzima.com/news/critic-rakhine-state-government-given-six-months-prison-term (accessed December 8, 2018).

VIII. Peaceful Assembly and Peaceful Procession Law

While the NLD-dominated parliament amended the Peaceful Assembly and Peaceful Procession Law in October 2016 to eliminate some of the most egregious rights-violating provisions in the law, the right to peaceful assembly remains restricted in Myanmar. As amended, the law no longer requires police permission for an assembly, but instead requires notification to the township police 48 hours in advance of an assembly. In practice, however, the notification requirement is frequently treated by local authorities as a de facto request for permission that can be arbitrarily denied, in violation of international standards for the protection of freedom of assembly and expression.[238]

Even when police do not attempt to block a protest, they often require that the protest take place at a location other than the one selected by the organizers. As Thinzar Shunlei Yi, advocacy director of Action Committee for Democracy Development, noted, "The law now requires only notice, not permission. But if you give notice, they will direct you to another place, like the protest ground. If you do it elsewhere, they will arrest you."[239]

Moreover, the 2016 amendments to the law left intact the criminal sanctions for failure to give notice or failure to comply with the remaining overly broad restrictions on what can be said and done at an assembly. As a result, the law continues to be used to arrest organizers and participants in peaceful assemblies, in violation of international human rights standards establishing that no one should be held criminally liable for the mere act of organizing or participating in a peaceful assembly.[240]

The law also provides no exception for spontaneous assemblies, in violation of international human rights standards.[241] "If something happens, we want to protest now,

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[238] UN Human Rights Council, Joint Report of the Special Rapporteur on the rights of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, February 4, 2016, para. 21.

[239] Human Rights Watch interview with Thinzar Shunlei Yi, Yangon, April 3, 2018.

[240] Joint Report of the Special Rapporteurs, para. 27.

[241] Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly: Secon* (Warsaw: OSCE/ODIHR, 2010), https://www.osce.org/odihr/73405?download=true (accessed December 5, 2018), paras. 97-98; see also Joint Report of the Special Rapporteurs, para. 23, which states:

but we have to give notice of 48 hours," said Thinzar Shunlei Yi. "These are bureaucratic barriers for us. We should be able to protest at any time—we just let them know for our safety and so they can close roads."[242]

Proposed Amendments

In February 2018, the government proposed further amendments to the Peaceful Assembly and Peaceful Procession Law. The amendments would require applicants seeking permission to hold a rally to inform local authorities the amount of money used to support the gathering and the funders. In addition, the amendments authorize a sentence of up to three years in prison for anyone who "provokes, persuades or urges anyone to join a peaceful assembly and peaceful procession by using money or assets or other ways, with the intention of disrupting security, rule of law, tranquility or public morality." This broad language leaves far too much discretion to law enforcement officers, opening the door to use of the law to penalize protesters based on the content of their message.

The proposed amendments would also add to the notice requirement in section 4 of the law that organizers ensure the rally is "not contrary to the existing laws, stability, rule of law, peace and tranquility of the community and public morality."[243] It appears designed to allow the authorities to prohibit any protest they deem to violate these standards. As noted by Tha Lun Zaung Htet, a leading member of the Protection Committee for Myanmar Journalists, "These are broad words, like rubber bands. It will be the rubber band law that can stretch to include anything."[244]

Some of those interviewed believe the requirement to disclose funding is a response to large rallies by ultranationalists and supporters of the military. Thinzar Shunlei Yi said:

"Spontaneous assemblies should be exempt from notification requirements, and law enforcement authorities should, as far as possible, protect and facilitate spontaneous assemblies as they would any other assembly."

[242] Human Rights Watch interview with Thinzar Shunlei Yi, April 3, 2018.

[243] "Hundreds March Against Proposed Changes to Peaceful Assembly Law," *Irrawaddy,* March 6, 2018, https://www.irrawaddy.com/news/hundreds-march-proposed-changes-peaceful-assembly-law.html (accessed March 8, 2018).

[244] Human Rights Watch interview with Tha Lun Zaung Htet, Yangon, March 26, 2018.

Demonstrators shout slogans at a protest against an amendment to Myanmar's public assembly law in Yangon, March 5, 2018. © 2018 Thein Zaw/AP Photo

> The NLD sees these as a threat to government processes. They don't understand that people would go out on their own—they think all protesters get paid. They want to track down the stakeholders and funders.... But this will impact other protesters. When we raise this, MPs say, "We won't charge you with this law. You are legitimate." But the law is implemented by police and township administrators.[245]

Both Myanmar civil society organizations and military-appointed lawmakers objected to the proposed amendments. On March 5, 2018, the Action Committee for Democracy Development released a statement, endorsed by more than 200 groups, opposing the proposed amendments and calling for further "democratic" amendments to the law.[246] On

[245] Human Rights Watch interview with Thinzar Shunlei Yi, April 3, 2018.

[246] Action Committee for Democracy Development, Facebook post, March 5, 2018. Some military-appointed MPs also opposed the proposed amendments. "Amendments to Assembly Bill Approved by Amyotha Hluttaw," *Myanmar Times,* March

the same day, hundreds of people marched through downtown Yangon to protest the amendments.[247] Two days later, the upper house of parliament passed the amendments, with the only change being a reduction in the possible sentence from three years to two years.[248] At time of writing, the amendments were pending before the lower house of parliament.

Ban on Assemblies in Yangon

Local governments have further restricted rights to peaceful assembly. In November 2017, a total ban on protests in 11 townships in central Yangon was announced. The ban, set forth in a directive by Yangon Region Security and Border Affairs Minister Col. Aung Soe Moe, instructs police in those Yangon townships to deny all applications for processions or assemblies to avoid "public annoyance and anxiety" and sets aside one small area of Yangon for all protests.[249]

The directive, which precludes protests near Yangon City Hall, most government offices, and many foreign embassies, makes it impossible for those protesting against government policies or acts of foreign governments to demonstrate anywhere near the target of their protests.

While governments can impose reasonable time, place, or manner restrictions on specific assemblies, under international human rights norms they have the burden of showing that imposing restrictions is necessary to protect a legitimate interest, and that the restriction is a proportionate response to the perceived risk. The stated justifications for the ban, which include public nuisance and traffic congestion, are insufficient to justify such an

8, 2018, https://www.mmtimes.com/news/amendments-assembly-bill-approved-amyotha-hluttaw.html (accessed July 24, 2018).

[247] "Hundreds March Against Proposed Changes to Peaceful Assembly Law," *Irrawaddy*.

[248] "CSOs to Contest Peaceful Assembly Amendments," *DVB,* March 9, 2018, http://www.dvb.no/news/csos-contest-peaceful-assembly-amendments/80089 (accessed July 24, 2018).

