



**Joint submission to the Universal Periodic Review of Myanmar by Arakan Journalists Association, ARTICLE 19, Athan, Centre for Law and Democracy, Free Expression Myanmar, Generation Wave, Kachin State Youth Assembly, Karen Human Rights Group, Karenni National Youth Organization, Myanmar Centre for Responsible Business, Myanmar ICT for Development Organization, Myanmar Journalist Network, Myanmar Media Lawyers' Network and Progressive Voice.**

For consideration during the 37th Session of the Working Group.

9 July 2020

## **Introduction**

1. In this Universal Periodic Review ('UPR') report, the submitting organisations assess the progress made by the Government of Myanmar in implementing recommendations received during its second UPR in November 2015 that relate to freedom of expression, information, assembly, and connected rights. This UPR report is organised under the following headings:
  - Legal framework for expression
  - Prosecution of journalists, human rights defenders, and others exercising their right to freedom of expression and information
  - Threats and violence against journalists and others exercising the right to freedom of expression
  - Media freedom
  - Restrictions on the right to peaceful assembly
  - Promotion of pluralism, diversity and tolerance and combating discrimination
  - Digital rights
  - Access to information

## **Legal framework for expression**

2. Myanmar's legal framework is highly restrictive from a freedom of expression perspective. Myanmar's Constitution fails to fully protect the right to freedom of expression; the Constitution heavily prescribes this right and does not explicitly mention the right to access government information nor media freedom.<sup>1</sup>
3. Myanmar's laws contain numerous provisions which are fundamentally incompatible with international human rights law and standards.<sup>2</sup> None of the provisions identified as problematic during the 2015 UPR have been amended or repealed. They continue to be applied by the government, military, and private individuals against journalists, human rights defenders, and others exercising their right to freedom of expression.
4. Several of Myanmar's laws criminalise defamation, though the Human Rights Committee has called on all states party to the ICCPR to decriminalise defamation.<sup>3</sup> Sections 499-500 of the Penal Code broadly criminalise harm to reputation and are susceptible to arbitrary application to shield powerful interests and individuals from legitimate criticism. Sections 499-500, cover 'any imputation' made with the intent to harm or knowledge that harm would occur, and is punishable by up to two years' imprisonment. Truth is a defence only if made 'for the public good'. According to human rights organisation Athan, at least 10 cases were filed during the UPR period under sections 499-500 of the Penal Code.
5. Five other laws contain criminal defamation provisions.<sup>4</sup> Several laws specifically target online defamation. Section 66(d) of the 2013 Telecommunications Law vaguely criminalises online defamation,<sup>5</sup> punishable by up to two years' imprisonment, a fine, or both. Amendments to this section in August 2017 allowed for release on bail and reduced the maximum penalty from three to two years' imprisonment, but failed to align the section with international standards. Section 68(a) of the law further broadly prohibits 'communications, reception, transmission, distribution or conveyance of incorrect

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<sup>1</sup> Free Expression Myanmar, '20 expert organisations urge Myanmar to fully guarantee the internationally protected right to freedom of expression in the Constitution,' 11 April 2019, available at: <http://freeexpressionmyanmar.org/20-expert-organisations-urge-myanmar-to-fully-guarantee-the-internationally-protected-right-to-freedom-of-expression-in-the-constitution/>.

<sup>2</sup> ARTICLE 19, 'Myanmar Briefing Paper: Criminalisation of Free Expression,' May 2019, available at: <https://www.article19.org/wp-content/uploads/2019/06/2019.06.6-A19-Criminalisation-of-Free-Expression-final.pdf>.

<sup>3</sup> See, Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, 12 September 2011, para 47.

<sup>4</sup> Free Expression Myanmar, 'Defamation?,' May 2019, available at: <http://freeexpressionmyanmar.org/wp-content/uploads/2019/05/Defamation-international-standards.pdf>

<sup>5</sup> It criminalises 'extorting, defaming, disturbing or threatening to any person by using any telecommunications network'. See Centre for Law and Democracy, 'Myanmar: Groups Plan to Reform Digital Content Restrictions,' 10 December 2017, available at: <https://www.law-democracy.org/live/myanmar-groups-plan-to-reform-digital-content-restrictions/>.

information with dishonesty or participation', punishable by up to one year's imprisonment, a fine, or both.

