



Report on repressive laws in Burma

October 2015

INTRODUCTION

In spite of the reforms in Burma in recent years, the process of democratization has been called into question by the persistence of grave human rights violations and the absence of any significant progress on genuine democratic reforms, notably with regard to the process of legal reform. Nearly all of the old repressive laws are still in place; and new laws, presented as great democratic advances, do not conform to international human rights standards and do not guarantee the promised freedoms.

Even though hundreds of political prisoners were set free between 2011 and 2013, the government still continues to use a wide range of repressive laws in order to intimidate, arrest and imprison political activists, journalists and peaceful protesters. President Thein Sein made a commitment to European policymakers to release all political prisoners by the end of 2013. He has not fulfilled his promise. In fact, the number of political prisoners has increased by nearly 600% since the beginning of 2014. At the end of May 2015, at least 163 political prisoners were still locked up in Burmese prisons and 442 were awaiting their verdict.

Additionally, we have seen a decline in the freedom of expression during the last two years. In 2014, at least 11 journalists and media professionals were imprisoned for their work, dozens were threatened, kept under surveillance, restricted in their movement within the country and were prosecuted for defamation. One journalist, Par Gyi (also known as Aung Kyaw Naing), was shot and killed in military custody in October 2014 and there were allegations that he had been tortured. The soldiers who allegedly shot Par Gyi were acquitted of murder charges. Many Burmese journalists nowadays prefer censoring themselves rather than tackling sensitive issues.

In theory, fundamental rights are guaranteed by the Burmese constitution, but in reality, the government has continually been using draconian legislation in order to criminalize and impede actions of those who fight for human rights. Many legal and constitutional provisions have been used for repressive ends, but there are three sources used in this repression: the constitution of 2008, different legal texts and the Burmese penal code. More generally:

- constitutional provisions limit fundamental freedoms and allow the current government to maintain its stranglehold on power;
- repressive laws are still in effect, including laws passed during British rule, many of which are obsolete but can act as a deterrent, even if they are not applied anymore;
- recently passed laws do not involve any democratic guarantee;
- the provisions of the penal code allow the government to impose excessive sentences on activists, notably due to the accumulation of multiple sentences;
- other laws which cannot be considered as repressive can be applied in an abusive way, e.g. Article 447 (violation of private property) of the penal code is regularly used in order to arrest farmers claiming their right on land that has been confiscated from them.

This report aims to present the main laws implemented in the repression of the Burmese population.

The abusive provisions of the 2008 constitution

THE MILITARY'S STRANGLEHOLD ON POLITICAL POWER

Article 59 (f) prohibits anyone who is married to a foreigner or who has foreign children from running for presidency in the country. It seems to have been written in order to prevent Aung San Suu Kyi, the opposition leader, from becoming president.

The Tatmadaw (the Burmese military) is protected as a distinct entity and separated from the government; additionally, it is not overseen by any civilian authority. Soldiers are thus subject to a military tribunal, not to civil tribunals.

Article 20 (b) of the constitution gives the military total authority over the ministries of defense, of the interior and of border issues. In fact, the Burmese military appoints their ministers.

By virtue of **chapter VII** of the constitution, the National Defence and Security Council (NDSC) is the most important executive body. In practice, however, it is controlled by the national military, which provides the majority of its members (6 out of 11). While power has been transferred to a pseudo-civil political body, **chapter XI** of the constitution allows this council to impose martial law, dissolve parliament, and govern the country when a state of emergency is declared. The president can transfer all power to the military's commander-in-chief, who has the right to force parts of the population to join the military forces.

Articles 109 and 141 combined with **article 436** put in place an informal veto right in favour of the military. Articles 109 (b) and 141 (b) reserve 25% of parliamentary seats for the military, while Article 436 requires a minimum approval of 75% of parliament members for amendments to the constitution. Furthermore, the provisions of Article 60 guarantee that at least one of the vice-presidents or the president belongs to the military. In effect, three committees form the body of voters, of which one is comprised of the military and of each of which designates a candidate.

BROAD LIMITATIONS TO FUNDAMENTAL FREEDOMS

Section 354

This section limits fundamental freedoms such as expression, assembly and association by subjecting them to "laws enacted for State security, prevalence of law and order, community peace and tranquility or public order and morality." While limitation clauses are not uncommon in democratic constitutions and international human rights treaties, the limitation clause provided in Section 354 is particularly broad and does not require that restrictions, for example, have to be consistent with democratic values.