[249] "Burma: Withdraw Protest Ban in Yangon," Human Rights Watch news release, November 15, 2017, https://www.hrw.org/news/2017/11/15/burma-withdraw-protest-ban-yangon. The 11 townships where peaceful assemblies and processions are prohibited are Kyauktada, Pabedan, Latha, Lanmadaw, Botahtaung, Bahan, Sanchaung, Dagon, Ahlone, Mingalar Taung Nyunt, and Pazundaung. "Civil Groups Question Assembly Ban," *Myanmar Times,* November 10, 2017, https://www.mmtimes.com/news/civil-groups-question-assembly-ban.html (accessed November 12, 2017).

incredibly broad and open-ended burden placed on the right to peaceful assembly.[250] As United Nations human rights experts have made clear, a certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance, and even harm to commercial activities, needs to be tolerated if the right to peaceful assembly is not to be deprived of substance.[251]

More importantly, a blanket ban on all assemblies in a given area is by nature disproportionate because it precludes consideration of the specific circumstances of each proposed assembly.[252]

Authorities in Yangon appear to be selectively enforcing the ban, with some assemblies permitted to take place without hindrance, while others result in arrest of the organizers. For example, as discussed above, the authorities took no action to stop a large protest against proposed amendments to the Peaceful Assembly and Peaceful Procession Law in central Yangon in March 2018. The organizers of that protest submitted a letter informing the police in multiple townships that there would be a march with about 1,000 people. Thinzar Shunlei Yi, one of the organizers, said they worried about the protest ban. "Our protest went through some of the townships," she said. "Should we avoid those townships? Do we need permission or not? What will happen? In the end, we went through several of those townships but nothing happened."[253]

Similarly, no action has been reported against thousands of pro-military supporters who rallied in downtown Yangon on February 5, 2018, or against those who rallied on October 15 to protest calls by concerned governments for referral of the country's military leaders to the International Criminal Court.[254]

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[250] "Police Confirm Protest Ban in Downtown Yangon," *Irrawaddy,* November 10, 2017, https://www.irrawaddy.com/news/police-confirm-protest-ban-downtown-yangon.html (accessed November 11, 2017).

[251] Joint Report of the Special Rapporteurs, para. 32.

[252] Ibid., para. 30. It states: "To this end, blanket including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular ties, are intrinsically disproportionate, because the preclude consideration of the specific circumstances of each proposed assembly."

[253] Human Rights Watch interview with Thinzar Shunlei Yi, April 3, 2018.

[254] "Pro-Military Rally Denounces Peace Performance, Mocks Student Leader," *Irrawaddy,* February 5, 2018, https://www.irrawaddy.com/news/burma/pro-military-rally-denounces-peace-performance-mocks-student-leader.html (accessed August 15, 2018); "Yangon Pro-Military Rally Draws Thousands as Wirathu Hits Back at UN," *Frontier Myanmar,* October 15, 2018, https://frontiermyanmar.net/en/yangon-pro-military-rally-draws-thousands-as-wirathu-hits-back-at-un (accessed October 15, 2018).

By contrast, those seeking to hold a peaceful protest against the conflict in Kachin State in May 2018, discussed below, were told that the assembly could not proceed because it would violate the protest ban. The ban was also initially invoked when journalists sought to hold a protest against the conviction of Reuters reporters Wa Lone and Kyaw Soe Oo, but the protest was ultimately allowed to go forward.[255]

Prosecutions for Peaceful Assemblies

Prosecution of Solo Peace Protester

On February 4, 2017, final-year medical student Nyan Myo Aung attempted to hold a one-man protest calling for peace in front of Magway City Hall. He did not give advance notice of his protest, which involved standing with a placard calling for an end to war in Myanmar, because he did not believe the law applied to protests involving only one person.[256]

His attorney, Robert San Aung, said his client had not even started his protest when police arrested him.[257] Nyan Myo Aung was charged with violating section 19 of the Peaceful Assembly and Peaceful Procession Law. He was convicted on May 2, 2017, and sentenced to 15 days in prison or a fine of 30,000 kyat (US$21). He chose to pay the fine.[258]

Nyan Myo Aung was quoted in the media saying, "Although I paid the fine, I am not happy. I am protesting for basic human rights and against the government's restriction on citizens' rights to freedom of speech."[259]

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[255] "Authorities Ban Protests Against Jailing of Reuters Journalists, Threaten Arrests," *Frontier Myanmar,* September 13, 2018, https://frontiermyanmar.net/en/authorities-ban-protests-against-jailing-of-reuters-journalists-threaten-arrests (accessed September 13, 2018); "Activists protest to demand release of jailed journalists," *Myanmar Times,* September 17, 2018, https://www.mmtimes.com/news/activists-protest-demand-release-jailed-journalists.html (accessed September 17, 2018).

[256] "Medical Student Arrested for Staging One-Man Protest," *Myanmar Times,* February 6, 2017, https://www.mmtimes.com/national-news/mandalay-upper-myanmar/24826-medical-student-arrested-for-staging-one-man-protest.html (accessed March 2, 2017). Under international standards, notification should not be required for a one-person assembly. Joint Report of the Special Rapporteurs, para. 21, states: "Notification should not be expected for assemblies that do not require prior preparation by State authorities, such as those where only a small number of participants is expected, or where the impact on the public is expected to be minimal."

[257] Human Rights Watch interview with Robert San Aung, Yangon, April 6, 2018.

[258] "Fine for Medical Student Protesting for Peace," *Myanmar Times,* May 3, 2017, https://www.mmtimes.com/national-news/mandalay-upper-myanmar/25821-fine-for-medical-student-protesting-for-peace.html (accessed June 14, 2018).

[259] Ibid.

Students take part in an anti-war rally in Yangon, Myanmar, calling for an end to the conflict in Kachin State. May 6, 2018. © 2018 Ann Wang/Reuters

Prosecution for Peace Protests

In May 2018, as reports of heavy fighting in Kachin State and civilians trapped in the jungle filtered out into the media, concerned citizens held a series of peace protests around the country. The police filed 15 cases under the Peaceful Assembly and Peaceful Procession Law against at least 47 participants in peace protests, with seven cases in Yangon, three in Mandalay, three in Bago, and two in Kachin state.[260] Below are details from a few of those cases.

[260] Athan, "Number of Cases Filed Against the Peace Protests in May," Facebook post, June 4, 2018, https://www.www.facebook.com/athan.foe.myanmar. For a detailed report on the protests in Yangon and Myitkyina, see Progressive Voice, "Time to Hear Our Voices: Freedom of Assembly and the Youth Peace Movement in Myanmar," July 2018, https://progressivevoicemyanmar.org/2018/07/12/time-to-hear-our-voices-freedom-of-assembly-and-the-youth-peace-movement-in-myanmar/ (accessed December 5, 2018).