6. Section 8(f) of the Law Protecting the Privacy and Security of Citizens, passed in 2017, provides that no one, without government permission, 'shall unlawfully interfere with a citizen's personal or family matters or act in any way to slander or harm their reputation.' Those convicted face six months' to three years' imprisonment, plus a fine.<sup>6</sup>
7. The Law has been used to target those posting online criticism of the government, resulting in prosecutions against more than 100 individuals, including human rights defenders, journalists, and political party members in the past two and half years.<sup>7</sup> Amendments proposed in early 2020 would reduce the maximum penalties and make it a bailable offence, but penalties would remain disproportionate under international law.
8. Section 505 of the Penal Code criminalises the making of a statement 'with intent to cause, or which is likely to cause': (a) 'any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such,' (b) '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,' or '(c) any class or community of persons to commit any offence against any other class or community.' Conviction is punishable with imprisonment of up to two years, a fine, or both. The broad language of section 505 has been used frequently to target individuals criticizing the military or military officials.
9. Section 34(d) of the Electronic Transactions Law criminalises the 'creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person'. Following a 2013 amendment, the offence is punishable by only a fine, but remains criminal in nature. Section 33 of the Law can be used to prosecute those who have merely electronically received information related to state secrets;<sup>8</sup> Athan documented two cases under section 34(d) during the UPR period.<sup>9</sup>
10. Section 124A of the Penal Code criminalises any act that brings 'or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards [the Government established by law for the Union or for the constituent units thereof]'. International standards do not permit restrictions on freedom of expression to protect the state or its symbols, and heads of state or other public officials are legitimately subject to criticism and political opposition.<sup>10</sup>
11. Section 295A of the Penal Code provides for up to two years of imprisonment for 'outraging religious feelings'. Authorities have invoked this section to target religious minorities and have used it twice during the COVID-19 pandemic.<sup>11</sup> Blasphemy provisions such as section 295A are not in line with international standards, such as those set forth in Human Rights Council Resolution 16/18 and the Rabat Plan of Action.
12. The Unlawful Associations Act empowers the President to declare groups 'unlawful', with far reaching consequences for groups and individuals who interact with them. Section 17(1) provides for two to three

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<sup>6</sup> Law Protecting the Privacy and Security of Citizens (Union Parliament Law 5/2017), 8 March 2017, section 8(f).

<sup>7</sup> San Yamin Aung, 'Myanmar Lawmakers Submit Bill to Amend Controversial Privacy Law', *Irrawaddy*, 18 February 2020, available at: <https://www.irrawaddy.com/news/burma/myanmar-lawmakers-submit-bill-amend-controversial-privacy-law.html>; Human Rights Watch, 'Burma: Privacy Law Used to Prosecute Critics,' 12 January 2018, available at: <https://www.hrw.org/news/2018/01/12/burma-privacy-law-used-prosecute-critics>.

<sup>8</sup> ARTICLE 19, 'Myanmar Briefing Paper: Criminalisation of Free Expression,' May 2019, available at: <https://www.article19.org/wp-content/uploads/2019/06/2019.06.6-A19-Criminalisation-of-Free-Expression-final.pdf>. See also Centre for Law and Democracy, note 3.

<sup>9</sup> Athan data.

<sup>10</sup> Athan, 'The Tatmadaw's Complaints Violating Freedom of Expression Under Current Government', 7 January 2020, available at: [https://drive.google.com/file/d/1\\_GTt-qk7MRbRZhV4TW8BCae8T61PAwp/view?fbclid=IwAR1A34zleTg1IouJvWWM02-5iv5tiYDSTddRduhfJdrdaY8kKGYN2\\_cD3K-E](https://drive.google.com/file/d/1_GTt-qk7MRbRZhV4TW8BCae8T61PAwp/view?fbclid=IwAR1A34zleTg1IouJvWWM02-5iv5tiYDSTddRduhfJdrdaY8kKGYN2_cD3K-E).