While supposedly guaranteeing these freedoms, this constitutional provision makes all restrictions to them legal.

REPRESSIVE LAWS AND ACTS

Unlawful Associations Act 1908

Enacted in 1908 during the British colonial era, this Act makes it illegal for individuals to contribute or assist in any way in the functioning of any organisation which the President declares (unilaterally and according to his/her discretion) to be illegal. The British colonials used the Act to oppress opponents of colonial rule. Most of the political prisoners in Burma, some of whom were released recently, were charged under this Act.

Section 17 of this law, among other things, makes it an offence, punishable with imprisonment for between two and three years and a possible fine, to have contact with any organisation which the Burmese authorities have declared illegal. Burmese lawyers have been targeted under this law for representing farmers that complained about land seizures to the International Labour Organisation. The NLD was declared an unlawful association in the past and people in contact or working with the NLD were then arrested and jailed.

Ethnic civilians are also targeted under this law. For example, Kachin farmer Brang Yung was arrested in June 2012 by the military-backed government in Burma. He was charged under Article 17/1 of the Unlawful Association Act, and sentenced to 21 years in prison. He was brutally tortured and forced to make a false confession about his connection with the Kachin Independence Army.

In October 2015, the Karen National Union, All-Burma Students' Democratic Front, the Restoration Council of Shan State/ Shan State Army-South, KNU-KNLA Peace Council, Chin National Front, Democratic Karen Benevolent Army, Pa-O National Liberation Organisation and Arakan Liberation Party accepted to sign the nationwide ceasefire agreement. As a consequence they have been removed from Burma's official list of unlawful associations and terrorist groups. Non-signatories – including the two largest ethnic militias in the country, the United Wa State Army and the Kachin Independence Army – remain outlawed¹.

Official Secrets Act 1923

Another Act brought in by the British colonial regime to ensure their colonial subjects did not enjoy the right to freedom of information. The Act makes it unlawful for any person to possess, control, receive or communicate any classified document or information from the State that may have an adverse affect on the sovereignty and integrity of the State, or which may affect Burma's foreign relations or threaten the safety of the state. The Act gives the authorities extensive powers to classify any information as "secret." Those found guilty under this Act can be punished with imprisonment for up to two years or fined, or both. The Act prevents the transparency of Government and contains vague and broad terms that are susceptible to abusive interpretations.

¹ <http://www.dvb.no/news/5-more-militias-de-listed-as-unlawful-groups/58159>

EXAMPLE OF THE APPLICATION OF THE OFFICIAL SECRETS ACT 1923

In July 2014, four journalists from the Unity weekly news journal as well as its chairman were sentenced to ten years in prison with forced labour, for violating Section 3/9 of this Act, after revealing that a government-run factory had been designed for the production of chemical weapons. The government denied the allegations and the press group was prosecuted. In October 2014, following an appeal process and pressure from the international community, the five detainees saw their prison sentence reduced to seven years.

Wireless Telegraphy Act 1933

An Act brought in by the British colonial regime making it an offense to be in possession of any “wireless telegraphy apparatus” without permission. Amended in 1995 to cover the use of unlicensed fax machines, and again in 1996 to cover computer modems. Anyone found possessing these “apparatus” without official permission was liable to imprisonment of up to three years or fined. The effect of this Act is to indirectly prohibit the acquisition of information through modern technologies, in contravention of Article 19 of the Universal Declaration of Human Rights.

In April 1996, the State Law and Order Restoration Council (SLORC) used this law to prosecute James Leander Nichols, a close friend of Aung San Suu Kyi, on charges of operating unregistered telephone and facsimile lines from his home in Rangoon. Nichols was sentenced to three years’ imprisonment, but died two months into his prison term, allegedly as a result of previous medical problems².

There are no recent examples of convictions based on this somewhat outdated law, but the mere fact that it exists maintains a dissuasive effect. This law is also complemented by other laws of similar scope: the laws on electronics, the internet, and on videos and television, which equally require authorization.