Myanmar police stop a group of demonstrators during an anti-war protest in Yangon, May 12, 2018. © 2018 Sai Aung Main/AFP/Getty Images

Yangon Peace Protest

On May 10, 2018, organizers submitted notice of a planned protest in downtown Yangon to the police stations in the six townships through which they planned to march on May 12.[261] "We were told that protests are banned in the downtown area when we were at Mingalar Taung Nyunt township police station by the station head, but it was just words," said civic educator Khin Sandar Tun, one of the protest organizers. "He didn't show us any letter." The police subsequently delivered letters to the homes of the organizers stating that the protest could not go forward.[262] In response, the organizers sent letters to the police stations stating that the ban was not consistent with the law and that the protest would go forward.

[261] Human Rights Watch interview with Khin Sandar Tun, Yangon, June 20, 2018. The townships notified were Tamwe, Mingalar Taung Nyunt, Bahan, Kyauktada, Pabedan, and Dagon.

[262] Human Rights Watch interview with Khin Sandar Tun, June 20, 2018.

Protest participants began gathering near Ocean Supercenter at about 3:30 p.m. on May 12 for a protest due to start at 5 p.m. Pro-military counter-protesters began arriving at around the same time. According to Khin Sandar Tun, at about 5 p.m., around 100 people chanting "stop wars immediately!" started to march, and the police immediately blocked them from the main road.[263] Those in the front line of the protest, including Moe Thway and Maung Saungkha, tried to negotiate with the police. "We were very worried something is going to happen because there were more and more people arriving," said Khin Sandar Tun. "That's why we tried to step back. When we were talking to the participants that we are taking steps back, police started beating protesters."[264]

Zayar Lwin, who was in the fourth row of protesters holding a megaphone, said that after negotiating with the police for about 15 minutes, protest organizer Ei Ei Moe announced to the participants that there would be another protest the next week, and those at the back started to leave. With police still blocking the front line, those near the front yelled to the police: "We're going back! You should not block the people anymore!"[265]

Khin Sandar Tun said she heard bystanders yelling at the police: "What are you watching? Just beat them! Beat them!"[266] Zayar Lwin was pushed into the crowd and dropped the megaphone he was holding. A police officer put his shield under Zayar Lwin's throat, pushed him to the wall, and beat him with a baton.[267] He was then carried to a police van and thrown in, where he found three others already there: "I fell in the van and a police woman kicked me and said, 'Hey, get up! Get up!'"[268]

When Khin Sandar Tun saw the police beating Zayar Lwin and several others with batons, she shouted, "Why are you guys beating them up? You can arrest them without beating them up." When she persisted in challenging the police, five police women seized her. "They dragged my arm and shoulder forcefully. Another police woman tried to rip my shirt

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[263] Protection Committee for Myanmar Journalists, "Violent Threats and Assaults on Myanmar News Media: Report on the Violent Crackdown Against the Anti-War Protesters in Yangon on May 12, 2018," statement, May 13, 2018, English translation of statement posted on Facebook page in Burmese on May 13, 2018.

[264] Human Rights Watch interview with Khin Sandar Tun, June 20, 2018.

[265] Human Rights Watch interview with Zayar Lwin, Yangon, June 20, 2018.

[266] Human Rights Watch interview with Khin Sandar Tun, June 20, 2018.

[267] Human Rights Watch interview with Zayar Lwin, June 20, 2018.

[268] Ibid.

from the back."[269] The police women pulled her to the police van and pushed her in. "I fell on the stairs of the van," she said. "The door of the van was just half open and I got hit by the door. It was very painful."[270]

Ultimately, police arrested nine people, who were transported first to Yankin township police station, and then to South Okkalapa township police station where the police questioned them.[271] After questioning, they were taken to Mingalar Taung Nyunt township police station, where they were detained overnight. All were released on bail the following afternoon.

Eight of the nine, plus an additional nine participants in the protest, were then charged under section 20 of the Peaceful Assembly and Peaceful Procession Law, which authorizes a sentence of up to one month in prison for anyone who violates any of the broadly worded rules governing the conduct of assemblies in sections 8, 9, and 10 of the law.[272] At time of writing, it was not yet clear what provision of the law they were accused of violating.[273]

Zayar Lwin said he was surprised to be arrested, much less charged. "I didn't think that I'm going to be arrested because I'm not an organizer," he said. "I think I am charged because I've had some confrontation with the Ministry of Home Affairs before."[274]

In a letter sent to top government officials including Aung San Suu Kyi and President Win Myint, eight of the rally organizers said action should be taken against the police, which come under the military's control.

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[269] Human Rights Watch interview with Khin Sandar Tun, June 20, 2018.

[270] Ibid.

[271] Ibid.

[272] One person, who had just been passing by the rally, was later released according to Khin Sandar Tun. The eight who were arrested at the rally and were facing charges are Zayar Lwin, Tin Htut Paing, Phoe Soe, Myat Kyaw, Htar Htar Nwe, Ye Htut Lwin, Khin Sandar Tun, and Pyae Phyo Naing.

[273] One local media report quoted Bahan township police chief as saying they were charged under section 20 because they had "disturbed the people." "Yangon Police Charge, Release 17 Peace Protesters," *Myanmar Times,* May 14, 2018, https://www.mmtimes.com/news/yangon-police-charge-release-17-peace-protesters.html (accessed July 24, 2018). Section 10(a) of the PAPPL states that those who participate in peaceful assemblies must not "talk or behave in a way to cause any disturbance or obstruction, annoyance, danger, or a concern that these might take place."

[274] Human Rights Watch interview with Zayar Lwin, June 20, 2018. Zayar Lwin faced multiple charges under the PAPPL and section 505(b) of the Penal Code under the Thein Sein administration for organizing a protest calling for amendment of the constitution. Human Rights Watch, "Dispatches: Retroactive Repression of Burma's Students," February 8, 2016, https://www.hrw.org/news/2016/02/08/dispatches-retroactive-repression-burmas-students.