<sup>11</sup> Zarni Mann, 'Myanmar Doctor Jailed for Online Criticism of Monks Who Oppose Sex Education', *Irrawaddy*, 3 June 2020, available at: <https://www.irrawaddy.com/news/burma/myanmar-doctor-jailed-online-criticism-monks-oppose-sex-education.html>; Human Rights Watch, 'Myanmar: 3 Charged for COVID-19 Street Art', 8 April 2020, available at: <https://www.hrw.org/news/2020/04/08/myanmar-3-charged-covid-19-street-art>.

years' imprisonment for membership of, participation in, or contributions to an unlawful association. Since 2015, the Act has been routinely used to target those working in conflict-affected areas.

13. The Official Secrets Act prohibits access to or possession of a broad range of government information, even when there is no proof of intent to harm the state or a risk of harm from the access. The law, which is highly relevant to journalists, academics, and the general public, contains severe penalties. It is often cited as a major threat for both freedom of expression and information,<sup>12</sup> yet there have been no attempts to amend the Act since the 2015 UPR.

#### 14. Recommendation

- Fully respect and ensure the right to freedom of expression, online and offline, including by committing to the urgent repeal of sections 66(d) and 68(a) of the Telecommunications Law, section 34(d) of the Electronic Transactions Law, and section 8(f) of the Law Protecting the Privacy and Security of Citizens, and to the repeal or amendment in line with international law of the Official Secrets Act, the Unlawful Associations Act, and sections 124A, 153, 295A, 499-500, and 505 of the Penal Code.

### **Prosecution of journalists, human rights defenders, and others exercising their right to freedom of expression and information**

15. During the 2015 UPR, Myanmar supported recommendations relating to reprisals against those exercising their rights to freedom of expression and to the release of political prisoners.<sup>13</sup> Myanmar noted recommendations relating to the release of political prisoners, prisoners of conscience, human rights defenders, and others who expressed dissenting viewpoints.<sup>14</sup>
16. Prosecutions that impact freedom of expression under Myanmar's laws have been on the rise during the UPR period. At the time of writing, 74 political prisoners remained behind bars with another 568 awaiting trial.<sup>15</sup> As detailed in other sections of this report, prosecutions under sections 500 and 505 of the Penal Code, section 66(d) of the Telecommunications Act, and section 8(f) of the Law Protecting the Privacy and Security of Citizens Law have been particularly rampant.
17. A variety of institutions and individuals have used these repressive laws to silence those exercising their right to freedom of expression. The National League for Democracy ('NLD')-led government has initiated scores of suits against critics, frustrating hopes that the party, which took office during the UPR period, would usher in a new era for freedom of expression.<sup>16</sup> For example, in September 2018, former newspaper columnist Ngar Min Swe was sentenced to seven years in prison and fined 100,000 kyat in relation to Facebook posts critical of Aung San Suu Kyi.<sup>17</sup>
18. During the UPR period, at least 32 cases affecting 63 individuals were filed under section 505 of the Penal Code. More than half of these prosecutions were initiated in 2019.<sup>18</sup> Subsections (a) and (b) were invoked most frequently. In May 2018, Aung Ko Htwe was sentenced to two years' imprisonment under

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<sup>12</sup> See Centre for Law and Democracy, note 5.

<sup>13</sup> 143.99 (Italy) (supported).

<sup>14</sup> 143.65 (France)(supported); 144.65 (Germany) (noted); 144.66 (Greece) (noted); 144.67 (Spain) (noted); 144.68 (Czech Republic) (noted); 144.69 (United States of America) (noted); 144.70 (Croatia) (noted); 144.71 (Norway) (noted).

<sup>15</sup> Assistance Association for Political Prisoners—Burma, February 2020, available at: <https://aappb.org/>.

<sup>16</sup> See, e.g. Myanmar: UN Human Rights Council must act to secure key reforms ahead of 2020 elections', February 2020, available at: <https://www.article19.org/wp-content/uploads/2020/02/2020.02.23-HRC-Briefing-March-2020-final.pdf>; ARTICLE 19, 'Myanmar: UN HRC must maintain scrutiny on free expression situation', 4 March 2019, available at: <https://www.article19.org/wp-content/uploads/2019/03/2019.03.04-Myanmar-HRC40-briefing-UN-clean-1.pdf>; ARTICLE 19, Myanmar: HRC must address deteriorating environment for free expression, 23 February 2018, available at: <https://www.article19.org/resources/myanmar-hrc-must-address-deteriorating-environment-free-expression/>.