Emergency Provision Act 1950

This Act is used to imprison journalists and writers. Section 5 of this Act makes it a criminal offence “to spread false news, knowing, or having reason to believe that it is not true,” and anyone who is considered to have contributed towards the diminishment of respect or disloyalty among members of the civil service or the military towards the government, either of which can be prosecuted with up to seven years imprisonment. Further, it allows anyone who causes or intends to disrupt the morality or the behavior of a group of people or the general public, or to disrupt the security or the reconstruction of stability of the Union, to be sentenced to seven years in prison, a fine or both. The law is very broad and leaves open to the authorities to decide when news is “false”, when a person contributed to the “diminishment of respect” or “disloyalty” of others, and what the disruption of “morality” entails. These vague terms are all open to abuse and lead to arbitrary decisions to imprison people for merely expressing their views.

² <http://www.ibiblio.org/obl/docs/HRDU2003-04/Freedom%20of%20Opinion,%20Expression%20and%20the%20Press.htm>

EXAMPLE OF THE APPLICATION OF THE EMERGENCY PROVISION ACT 1950

In July 2014, four journalists from the Bi Mon Te Nay journal were arrested under the Emergency Provision Act for publishing false information and threatening the security of the state. The arrests came after they published an article citing an incorrect claim that Aung San Suu Kyi and ethnic democracy forces had been appointed as an interim government. They were sentenced under 505 of the penal code to the maximum penalty of two years in prison without parole. Their journal was closed down. The 4 journalists were finally freed from prison as part of mass presidential amnesty in July 2015.

State Protection Law 1975

"The Law to safeguard the State against the dangers of those desiring to cause subversive acts", also known as the "State Protection Law", was amended in August 1991 to increase the maximum permissible term of imprisonment from three to five years. The BLC published an analysis of this "Broadest Law in the World" in December 2001. The 1975 State Protection Law allows the authorities to detain anyone who has committed or is about to commit an act that may be considered an "infringement of the sovereignty and security of the Union of Burma," or a "threat to the peace of the people".

Article 14 allows the Cabinet to extend a person's detention for up to three additional years. The State Protection Law allows detention under very broad and unclear terms without the necessary safeguards of a judicial review. For instance, Article 9 provides that "Only necessary restriction of fundamental rights shall be decided". The law does not state, however, when a restriction is "necessary" or who decides it is "necessary". Further, **Article 9(e)**, states that a person "against whom action is taken" will only be handed over to judicial authorities if "sufficient facts for filing a lawsuit have been gathered". The wording implies that people may be indefinitely detained without trial if ample evidence cannot be found.³

Moreover, those charged under the 1975 State Protection Law have no right to judicial appeal. Political prisoners can be detained in prison or at home for up to five years, without ever being presented in court, without the right to know why they are being detained or to contest their detention. Many prisoners of conscience have been detained under this legislation, usually after their prison sentences have expired⁴.

In July 2013, the Deputy Minister of the Interior affirmed before the parliament that the government had no intention whatsoever to abolish or amend these laws frequently used under the rule of the military junta to harass political activists⁵.

Law relating to Formation of Organisations 1988

This law regulates the formation of organisations such as associations, committees and clubs. It requires prior permission from the Ministry of Home and Religious Affairs to form an organisation. If denied permission, the organisation must not form or conduct activities. This

³ <http://www.burmapartnership.org/wp-content/uploads/2010/03/BLC-Analysis-on-Elections-2010.pdf>

⁴ <http://www.ipu.org/hr-e/myanmar4.pdf>

⁵ <http://www.irrawaddy.org/burma/no-plan-to-repeal-two-repressive-junta-era-laws-minister.html>

provision contravenes ILO Convention No. 87, to which Burma is a party, which prohibits governments from requiring prior authorization to form a union. **Section 5** of the law prohibits the formation of organisations “that attempt, instigate, incite, abet or commit acts that may in any way disrupt law and order, peace and tranquility, or safe and secure communications”. Due to the broad and vague language, this section has led to the prohibition of organisations, formal or informal, that threaten the status quo. Although a new Labour Organisations Law has recently been promulgated in Burma, it only covers labour unions and thus is not as broad as the Law relating to Formation of Organisations.

In July 2013, two leaders of independent women’s networks and a student activist were arrested and imprisoned under Section 5 of this law for showing their support for farmers who ploughed fields which had been confiscated 20 years earlier. They were released in December 2013 on appeal after they went on hunger strike⁶.