"Police came, arrested us and beat us for no reason, and that's why we are demanding action to be taken against police who violently handled the peaceful protest," the letter stated.[275] The Protection Committee for Myanmar Journalists issued a report documenting the use of force against unarmed protesters by police and pro-military protesters. The Myanmar Human Rights Commission opened an investigation into the protest and its aftermath.[276]

Prosecution for Reciting Poems for Peace

On May 14, 2018, the day after he was released from custody, Zayar Lwin attended an event in Maha Bandoola Park at which individuals recited poems calling for peace and an end to war in Myanmar. He was asked to give a speech that the police tried to stop.[277] Afterward, a police officer came up to him while he was talking to the media and asked him to come to the police station. "I told him to send me an official letter," Zayar Lwin said. He was charged under section 19 of the Peaceful Assembly and Peaceful Procession Law for failing to provide notice of the event, even though he was not involved in organizing it.[278] Two poets, Khant Min Htet and Shwe Kyal Moe, were also charged with violating the same provision.

On September 19, all three were convicted and sentenced to 15 days in prison or a fine of 20,000 kyat (US$14). While Khant Min Htet and Shwe Kyal Moe paid the fine, Zayar Lwin chose to serve the prison term because "our trial shows the devastation of the judicial system of the country."[279]

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[275] Sam Aung Moon and Yimou Lee, "Myanmar Anti-War Protesters Call on Suu Kyi to Act Against 'Violent' Police," Reuters, May 30, 2018, https://www.reuters.com/article/us-myanmar-kachin-protests/myanmar-anti-war-protesters-call-on-suu-kyi-to-act-against-violent-police-idUSKCN1IV1J7 (accessed May 30, 20018).

[276] "Myanmar Rights Commission Meets with Journalists in Probe of Crackdown on Antiwar Protesters," Radio Free Asia, June 1, 2018, https://www.rfa.org/english/news/myanmar/myanmar-rights-commission-meets-with-journalists-in-probe-of-crackdown-on-antiwar-proteters-06012018154406.html (accessed July 25, 2018).

[277] Human Rights Watch interview with Zayar Lwin, June 20, 2018.

[278] Ibid.

[279] Zarni Mann, "Activist Receives 15-Day Sentence for Peace Protest," *Irrawaddy,* September 20, 2018, https://www.irrawaddy.com/news/burma/activist-receives-15-day-sentence-peace-protest.html (accessed September 20, 2018).

Mandalay Peace Protests

On May 6, 2018, approximately 40 people held a peace protest in Mandalay calling for an end to the fighting in Kachin State and demanding that the authorities help villagers trapped in conflict zones there. Activists and civil society members wore blue shirts reading "May peace prevail in Myanmar" and holding placards reading "No War," "Free IDPs," and "Stop attacks in ethnic areas," along with photos of displaced children.[280]

Police arrested activists Aung Hmine San and Soe Moe Naing, as well as the poet Kalint. They were charged with failing to give notice of the protest, in violation of section 19 of the Peaceful Assembly and Peaceful Procession Law. Kalint was convicted and sentenced to one month in prison on May 10, and the two activists were sentenced to two months in prison on May 22.[281] In addition, Kalint was fired from his job on the civilian staff of the military's Central Command for participating in the protest. His younger brother, who worked on the civilian municipal staff at the same military office, was reportedly fired for being the brother of a peace protester.[282]

Two other men, Than Htike and Thet Hnin Aung, were arrested on May 12 while handing out questionnaires in Mandalay to solicit views on the peace process and armed conflicts around the country. Police charged them with violating section 19 of the Peaceful Assembly and Peaceful Procession Law by participating in a candlelight protest calling for an end to fighting in Kachin State and assistance for villagers trapped by fighting.[283] Although eligible for bail, they chose to defend themselves from prison.[284] On July 5, they were convicted of violating section 19 and sentenced to three months in prison. Than Htike was quoted in local media as saying, "In a genuine democracy, people are not arrested or

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[280] "Police Sue Protest Organizers in Mandalay, Yangon," *Irrawaddy,* May 8, 2018, https://www.irrawaddy.com/news/burma/police-sue-protest-organizers-in-mandalay-yangon.html (accessed July 24, 2018).

[281] "Two Antiwar Protesters Sentenced For Unlawful Assembly in Myanmar's Mandalay," May 22, 2018, https://www.rfa.org/english/news/myanmar/two-antiwar-protsters-sentenced-for-unlawful-assembly-in-myanmars-mandalay-05222018152758.html (accessed July 5, 2018).

[282] "Two Men Jailed for Three Months for Taking Part in Mandalay Peace Protests," *Irrawaddy,* July 5, 2018, https://www.irrawaddy.com/news/two-men-jailed-three-months-taking-part-mandalay-peace-protests.html (accessed July 5, 2018).

[283] Assistance Association for Political Prisoners (Burma), "May Chronology 2018," http://aappb.org/wp-content/uploads/2018/06/Final-may-chronology.pdf (accessed October 1, 2018).

[284] "Two Men Jailed for Three Months for Taking Part in Mandalay Peace Protests," *Irrawaddy.*

subject to legal action for expressing their thoughts in public. Our actions were taken for the sake of peace."[285]

Prosecution for Prayer Event in Myitkyina

On June 9, 2018, thousands of people attended a prayer event at the Manaw ground in Myitkyina to mark the seventh anniversary of the resumption of military clashes in Kachin State. Although organizers had received official approval for the assembly, the police asserted that the event continued beyond the permitted time and included the staging of a drama for which permission had not been granted. Police said that the organizers would be charged under the Peaceful Assembly and Procession Law.[286] According to the Assistance Association for Political Prisoners (Burma), Sara Ying Kyang, one of the organizers, was fined 10,000 kyat (US$7) under section 20 of the law for failing to notify authorities that they would stage a drama and for continuing the event past the permitted time.[287]

Protest Calling for Prosecution of Generals

On September 28, 2018, activist Tin Maung Kyi of the Movement for Democracy Current Forces held a solo protest outside Yangon City Hall calling for the prosecution of Myanmar's generals by the International Criminal Court.[288] His protest took place a day after the UN Human Rights Council adopted a resolution on Myanmar establishing an international mechanism to collect and preserve evidence of atrocities and prepare case files for future prosecutions.[289]

Shortly after he began his protest, police officers surrounded him and arrested him. He was taken by vehicle to Kyauktada township police station and then sent to Insein Prison

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[285] Ibid.

[286] "Organizers of Myitkyina Anti-War Protest Face Legal Action," *Irrawaddy,* June 11, 2018, https://www.irrawaddy.com/news/burma/organizers-myitkyina-anti-war-protest-face-legal-action.html (accessed July 4, 2018).

[287] Assistance Association for Political Prisoners (Burma), "June Chronology 2018," http://aappb.org/wp-content/uploads/2018/07/Chronology-June-2018.pdf (accessed October 1, 2018).

[288] "VIDEO: Police Swarm Anti-War Protester Outside Yangon City Hall," *Coconuts Yangon,* October 1, 2018, https://coconuts.co/yangon/news/video-police-swarm-anti-war-protester-outside-yangon-city-hall/ (accessed October 3, 2018); Human Rights Watch telephone interview with Than Than Maw, wife of MDCF leader Htin Kyaw, October 3, 2018.