<sup>17</sup> Shoo Naing, 'Myanmar arrests government critic under sedition law', *Reuters*, 13 July 2018, available at: <https://www.reuters.com/article/us-myanmar-critic-arrest/myanmar-arrests-government-critic-under-sedition-law-idUSKBN1K32A5>; Toe Wai Aung, 'Ngar Min Swe given 7 years for Facebook post', *Myanmar Times*, 19 September 2018, available at: <https://www.mmtimes.com/news/ngar-min-swe-given-7-years-facebook-post.html>.

<sup>18</sup> Athan data. See, Athan, '20 Situation of FoE in 2019, February 2020, available at: [https://drive.google.com/file/d/1Zy1jQEUMtxf\\_WOskQe1DgLD6C40-xkcJ/view?fbclid=IwAR2t2SFCEfxn08MTIWh-GVfaob30gTwiAHGyITy5d2OXJ8QBA-z5mEGjmdQ](https://drive.google.com/file/d/1Zy1jQEUMtxf_WOskQe1DgLD6C40-xkcJ/view?fbclid=IwAR2t2SFCEfxn08MTIWh-GVfaob30gTwiAHGyITy5d2OXJ8QBA-z5mEGjmdQ); Athan, '2019 Mid-year Report on Status of Freedom of Expression in Myanmar', September 2019, available at: <https://www.athanmyanmar.org/2019-mid-year-report/>.

section 505(b) of the Penal Code after speaking to the media about his experiences as a former child soldier.<sup>19</sup> In August 2019, prominent documentary filmmaker Min Htin Ko Ko Gyi was sentenced to one year's imprisonment under section 505(b) of the Penal Code for criticising the military and its role in Myanmar politics.<sup>20</sup> In 2019 and 2020, six members of the Peacock Generation thangyat troupe – a satirical performance group – were convicted in five separate cases under section 505(a) of the Penal Code and section 66(d) of the Telecommunications Act after a performance deemed critical of the military; they are serving sentences of up to five years' imprisonment, and additional charges are pending.<sup>21</sup>

19. Government and military officials frequently invoke defamation provisions to silence critics. Since the NLD took office, the military has filed more than 40 cases affecting freedom of expression, resulting in 18 convictions.<sup>22</sup> For example, in 2018, a Tatmadaw officer initiated proceedings against Kachin youth human rights defenders Nang Pu, Lum Zawng, and Zau Ja for their participation in an anti-war protest; the trio were later sentenced to six months' imprisonment and fined 500,000 kyat.<sup>23</sup> Military-initiated suits rose sharply in 2019.<sup>24</sup>
20. Those working in conflict areas face particular risks. In October 2017, Kachin men Dumdaw Nawng Lat and Langjaw Gam Seng—a Baptist pastor and youth leader, respectively— were convicted under the Unlawful Associations Act and the Import and Export Law in relation to their role facilitating a trip by journalists to the region.<sup>25</sup> They were later freed by presidential pardon. In December 2017, two Kachin pastors were found guilty under section 17(1) of the Unlawful Associations Act for allegedly assisting the Kachin Independence Army in what was widely viewed as politically motivated.<sup>26</sup>
21. Use of the Telecommunications Law's defamation provision has increased with the rise of mobile internet use in Myanmar. While only 11 cases were recorded by Athan under the former government, more than 200 cases have been documented since the NLD took office in 2016, with 49 cases in 2019 alone.<sup>27</sup> Suits have been initiated by the NLD government, military, and private citizens including ultranationalists.<sup>28</sup> For example, in April 2017, researcher and former political prisoner Myo Yan Naung Thein was convicted under section 66(d) of the Telecommunications Law for criticising Myanmar's commander-in-chief on Facebook.<sup>29</sup> The next month, authorities charged human rights defender Tun

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<sup>19</sup> Mratt Kyaw Thu & Oliver Slow, 'Former child soldier Aung Ko Htwe sentenced, new charges added', *Frontier Myanmar*, 29 March 2018, available at: <https://frontiermyanmar.net/en/former-child-soldier-aung-ko-htwe-sentenced-new-charges-added>.

<sup>20</sup> San Yamin Aung, 'Filmmaker Accused of Insulting Army Is Denied Bail, Sent to Prison', *Irrawaddy*, 12 April 2019, available at: <https://www.irrawaddy.com/news/burma/filmmaker-accused-insulting-army-denied-bail-sent-prison.html>.