The Television and Video Law 1985 / 1995 / 1996 Television and Video Act

This Act requires any persons who hold or use a television set or video recorder to obtain a license. This law is often used to target journalists and to prevent them from working. A breach of the law could lead to imprisonment for up to three years. The biggest problem with this law is that it is too broad and the punishments are too severe. Also, there is no assurance that after requesting a license, it will be granted. This law was clearly enacted to ensure strict control of the media. It contravenes Article 19 of the UDHR protecting the right to freedom of information.

Under the dictatorship, the State Law and Order Restoration Council (SLORC), later its successor, the State Peace and Development Council (SPDC), these laws were implemented on many occasions with heavy prison sentences. In August 1996, for example, three democracy activists, U Kyaw Khin, NLD deputy in Shan State, doctor Hlaing Myint, member of the NLD and businessman from Rangoon, as well as Maung Maung Wan, a student, were each sentenced to three years in prison for having a video recording in their possession which contained anti-government messages broadcast by foreign television networks. At this time, the SLORC had even launched a large campaign against video stores throughout the country, forcing many of them to close down after discovering that they distributed home-made videos of NLD rallies and reports on Burma⁷.

These two laws were mostly used to find the political activists in their home and in their relatives’ houses. Then the special police have the right to take all electronic devices as evidence for the case and to sentence the political activists to an additional charge.

The Motion Pictures Law 1996

Licenses to make films must be obtained from the Myanmar Motion Picture Enterprise, which are later censored if necessary. This law is part of the Government’s policy of restricting the freedom of people to information. Movies that are not approved by the Government will not be shown. Despite all the recent reforms, “The Lady”, a movie about Daw Aung San Suu Kyi, is not allowed in Burma.

Computer Science Development Law 1996

⁶ <http://burmacampaign.org.uk/khin-mi-mi-khaing-myint-myint-aye-and-thant-zin-htet-released-after-hunger-strike/>

⁷ <http://www.ibiblio.org/obl/docs3/Acts%20of%20Oppression,%20Art19.htm>

This law requires anyone in Burma to request permission from the Ministry of Communication before importing or possessing computer equipment or software. It also prohibits the use of this equipment if it undermines or sends out information regarding state security, prevalence of law and order and community peace and tranquility, national unity, state economy or national culture.

Punishment is imprisonment for a minimum of 7 years and a maximum of 15 years. The claimed purpose of the law is “(a) to contribute towards the emergence of a modern developed State through computer science” and “(b) to lay down and implement measures necessary for the development and dissemination of computer science and technology”.

This law, like others, also creates a “chilling effect”. Computer users fear violating the law and thus are less likely to use the computers to disseminate what may well be information that is perfectly lawful, even under the restrictions of the Computer Science Law.

This law was even called “Orwellian” by the United States Department of State.

This law is too restrictive and punishment for violations is too severe. Even after permission is given to possess the equipment, it cannot be used to freely express opinions.

Internet Law 2000

This law, established by the State-owned Myanmar Post and Telecommunications (MPT) for users of its internet service, imposes regulations on Internet postings that may be deemed detrimental to the country, its policies or security affairs. The regulations create extremely restrictive internet rules that are clearly intended to censor criticism of the government.

For instance, they forbid the posting of “any writings detrimental to the interests of the Union of Myanmar” (Section 1); “any writings directly or indirectly detrimental to the current policies and secret security affairs of the Government” (Section 2); and “writings related to politics” (Section 3). It further only allows the person who is granted an internet account to use the internet (Section 5) and holds this person responsible for all internet use of that account (Section 6). The creation of a webpage requires prior permission (Section 10). The MPT also has the right to amend and change the regulations on the use of internet “without prior notice” (Section 12). Violation of any of the above sections results in termination of internet use and legal action (Section 14).

This law was essentially used under the dictatorship. It is nowadays obsolete, but still has not been amended and thus represents another example of a law maintained for its deterrent effect.

Electronic Transaction Law 2004:

The 2004 Electronic Transaction Law was promulgated by the Government to regulate all use of electronic transactions throughout Burma. In a broad sense, the law could serve as a solid framework upon which E-commerce and E-government could be built in the future. Its objectives sound similar to the ones in the above-described Computer Science Development Law.