[289] Nick Cumming-Bruce, "Human Rights Council Ratchets Up Pressure on Myanmar," *New York Times,* September 27, 2018, https://www.nytimes.com/2018/09/27/world/asia/myanmar-un-human-rights.html (accessed September 28, 2018).

that night.[290] He had reportedly notified the police of his plan to protest five days in advance, but was informed that his request had not been granted.[291] He has been charged with violating section 20 of the Peaceful Assembly and Peaceful Procession Law and section 505(b) of the Penal Code.[292]

[290] Human Rights Watch telephone interview with Than Than Maw, October 3, 2018.

[291] Amnesty International, "Activist Charged for Peaceful Anti-Military Protest," Urgent Action appeal, November 5, 2018, https://www.amnesty.org/en/documents/asa16/9336/2018/en/ (accessed December 1, 2018).

[292] Ibid. On December 3, Ko Kyaw Zin Latt, who was on the list of organizers in the application for the protest but who did not give a speech, pled guilty to violating article 20 of the PAPPL and was sentenced to 15 days in prison.

IX. Other Issues Impacting Freedom of Expression and Press

Access to Information

Press freedom in Myanmar is also hampered by a lack of access to information. Many journalists highlighted that government officials routinely refuse to answer questions or simply do not answer their phones. "No one is acting like a spokesperson," said journalist Lawi Weng. "They say, 'Why are you asking me about that?' They kick the ball. One person sends you to someone else, they send you back to the first person, then they don't answer the phone."

"Under the Thein Sein government, you could contact union ministers and get responses," said Tha Lun Zaung Htet from the Protection Committee for Myanmar Journalists. "Now, they don't reply. They don't care about the media."[293]

Although the Ministry of Information has uploaded contact information for all of the ministries, journalists reported that often no one answers the phone. "If they do answer, they say they are not the right person to answer the question," said Lawi Weng. "It is the same with local government ministries. Some local lawmakers are good, but most government officials worry about their position and aren't willing to say anything."[294]

The military issues press statements, but there is no ability to question the information, according to Myint Kyaw.[295] Kyaw Min Swe of *The Voice Daily* said, "The lack of response makes it hard to be balanced in reporting … so you have to say, 'We tried to contact the military but received no response.' Some media even say, 'We tried several times,' or 'We tried contacting this phone number.'"[296]

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[293] Human Rights Watch interview with Tha Lun Zaung Htet, Yangon, March 26, 2018.

[294] Human Rights Watch interview with Lawi Weng, Yangon, March 31, 2018.

[295] Human Rights Watch interview with Myint Kyaw, Yangon, March 29, 2018.

[296] Human Rights Watch interview with Kyaw Min Swe, Yangon, March 29, 2018.

While there were several consultations with civil society organizations about a draft right to information law, the current content and status of that draft law remains unclear.

Access to Conflict Areas

By-laws issued by the Ministry of Information under the News Media Law state that news media workers "can request that the security forces allow them to gain access to gather information in areas of conflict, protests, riots or public demonstrations by showing the IDs given to them by their respective news media organizations, and follow the instructions required by the authorities."[297]

In reality, however, the security forces routinely deny journalists access to areas of ongoing conflict, often claiming it is for the journalist's own protection. "The News Media Law says journalists can go to conflict areas, but the military stops journalists trying to go, using guns," said Zayar Hlaing. "The government never says anything."[298]

Myint Kyaw also criticized the government's failure to speak up on the issue of access: "I know the military is an obstacle, but the government is also silent. They don't have full power but they make no comments or remarks on that issue."[299] The use of the Unlawful Associations Act against journalists meeting with ethnic armed groups has further restricted the flow of information about armed conflict.

Access to Rakhine State has been particularly restricted in recent years. According to Myanmar Press Council member Myint Kyaw, in April 2017, President Htin Kyaw sent a letter saying that journalists must have permission to go to Rakhine State.[300] Since the military operations began in August 2017, only those selected by the government to participate in tightly controlled state-organized trips have been able to gain access to the area.

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[297] Ministry of Information, Notification No. 45/2015, June 17, 2015 (unofficial translation).

[298] Human Rights Watch interview with Zayar Hlaing, Yangon, April 2, 2018.

[299] Human Rights Watch interview with Myint Kyaw, Yangon, March 30, 2018.

[300] Ibid.

The government has legitimate security concerns in battle zones. However, the threats posed do not provide a legal justification for the broad-brush and indefinite restrictions on freedom of movement that have been imposed. Any such restrictions need to be based in law, narrowly construed in application and time to address a particular government concern, and proportionate to achieving a specific aim. Without access, independent reporting on armed conflict becomes impossible, thereby denying the press and public their rights to seek, receive, and impart information as guaranteed by the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

Weakness of the News Media Law

Myanmar's News Media Law, and the Press Council formed pursuant to that law, are widely viewed by Myanmar journalists as in need of serious reform. The Myanmar Press Council can have between 15 and 30 members. Three of the members of the Press Council are proposed by the government.[301] Press Council members can be removed by the president on the recommendation of two-thirds of the council members.[302] The Press Council is also funded, at least in part, by the government.[303]

This arrangement has led many in the media and civil society to view the Press Council as being too close to the government. Yin Yadanar Thein of Free Expression Myanmar was one of many who commented that the Press Council "needs to be truly independent, with no ability of the government to appoint members."[304]

The News Media Law gives those who believe that members of the media have violated the responsibilities or "code of conduct" set forth in section 9 of the law "the right"—but not the obligation—to complain to the council, which can attempt to reach a "compromise" between the parties.[305] Where the parties cannot work out a compromise, the complainant

[301] News Media Law, sec. 13(a). One member is proposed by the president, and one by the speakers of each of the houses of parliament.

[302] Ibid., sec. 17(b).

[303] Ibid., sec. 19.

[304] Human Rights Watch interview with Yin Yadanar Thein, Yangon, April 4, 2018; see also Free Expression Myanmar, "News Media Law," January 16, 2017, http://freeexpressionmyanmar.org/news-media-law (accessed December 5, 2018).

[305] News Media Law, secs. 21-22.

"can prosecute the other party at the relevant court under applicable laws."[306] Journalists said that among the law's weaknesses is its failure to require those dissatisfied with news reports, including government officials, to address those complaints to the Press Council for mediation as a first step.