<sup>21</sup> Zaw Zaw Htwe, 'Satirical Troupe Face Extra Prison Terms for Ridiculing Myanmar's Military', *Irrawaddy*, 11 June 2020, available at: <https://www.irrawaddy.com/news/burma/satirical-troupe-face-extra-prison-terms-ridiculing-myanmars-military.html>; Amnesty International, 'Myanmar: More 'outrageous' convictions for satire performers', 17 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/myanmar-more-outrageous-convictions-for-satire-performers/>.

<sup>22</sup> Athan, 'The Tatmadaw's Complaints Violating Freedom of Expression Under Current Government', 7 January 2020, available at: [https://drive.google.com/file/d/1\\_GTt-gk7MRbRZhhV4TW8BCae8T61PAwp/view?fbclid=IwAR1A34zleTg1louJvWM02-5iv5tIYDSTddRduhfJdrdaY8kKGYN2\\_cD3K-E](https://drive.google.com/file/d/1_GTt-gk7MRbRZhhV4TW8BCae8T61PAwp/view?fbclid=IwAR1A34zleTg1louJvWM02-5iv5tIYDSTddRduhfJdrdaY8kKGYN2_cD3K-E).

<sup>23</sup> Ye Mon, 'Kachin youth activists handed prison sentences for 'defaming' the Tatmadaw', *Frontier Myanmar*, 7 December 2018, available at: <https://frontiermyanmar.net/en/kachin-youth-activists-handed-prison-sentences-for-defaming-the-tatmadaw>.

<sup>24</sup> Ibid.

<sup>25</sup> Amnesty International, 'Myanmar: Further information: Kachin pastor sentenced to four years in prison', 5 December 2017, available at: <https://www.amnesty.org/en/documents/asa16/7554/2017/en/>.

<sup>26</sup> Amnesty International, "Myanmar: Further information: Kachin pastor sentenced to four years in prison", 5 December 2017, available at: <https://www.amnesty.org/en/documents/asa16/7554/2017/en/>.

<sup>27</sup> Athan data. See, Athan, 'Analysis Report on Law Amendment of Telecommunications Law', 11 September 2018, available at: <https://www.facebook.com/athan.foe.myanmar/photos/pcb.391922764700128/391928108032927/?type=3&theater>; See, Athan, '20 Situation of FoE in 2019, February 2020, available at: [https://drive.google.com/file/d/1Zy1jQEUMtxf\\_WOskQe1DgLD6C40-xkcJ/view?fbclid=IwAR2t2SFCEfxn08MTIWh-GVfaob30gTwiAHGyITy5d2OXJ8QBA-z5mEGjmdQ](https://drive.google.com/file/d/1Zy1jQEUMtxf_WOskQe1DgLD6C40-xkcJ/view?fbclid=IwAR2t2SFCEfxn08MTIWh-GVfaob30gTwiAHGyITy5d2OXJ8QBA-z5mEGjmdQ); Human Rights Watch, 'World Report 2018: Burma', January 2018, available at: <https://www.hrw.org/world-report/2018/country-chapters/burma#307a62>.

<sup>28</sup> Ibid.

<sup>29</sup> Reporters without Borders, 'Criminal defamation law blocks freedom of information', 11 April 2017, available at: <https://rsf.org/en/news/criminal-defamation-law-blocks-freedom-information>; Days after his conviction, Myo Yan Naung Thein, who had been detained since November 2016, was released as part of a prisoner amnesty.



Tun Oo under the same section for livestreaming a video of a play deemed defamatory of the military.<sup>30</sup> Private individuals can also initiate legal proceedings. *Myanmar Now* chief editor Swe Win was arrested in July 2017 and faces charges under section 66(d) of the Telecommunications Law in relation to messages posted on Facebook critical of ultra-nationalist monk Wirathu.<sup>31</sup>

22. Journalists are frequently targeted with lawsuits or criminal charges in relation to their reporting.<sup>32</sup> Section 66(d) of the Telecommunications Act, section 500 of the Penal Code, and the Unlawful Associations Act are frequently used to target journalists. The Myanmar military and police most frequently file cases against journalists.<sup>33</sup>