However, this law similarly contains severe punishment for the misuse of electronic transaction technology including: (a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture; (b) receiving or sending and distributing any information relating to secrets of

**EXAMPLE OF THE
APPLICATION OF THE
ELECTRONIC TRANSACTION
LAW 2004**

In November 2008, the blogger Nay Phone Latt, aged 28, was sentenced to 20 years and 6 months in prison for infractions linked to the internet. One of his offenses was keeping a cartoon of Than Shwe, the former dictator, in his e-mails. He was eventually pardoned in 2012.

the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture (Section 33). The punishment for infringement is imprisonment from 7 to 15 years.

The law's broad and vague terms leave discretion to the authorities to imprison anyone that expresses opinions electronically that the authorities view as a threat.

The 2008 constitution, drafted by the military government, does not guarantee internet freedom. In fact, every citizen can only exercise the right to express and publish their convictions and opinions, if this does not contravene effective laws, the prevalence of law and order, peace and tranquility of the community, or the public order and morale. The right to expression is so confined by numerous laws that it is void. These laws concerning the new technologies make internet censorship possible, they are drafted in very broad terms and are subject to arbitrary application, thus creating a climate of fear⁸.

Ward or Village Tract Administration Law 2012

The Ward or Village Tract Administration Law requires all residents of Burma—urban and rural, Burman Buddhists and minorities, rich and poor—to report the identity of overnight houseguests to government officials serving as ward or village tract administrators. In effect, residents need permission from the state to host overnight guests—and authorities are known to deny guest registration for a variety of reasons.

In Burma, it is risky to spend the night at a friend's or relative's without previously informing the authorities.

The heads of districts and villages represent the lowest rank of the country's administrative hierarchy. They are elected by the people, their nomination, however, requires the approval of high-ranking officials who have the right to reject their election. In practice, very few of them are truly democratically elected. One provision of the law obliges them to follow all instructions communicated by the Ministry of Home Affairs. Decisions are not taken in favour of public welfare.

Burmese authorities ensure compliance with the guest registration requirement by conducting periodic household inspections. The Ward or Village Tract Administration Law empowers officials to inspect "the places needed to examine for prevalence of law and order and upholding the discipline [sic]," effectively giving them unfettered authority to enter private residences.

Under the authority granted by this provision, ward or village tract administrators typically carry out household inspections late at night with police or intelligence officers and others, ostensibly to determine if unregistered guests are present. Given the timing of these intrusions, many residents refer to the practice as "midnight inspections." Additionally, individuals who lack

⁸ <https://freedomhouse.org/report/freedom-net/2012/burma#.VVnDQZPtmkp>

adequate documentation or citizenship status in Burma face challenges hosting or staying as overnight guests. For example, individuals who are unable to obtain household registration documents are typically required to regularly report themselves to the state as guests in their own homes, often on a weekly basis. The provisions of the Ward or Village Tract Administration Law related to the guest registration requirement and its enforcement impinge on various human rights, including the right to privacy and rights to freedom of movement, residency, and association. The guest registration requirement represents a systematic and nationwide breach of privacy, giving the government access to troves of personal data from communities across the country. Evidence collected by Fortify Rights also suggests that the law is particularly enforced against low-income communities, individuals working with civil society organisations, and political activists.

Article 18 of The Right to Peaceful Assembly and Peaceful Procession Act

ARTICLE 18

If there is evidence that a person is guilty of conducting a peaceful assembly or a peaceful procession, he or she must receive a maximum sentence of one year imprisonment or a maximum fine of thirty thousand kyat or both.

Remarks: The Right to Peaceful Assembly and Peaceful Procession Act was amended on 24 July 2014, and some articles were changed. In particular, the government replaced some terms (words) and the duration of prison sentences. For example, Section 18 was slightly changed by imposing the maximum jail sentence to six months in prison instead of one year in the old section 18 of 2011 as mentioned above .

Section 18 of the Right to Peaceful Assembly and Peaceful Procession Act, is very often used to arrest and imprison political activists when they are peacefully protesting for their rights.

It is widely used and the hundreds of political activists have been sentenced under Section 18 since its adoption on 5 July 2012. The government uses Section 18 to sentence to stop protests and discourage activists from protesting again in the future.

Since the adoption of the above act, people must ask for permission to protest. To obtain permission, citizens must submit their request five days before the proposed assembly, along with overly detailed information, which even includes the exact “chants” that will be used during the assembly.