Some members of the news media report that, when complainants do seek the help of the Press Council, the body pressures the media to apologize. Nyein Nyein Naing, chief editor of *7 Day Digital*, said, "The Press Council always encourages media to apologize. They don't negotiate for us. They just want us to make it go away. The Press Council should stand for the journalists."[307]

According to Myint Kyaw, a member of the Press Council, the number of complaints being filed with the Press Council is increasing as more people become aware that doing so is an option. "We have had some success in resolving disputes," he said. "Some have involved the Tatmadaw. Most media houses are scared, so when the Tatmadaw files a complaint, they are quick to make a correction or to apologize."[308]

According to Yin Yadanar Thein:

> The Press Council said they had a 93 percent success rate in negotiating media cases. But the question is how are they successful. When they negotiate, they pressure the media to apologize and then the military or government will withdraw the complaint. We want them to promote media freedom, not pressure media professionals to apologize.[309]

Many of those interviewed also expressed disappointment at the Press Council's perceived unwillingness to act on behalf of journalists who have been arrested. "The Press Council is supposed to protect press freedom, but they do not act," said Sein Win of the Myanmar Journalism Institute.[310] While the Press Council has issued statements and sent letters in

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[306] Ibid., sec. 23.

[307] Human Rights Watch interview with Nyein Nyein Naing, Yangon, April 5, 2018.

[308] Human Rights Watch interview with Myint Kyaw, March 30, 2018.

[309] Human Rights Watch interview with Yin Yadanar Thein, April 4, 2018.

[310] Human Rights Watch interview with Sein Win, Yangon, March 26, 2018.

some cases in which journalists have been arrested, it appears either unwilling or unable to go further.[311]

"If the Press Council were good, we would not have to go to prison," said Lawi Weng. "They should come to court and say we are real, registered journalists in the country, and that it isn't suitable for them to charge us. No one came. One time one person came, but only to observe—they didn't say anything."[312]

According to Zayar Hlaing, an executive member of the Myanmar Journalist Network and a member of the Press Council, "Wa Lone's wife sent a request to the Press Council to intervene, saying he had followed the code of conduct and should not be in jail. She asked the Press Council to press the government. It didn't."[313] The Press Council issued a statement a week after the Reuters journalists arrests calling for the government to settle the case using the News Media Law, but took no further action in the case.[314]

The Press Council's failure to act appears to derive, in part, from differing views on the role it is supposed to play. Some members of the Press Council view its role as simply that of a neutral mediator between the parties.[315] Once a criminal case is filed, in their view, there is nothing the Press Council can do. "In the Reuters case, the prosecutor did not complain to us, that's why we can't do anything for that case," said Press Council member Thiha Saw to local media.[316] Others, like Myint Kyaw, believe that the council can and should issue ethical judgments in such cases.[317]

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[311] For example, the Press Council sent a letter to the Ministry of Defense after the arrest of Lawi Weng and others under the Unlawful Associations Act but received no response. Nyan Hlaing Lynn, "Myanmar's Paper Tiger Press Council," *Frontier Myanmar,* July 20, 2017, https://frontiermyanmar.net/en/myanmars-paper-tiger-press-council (accessed September 24, 2018).

[312] Human Rights Watch interview with Lawi Weng, March 31, 2018.

[313] Human Rights Watch interview with Zayar Hlaing, April 2, 2018.

[314] Daung Lu and Cesan Myo Kyaw, "Myanmar Press Council Calls for Settling of Reporters Case through Media Law," *Mizzima,* December 21, 2017, http://www.mizzima.com/news-domestic/myanmar-press-council-calls-settling-reporters-case-through-media-law (accessed September 24, 2018).

[315] Human Rights Watch interview with Myint Kyaw, March 30, 2018.

[316] Ye Mon, "After Election, Press Council Members Target Law Reform," *Frontier Myanmar,* September 8, 2018, https://frontiermyanmar.net/mm/node/11426 (accessed September 19, 2018).

[317] Human Rights Watch interview with Myint Kyaw, March 30, 2018.

There also appears to be disagreement within the Press Council about the role that journalists in the country should play. Speaking at a media forum in August 2017, Aung Hla Tun, a journalist who served as vice chair of the Press Council until being appointed deputy minister of information in January 2018, said that "the greatest responsibility of media today in Myanmar is safeguarding our national image, which has been badly tarnished by some unethical international media reports."[318]

Ohn Kyaing, who became vice chair after Aung Hla Tun stepped down and who was elected chair of the Press Council in September 2018, told Commander-in-Chief Sr. Gen. Min Aung Hlaing in June 2018 that "the Tatmadaw and the media are of the same mind and aim."[319] He went on to say that "the media will do what is good for the country and the people."[320]

The Press Council held elections on August 18, 2018, with 29 new members taking office in September. Some of the new members have called for strengthening of the News Media Law to ensure better access to information and a stronger role for the Press Council, and at least one new member called for the incoming council to campaign for the release of Wa Lone and Kyaw Soe Oo.[321] However, newly elected chair Ohn Kyaing told media after his election that he will use his position to shield government and military officials from prosecution by the International Criminal Court.[322]

According to Myint Kyaw, the Press Council has suggested amendments to the News Media Law to the Ministry of Information, including one to mandate use of the News Media Law in any case involving journalists.[323] The status of those recommendations was unclear at time of writing.

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[318] "Concerns Voiced about Media Coverage of Myanmar," *Mizzima,* August 13, 2017, http://www.mizzima.com/news-domestic/concerns-voiced-about-media-coverage-myanmar (accessed September 24, 2018).

[319] Facebook post, MOI Webportal Myanmar, June 28, 2018, https://www.facebook.com/MOIWebportalMyanmar/posts/senior-general-min-aung-hlaing-receives-mpc-vice-chairman-1tatmadaw-commander-in/1597696737024853.

[320] Ibid.

[321] Ye Mon, "After Election, Press Council Members Target Law Reform," *Frontier Myanmar.*

[322] "Myanmar Press Council Chair Says Young Journalists Lack 'Knowledge, Experience, Ethics,'" *Coconuts Yangon,* September 10, 2018, https://coconuts.co/yangon/news/myanmar-press-council-chair-says-young-journalists-lack-knowledge-experience-ethics/ (accessed September 11, 2018).

[323] Human Rights Watch interview with Myint Kyaw, March 30, 2018. Myint Kyaw noted that the Press Council suggested the same provision in 2014, but it was rejected by the Ministry of Information.

Threats Against Journalists and Activists

Myanmar journalists and civil society activists also face threats and hostility, notably from ultranationalist groups, and have had little recourse to protection from the government. Thinzar Shunlei Yi said that those speaking about events in Rakhine State are at particular risk.[324] Fear of attacks by ultranationalist groups also leads to self-censorship in some cases by the media and activists.