With demonstrations that run counter to the interests of the military or high-ranking officials, the authorities often refuse to give authorization without stating the reasons. When, however, demonstrations are in support of the régime or in favour of Buddhist nationalism, protesters have no difficulties obtaining authorization.

This Article is used particularly against farmers who demonstrate against the confiscation of their land. This is the case with Thaw Kyar, a farmer sentenced to 7 years in prison in October 2014 for protesting against the confiscation of his land by ploughing the fields.

More generally, this Article is aimed at all human rights activists: it was recently used against the student leaders who protested peacefully for the amendment of the National Education Law on

EXAMPLE OF THE APPLICATION OF ARTICLE 18

On December 30, 2014, Naw Ohn Hla, Sein Htwe, Nay Myo Zin, and Ko Tin Htut Paing were arrested outside the Chinese embassy in Rangoon when they were peacefully protesting against the controversial Letpadaung copper mine in Monywa and the killing of an unarmed protester by police at the mine site on December 22. The four were charged under the Peaceful Assembly Law and several sections of the Penal code. On May 15, 2015 they were sentenced to 4 months in jail.

March 10, 2015. 80 of them are still in prison, awaiting their trial. They could be sentenced to up to 9.5 years in prison for illegal demonstration and contraventions to public order⁹.

On December 21, 2014, five leaders of a peaceful protest in Rangoon, including the former political prisoner Ko Ko Gyi, who is also one of the leaders of 88 Generation Party, were charged by South Okkalapa township police under the above Act because they held their protest away from the site approved by authorities.¹⁰

After activists had run a campaign for several months, the Burmese Parliament amended this law¹¹. This fact has to be highlighted, since many legislators' intention was to move from a system of prior authorization to one of simple notification, with only limited sentences in case of infringement. This would have meant major progress, as most of the authorization requests for demonstrations remain unanswered. The amendment was to do away with the authorities' possibility to refuse permission to protest, while at the same time reducing the associated penalties. The amendment that came into force on July 24, 2014 merely creates more ambiguity and does not bring the law into compliance with international human rights standards.

In the absence of clarity, the amendment is not implemented uniformly, and confusion reigns around its application, with explanations and descriptions being imprecise and ambiguous.

Article 5 of the new law states that the local heads of police have the obligation to approve demonstration requests "according to the approval criteria", yet the law does not clearly establish what these criteria are. It is not specified either, whether the authorities have to consider a gathering's purpose when establishing if these criteria are met. The implementing legislation, has not come into effect yet; considering the wide range of restrictions included in the law, the police can thus continue to interpret their power to authorize very broadly. As a consequence, the law is implemented differently in every district. The delays preceding authorization requests for demonstrations vary and authorities do not justify all refusals. In the absence of implementation legislation for the amendment, some authorities continue to implement the old text and most systematically accuse protesters of protesting without authorization¹².

The number of political prisoners imprisoned under this law continues to rise. It is vital to set up clear implementation legislation so that the new version of the law can be executed fairly.

⁹ <http://www.info-birmanie.org/en-birmanie-les-leaders-etudiants-sont-harceles-retour-sur-les-manifestations-de-2015/>

¹⁰ <http://www.irrawaddy.org/burma/rangoon-police-charge-ko-ko-gyi-4-activists-unauthorized-protest.html>

¹¹ <http://www.article19.org/resources.php/resource/37666/en/myanmar:-amended-right-to-peaceful-assembly-and-peaceful-procession-law>

¹² <http://www.irrawaddy.org/burma/arrests-go-unabated-unclear-amendment-burma-protest-law.html>

Media Law and Printing and Publishing Law of March 2014

These two laws of 2014 replace the draconian 1962 Printing and Publishing Law. They include a few improvements. Prior censorship and the censorship board (where journals' contents had to be provided to the censorship board seven days before publication) have been revoked and the press can now deal with issues that had formerly been banned from public debate. These texts, however, still do not conform to international norms on human rights¹³.

-> **The Printing and Publishing Law** is a step forward, as pre-publication censorship is no longer required and the punishments that can be incurred have been reduced. Additionally, surveillance of the editing and publishing sector has partly been transferred from the government to the courts.

One of the effects is that a series of bureaucratic formalities have been established that companies in the sector have to meet, such as registration with the Ministry of Information and the transmission of information on the export and import of publications.

The definitions of "editor," "publisher" and "press agency" are not clear, which creates ample confusion on what the personal scope of the law is. Similarly, the content restrictions are laid out vaguely, which necessarily has a effect. Finally, in practice, the courts have discretionary powers to block the distribution of publications as restrictions are so unclear.

The law, promulgated in March 2014, bans the publication of any information capable of constituting an insult to religion, of disturbing the rule of law or of interethnic unity.

-> **News Media Law:**

This law introduces a few guarantees for the freedom of the media, such as the ban on pre-publication censorship and the recognition of the specific rights of media professionals. This can be seen as a positive attempt to dismantle the country's censorship mechanisms. Yet various shortcomings of this law endure. The measures to protect freedom of the media are subject to onerous conditions and remain insufficient to meet international norms. All media types, among them printing and broadcasting via radio or internet, are still under the unlimited control of the government through the Media Council. This body is not independent of the government and thus cannot protect the media from the implementation of the penal laws on content, which still limit freedom of expression, even if infringement does not entail prison sentences anymore.

¹³ <http://www.article19.org/data/files/medialibrary/37623/News-Media-Law-Myanmar-EN.pdf>

PROBLEMATIC PROVISIONS IN THE PENAL CODE

The Myanmar Penal Code is still based on the British Colonial Penal Code, and except for some amendments, is identical to Penal Codes in other previous Indian British Colonies, such as India, Bangladesh and Malaysia. Some sections of the Penal Code are clearly outdated and need to be revised to comply with international standards.

It allows the government to impose excessive sentences on political activists and all persons perceived as dissidents, as it allows prosecutors to accuse defendants of multiple infringements on grounds of archaic or widely unknown laws.

High Treason Law Used to Prosecute Dissidents -- Section 121 and 122

These sections penalize “High Treason”, with punishment of up to a maximum of 25 years imprisonment or the death penalty. High Treason is defined in **Section 121** as waging war or using violent means to overthrow the Union or assisting, inciting or conspiring with any person or State in or outside Burma to reach the same goal. This definition is prone to abuse and has been used to imprison dissidents or members of several ethnic groups inside Burma.

EXAMPLE OF THE APPLICATION OF THE LAW ON HIGH TREASON

Sai Phone Tint was condemned to three life sentences plus 25 years. He was arrested in February 2006 as a member of the Restoration Council of Shan State, an organisation of the Shan ethnic minority (the Shan army is known nowadays as Shan State Army). He was accused on various charges, notably treason and violence against the government. He is still behind bars.

More recently, in 2012, Karen leader Padoh Mahn Nyein Maung was sentenced to life imprisonment plus three years in jail for high treason after leaving Burma with false papers. He was eventually freed following a reprieve granted by president Thein Sein on March 26, 2012.

Excessive Limitations to the Freedoms of Expression and Assembly -- Section 505

This section deems it unlawful to make, publish or circulate any statement, rumour or report “(b) with intent to cause, or which is likely to cause, fear or alarm to the public [...] whereby any person may be induced to commit an offence against the State or against the public tranquility”. According to an “exception” in the law, there is no offence if a person commits this act without intent and when believing the statement, rumour or report is true. The Government has used this provision to arbitrarily repress and punish those taking part in free expression, peaceful demonstrations, and forming organisations. The provision should be amended to ensure it does not unnecessarily limit Section 354 of the Constitution, which ensures freedom of expression and assembly.

Ko Htin Kyaw, leader of the community-based organisation Movement for Democracy Current Force (MDCF), was sentenced by the Kyauktada Township Court in Yangon on October 30, 2014, to an additional two years' imprisonment under Section (b) of Myanmar's Penal Code. He is famous as a human rights activist and was sentenced several times by several courts in Burma. The government frequently uses Section 505, especially (b) to sentence political and human rights activists. Ko Htin Kyaw was one of them.

Section 505(b) provides imprisonment for anyone making, publishing or circulating information which may cause public fear or alarm, and which may incite people to commit offences "against the State or against the public tranquility."

Naung Naung was also sentenced on October 30 by the Kyauktada Township Court to two years and four months' imprisonment under Section 505(b) and for protesting without authorization under Article 18 of the Peaceful Assembly and Peaceful Procession Law. He was accused of distributing leaflets on July 7 which that stated that Aung San Suu Kyi and ethnic leaders had been elected as an interim government. He was arrested on 8 July.