In some instances, ultranationalist groups can influence events even without resorting to violence, as was the case with the Myanmar Journalist Network (MJN). The MJN works to promote freedom of expression and the press and to protect journalists' rights, and it has regularly allowed groups to use space in its offices to hold press conferences. Among those who have held press conferences are farmers whose land was confiscated and people alleging corruption in the judicial system.[325]

In February 2018, a Buddhist group opposed to the ultranationalist Committee for the Protection of Race and Religion, or Ma Ba Tha, asked to hold a press conference at the MJN office to call on the government to take action against Wirathu, to which MJN agreed.[326] On the day of the scheduled press conference, Ma Ba Tha supporters gathered outside the MJN office where the two groups clashed.[327] The anti Ma Ba Tha group canceled the press conference, with a member of the group quoted as saying, "If we continue with the briefing, there might be chaos."[328]

Soon after that, MJN's landlord said he would not rent to MJN anymore and ordered them to move out.[329] Not only did the authorities fail to provide protection against the Ma Ba Tha mob's intrusion, but when MJN sought new office space, the police advised local

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[324] Human Rights Watch interview with Thinzar Shunlei Yi, Yangon, April 3, 2018.

[325] Human Rights Watch interview with Zayar Hlaing, April 2, 2018.

[326] Ibid.

[327] "Landlord Bans Journalists Holding News Conferences," *Myanmar Times*, February 27, 2018, https://www.mmtimes.com/news/landlord-bans-journalists-holding-news-conferences.html (accessed November 5, 2018).

[328] "Anti-U Wirathu News Briefing Cancelled," *Myanmar Times*, February 26, 2018, https://www.mmtimes.com/news/anti-u-wirathu-news-briefing-cancelled.html (accessed November 5, 2018).

[329] "MJN Office to Close Down Following Anti-Wirathu Gathering," *DVB,* February 26, 2018, http://www.dvb.no/news/mjn-office-closed-following-anti-wirathu-gathering/79898 (accessed February 27, 2018).

government administrators that MJN had problems with religious groups at their previous office, thus discouraging other landlords from renting to them.[330]

"We are asking for press freedom and the release of journalists in jail. It is a very tough job," Zayar Hlaing said. "Now the religious groups are attacking us as well."[331]

Some ultranationalists accused video journalist Aung Naing Soe of being an Arakan Rohingya Salvation Army (ARSA) "terrorist" following the August 2017 attacks in Rakhine State. "There was an ARSA video on YouTube and one guy behind the speaker looks a bit like me," he said. "They took a screen shot of the video and circled that person and circulated it with other photos of me saying they [the police] should arrest this 'kalar' journalist."[332] A local intelligence officer in Yangon investigated Aung Naing Soe and later told him the problem had been solved. Despite that, when police arrested him in Naypyidaw for the drone case, nationalists who commented on the arrest on social media continued to call him a "terrorist."[333]

Esther Htusan, an award-winning journalist from Myanmar, left the country following threats. According to one journalist who knows her, "She was on a TV debate show and said that 'we can't know that the military didn't do anything wrong in Rakhine because we can't get in to check.' She was attacked for this, with lots of terrible, graphic images of rape and genitalia, and lots of rhetoric about how she should be raped."[334] One night, a man she did not know followed her and shouted her name near her apartment building.[335] Finally, in November 2018, after the government accused her of misrepresenting the content of a speech by Aung San Suu Kyi, a prominent supporter of Aung San Suu Kyi made a death threat against her online. In December, Htusan left the country for her own safety.[336]

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330 Human Rights Watch interview with Zayar Hlaing, April 2, 2018.

331 Ibid.

332 Human Rights Watch interview with Aung Naing Soe, Yangon, April 5, 2018.

333 Ibid.

334 Human Rights Watch interview with foreign journalist (name withheld), Yangon, March 29, 2018.

335 Shawn Crispin, "Threats, Arrests, and Access Denied as Myanmar Backtracks on Press Freedom," Committee to Protect Journalists, February 12, 2018, https://cpj.org/x/7146 (accessed November 2, 2018).

336 Ibid.

Recommendations

Since Human Rights Watch published *"They Can Arrest You at Any Time": The Criminalization of Peaceful Expression in Burma* in June 2016, the NLD-led government has aggressively used many of the overly broad, vague, and abusive laws identified in that report to suppress peaceful expression and freedom of the press.

The Myanmar government should act with urgency to bring its laws, policies, and practices into line with international law and standards. The following recommendations include many of those previously made in *"They Can Arrest You at Any Time*," as well as new recommendations regarding the Myanmar Press Council and News Media Law.

To the Government of Myanmar

- Amend Myanmar'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, leaving ample time for public review and consultation.
- Seek technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on international human rights standards, and ensure proposed legal revisions comply with those standards.

Legislative Drafting Unit

- To ensure the quality and clarity of newly drafted legislation, create a centralized technical legislative drafting unit, attached to the Office of the President or within the Office of the Attorney General, that is responsible for drafting all legislation, including amendments to existing legislation, as has been recommended by the UN Development Programme (UNDP).
- 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 Myanmar's 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.

Peaceful Assembly and Peaceful Procession Law

- Amend the 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 the law to make clear that police have a duty to protect protesters from those who seek to disrupt assemblies and from counter-demonstrators.
- Amend section 4 of the act to require notification of an assembly only if it will involve sufficient people to require facilitation, for instance, more than 50 people for a demonstration or more than 10 for a procession, as suggested in international guidelines. The notice requirement should only be to allow the authorities to take steps to facilitate the assembly and not serve as a de facto request for authorization.
- Amend section 4 to delete the requirement that organizers specify the topic and purpose of the assembly, the slogans to be used, and the personal details of the speakers. Notice requirements should be limited to information that is essential for the authorities to facilitate the assembly and protect public order, public safety, and the rights of others, such as time, date, and location; expected number of participants; and contact information for the organizer.
- Amend section 4 to eliminate the restrictions on the rights of non-citizens to peacefully assemble, consistent with international law.

- Amend section 5 to specifically provide that, once a notice providing the required details has been submitted, no response from the authorities is required to complete notification or for the assembly to proceed.
- Provide an explicit exception to the notice requirements where giving such notice is impracticable due to the spontaneous nature of the assembly.
- Repeal section 10(g) to eliminate the restriction on display of signs or posters containing slogans not specified in the notice.
- Amend section 10(h) to eliminate the restriction on expressing slogans not contained in the notice.
- Repeal section 10(k) to eliminate the requirement that those participating in peaceful assemblies abide by additional restrictions put on such assemblies by local authorities, and instruct local authorities by written order that any such additional restrictions must be lifted.
- Repeal the overbroad and vague restrictions on speech during peaceful assemblies contained in sections 10(a), 10(e), and 10(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.
- Amend sections 12 to 16 to make clear that the police have a duty to de-escalate any conflict using negotiation and may only order dispersal of an assembly as a measure of last resort, and only when there is an imminent threat of violence.
- Repeal section 17 to preclude the ability to disperse a peaceful assembly simply for failure to give notice.
- Repeal section 19 to remove criminal liability for organizing or participating in an assembly for which notice was not given.
- Repeal section 20 to eliminate criminal penalties for holding a peaceful protest at a location other than that specified in the notice; for deviating from the specified route of a procession; or for violating any of the restrictions imposed on assemblies under section 10.