Suspensions, reductions of sentences – section 401

SECTION 401: CONDITIONAL RELEASE CURBING FREEDOM

Prisoners are granted amnesty and freed on grounds of Section 401, yet conditions are imposed on those released that curb their freedom. The article establishes that if the authorities consider that a former prisoner has infringed the conditions for his release, he can be arrested again without warrant and sent back to prison to serve the rest of his sentence. The released persons are only released on parole and continue to live in fear, since after the slightest breach, they may have to go back to prison to serve the rest of their sentences.

Serious Limitations on the Right to Assembly -- Sections 143, 145 and 152

These provisions punish members of an unlawful assembly with imprisonment of up to six months and punish the participants that fail to disperse after being so ordered with up to 2 years imprisonment. Persons that threaten to assault or obstruct any public servant from dispersing an unlawful assembly can be punished with imprisonment of up to three years. These provisions overlap in subject matter with the Unlawful Associations Act and are a serious limitation on Section 354 of the Constitution, which guarantees the right to assembly. These sections and the Unlawful Associations Act should be amended for consistency and for compliance with the Constitution and international standards.

Criminalisation of sodomy – section 377

Article 377 of the Burmese penal code establishes that sodomy is illegal, since it constitutes "an act against nature." The article was implemented only once in order to convict a transsexual.

Many people, however, have been arrested under this Article. Most often, police and judges do not know how to use it and find other types of accusation in order to convict them. Yet the simple fact that the Article exists creates room for homophobia and pressure on the LGBT community. In 2014, seven transsexuals were arrested and sexually abused while in custody, they were also insulted and forced to sign a declaration to never again wear women's clothes. Civil society organisations should establish a proposal to request an amendment of this law.

Vague Definition of Public Nuisance -- Section 290

This section penalizes "whoever commits a public nuisance [...] not otherwise punishable by this Code [...] with a fine". Nowhere in the Penal Code is "public nuisance" defined and is thus susceptible to abuse.

Other more standard articles were implemented in the repression of activists: kidnapping and abduction (articles 359-368), vandalism (article 427) and violation of private property (article 447).

CONCLUSION AND RECOMMENDATIONS

International law includes the principle of the limitation of human rights; only in certain specific situations may states make limitations on the exercise of certain human rights. Unlike in Burma nowadays, these limitations of rights have to be considered as exceptions, not the rule. They have to be determined by the law, and in a democratic society need to be truly necessary in order to guarantee the respect for the rights and freedoms of others, ensure just demands of public order, health or morals, national security or public safety. Any limitations of rights outside or on top of these conditions are not tolerated under international human rights law and should be withdrawn.

As Burma heads towards its first general elections in decades, there is great concern that restrictions to freedom of expression and of assembly will increase and that people who continue to express their disagreement with the authorities will be systematically arrested, convicted and imprisoned, before the elections are held¹⁴.

Recommendations to the Burmese government

- The Burmese government needs to immediately suspend the application of all repressive laws, until they are repealed or revised, so that Burma can conform with international law and international human rights standards;
- The Burmese government needs to respect the fundamental freedoms of everyone, including freedom of expression;
- The Burmese government needs to unconditionally release everybody arrested or imprisoned because of their political activities, their ethnic origins, or their religion, before elections are held. It has to understand that they are not Burma's enemies, but only peacefully exercising their rights;
- The Burmese government needs to ratify the International Covenant on Civil and Political Rights (ICCPR), implement the provisions of this treaty in national politics and put them into practice.

Recommendations to the French government

France has made a commitment to donate 100 million Euros in development aid to Burma on the condition that the elections will be free and fair. The elections cannot be fair if imprisoned activists, notably for political reasons, cannot participate in the electoral process and the political debate. France needs to:

- Attach the immediate and unconditional release of all political prisoners, including student leaders, as a condition to its aid;

¹⁴ <https://www.amnesty.org/en/documents/asa16/1743/2015/en/>

- Request the Burmese government to ensure that activists, journalists, farmers, ethnic leaders and all other representatives of Burmese civil society can express themselves and protest peacefully, freely and without fear for their security;
- Request the Burmese government to amend its repressive legal mechanisms to comply with international human rights standards;
- Request the Burmese government to adhere to international treaties on fundamental freedoms.

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