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

- Repeal sections 499 to 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.

Telecommunications Law

- 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 references to "extorting" or "threatening" speech refer to criminal actions that are not otherwise already penalized in the 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 Penal Code, eliminate duplicative language in the Telecommunications Law.
- Repeal section 68(a) of the Telecommunications Law to eliminate criminal penalties for distributing or receiving "incorrect information."

News Media Law

- Narrow the definition of "media worker" in section 2 of the News Media Law and make clear exactly who is covered under the law.
- Amend section 3 to explicitly include, as an objective of the law, the promotion and protection of media freedom in line with international standards.

- Amend section 7 to make clear that those providing security in conflict areas have an obligation to facilitate efforts by journalists to travel in such areas.
- Repeal the "code of conduct" set forth in section 9 and the penalties for violation of the code of conduct in sections 25 and 26 so that the media can independently establish their own voluntary code of ethics.
- Amend sections 13 to 16 to eliminate the power of the president and the speakers of the two houses of parliament to propose members of the Press Council and to eliminate the power of the president to dismiss members of the Press Council to ensure that the Press Council is independent of the government. All members of the Press Council should be selected by members of the media.
- Amend chapter 8 of the law to encourage those aggrieved by media reporting to seek the assistance of the Press Council and specify alternative remedies such as corrections and right of reply.

Official Secrets Act

- Amend section 5(1) 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 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 Myanmar.

Right to Information Law

- Enact a union level right to 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 necessary to protect a legitimate national security interest. The law should designate specific and narrow categories of information which would materially damage national security if publicly 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, ombudspersons, 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.

To the Office of the Attorney General

- Drop all pending investigations and charges against those being prosecuted for exercising their right to peacefully assemble and their right to freedom of expression.
- Work to strengthen the rule of law in Myanmar 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 law 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 Myanmar Police Force and Ministry of Home Affairs

- Direct all police departments to facilitate, not hinder, peaceful assemblies, 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 Assembly and Peaceful Procession Law section 19.
- Provide training for the police focusing on how to manage assemblies wherever possible without recourse to use of force. Training should emphasize de-escalation tactics based on communication, negotiation, and engagement.
- Provide training on international standards on the use of force, including the principles of legality, legitimacy, necessity, and proportionality.

To the Ministry 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.
- Immediately extend an official invitation to the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN special rapporteur on the rights to freedom of peaceful assembly and of association.
- Fully cooperate with Yanghee Lee, the UN special rapporteur on the situation of human rights in Myanmar, and permit her to enter the country to pursue her mandate.
- Implement recommendations on the rights to freedom of expression, association, and peaceful assembly, among other fundamental rights, made by UN member states to Myanmar during its Universal Periodic Review session at the UN Human Rights Council in November 2015.
- Appoint an independent and impartial human rights expert as Myanmar's next representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR) and invite the AICHR to visit Myanmar to examine issues of free expression, association, and assembly, in consultation with civil society groups.
- Restart negotiations with the Office of the UN High Commissioner for Human Rights and seek to conclude at the earliest possible date a memorandum of understanding enabling OHCHR to open a country office in Myanmar with a full protection, promotion, and technical assistance mandate.

To the Myanmar National Human Rights Commission

- Recommend that Myanmar's 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, and 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 United Nations Country Team and Resident Coordinator

- Engage with Myanmar's government at all levels, but especially the Ministry of Home Affairs, Office of the Attorney General, and Ministry of Foreign Affairs, to urge 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 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 OHCHR to engage with the government on promoting respect for the rights to freedom of expression, association, and assembly, and to offer technical assistance as needed to bring Myanmar's law and policy into compliance with international standards.
- Establish a human rights working group among UN agencies and international and national human rights organizations that meets no less than every quarter to jointly develop and implement plans and advocacy to promote human rights in Myanmar.

To Concerned Governments

- Publicly and privately urge Myanmar to protect the rights to peaceful expression and assembly, including through the reforms detailed in the recommendations above.
- Raise freedom of speech and freedom of assembly concerns outlined in this report during Myanmar's next Universal Periodic Review.
- Offer assistance to train judges at all levels of court in international law on the rights to freedom of expression and assembly and on the technical aspects of handling cases involving material posted on the internet and social media.
- Provide assistance to human rights groups and other civil society organizations in Myanmar working on freedom of expression and media freedom issues.

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DASHED HOPES

The Criminalization of Peaceful Expression in Myanmar

When the National League for Democracy (NLD) in March 2016 became the first democratically elected civilian-led government in Myanmar since 1962, there was tremendous optimism that the government would finally respect freedom of speech and peaceful assembly. While discussion of a wide range of topics now flourishes in both the media and online, those speaking critically of the government or the military, or on sensitive topics like atrocities against the Rohingya, frequently face arrest and prosecution.

Criminal charges against journalists, online commentators, and activists are facilitated by overly broad and vaguely worded laws that violate internationally protected rights to free expression and assembly. With limited exceptions, NLD leaders have failed to use their overwhelming majority in parliament to make substantive changes to laws restricting free speech and assembly, and have made some existing laws even worse.

Dashed Hopes documents the Myanmar government's criminalization of peaceful speech and assembly using the Telecommunications Law, Official Secrets Act, Peaceful Assembly and Peaceful Procession Law, provisions of the Penal Code, and other laws. A steep rise in arrests and prosecutions of journalists, activists, and ordinary citizens under the Telecommunications Law and a range of other laws has undermined rather than enhanced protection of speech.

Human Rights Watch reiterates its call for the Myanmar government to cease using repressive laws against journalists and peaceful critics of the government. The government should amend or repeal all laws that criminalize peaceful expression and assembly, and bring the nation's laws into line with international human rights standards.

(above) Myanmar press freedom advocates and youth activists hold a demonstration calling for jailed Reuters journalists Wa Lone and Kyaw Soe Oo to be freed, Yangon, September 16, 2018.
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(front cover) A demonstrator shouts from inside a prison van after being detained by Myanmar police during an anti-war protest in Yangon, May 12, 2018.
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