23. In December 2017, *Reuters* journalists Wa Lone and Kyaw Soe Oo were arrested while investigating a massacre of Rohingya civilians in northern Rakhine State. In September 2018, they were convicted under the Official Secrets Act and sentenced to seven years' imprisonment. The pair were released in May 2019 by presidential pardon.<sup>34</sup> In May 2020, editor Zaw Min Oo was sentenced to two years' imprisonment for a story about COVID-19 that turned out to be false.<sup>35</sup>

24. The arrest and detention of journalists, even if they are ultimately released, have a severe chilling effect on media freedom in Myanmar. In June 2017, authorities arrested and charged journalists Lawi Weng, Aye Nai and Phya Phone Aung under the Unlawful Associations Act for reporting on a drug burning ceremony by an ethnic armed organisation in Shan State.<sup>36</sup> In October 2018, authorities arrested three journalists from *Eleven Media*—Kyaw Zaw Lin, Nayi Min, and Phyo Wai Win—on charges under section 505(b) of the Penal Code in relation to an article regarding the financial management of the Yangon Regional Government.<sup>37</sup>

#### 25. Recommendations:

- Cease the abuse of Myanmar's law to harass and silence journalists, human rights defenders, political opposition, government critics, and all those exercising their right to freedom of expression.
- Immediately and unconditionally release all those arbitrarily detained for exercising their rights to freedom of expression, quash their convictions, and drop all outstanding charges against those currently facing prosecution.

### **Threats and violence against journalists and others exercising the right to freedom of expression**

26. In 2015, Myanmar supported recommendations calling for the independent investigation and prosecution of crimes against ethnic and religious minorities.<sup>38</sup> It noted one recommendation calling for the investigation and prosecution of crimes of intimidation, harassment, persecution, torture and enforced disappearances against journalists, human rights defenders and others, as well as

<sup>30</sup> ARTICLE 19, 'Myanmar: Release and drop charges against journalists and activist charged under Article 66(d)', 26 June 2017, available at: <https://www.article19.org/resources/myanmar-release-and-drop-charges-against-journalists-and-activist-charged-under-article-66d/>.

<sup>31</sup> Zarni Mann, 'Myanmar Court Allows Appeal of Decision to Drop Lawsuit Against Editor', *Irrawaddy*, 27 August 2019, available at: <https://www.irrawaddy.com/news/burma/myanmar-court-allows-appeal-decision-drop-lawsuit-editor.html>.

<sup>32</sup> See, e.g., 'Myanmar Journalist Charged With Defamation Refuses to Apologize to Firebrand Monk', *Radio Free Asia*, 13 February 2018, available at: <https://www.rfa.org/english/news/myanmar/myanmar-journalist-charged-with-defamation-refuses-to-apologize-to-firebrand-monk-02132018161716.html>; 'Joint statement: Myanmar authorities must drop the case against Ko Swe Win and decriminalise defamation', 7 March 2019, available at: <https://www.icj.org/joint-statement-myanmar-authorities-must-drop-the-case-against-ko-swe-win-and-decriminalise-defamation/>.

<sup>33</sup> Athan, '2019 Mid-year Report on Status of Freedom of Expression in Myanmar', 2 September 2019, available at: [https://drive.google.com/file/d/1\\_chaUs7HTCSbrjvaqkcl0VPgh4--eAJA/view](https://drive.google.com/file/d/1_chaUs7HTCSbrjvaqkcl0VPgh4--eAJA/view).

<sup>34</sup> Simon Lewis & Shoon Naing, 'Two Reuters reporters freed in Myanmar after more than 500 days in jail', *Reuters*, 7 May 2019, available at: <https://www.reuters.com/article/us-myanmar-journalists/two-reuters-reporters-freed-in-myanmar-after-more-than-500-days-in-jail-idUSKCN1SD056>.

<sup>35</sup> Toe Wai Aung, 'Editor in Kayin State sentenced to jail over COVID-19 story', *Myanmar Times*, 21 May 2020, available at: <https://www.mmtimes.com/news/editor-kayin-state-sentenced-jail-over-covid-19-story.html>.

<sup>36</sup> ARTICLE 19, 'Myanmar: Release journalists charged for reporting in armed conflict area', 28 June 2017, available at: <https://www.article19.org/resources/myanmar-release-journalists-charged-for-reporting-in-armed-conflict-area/>.

<sup>37</sup> The charges were eventually dropped in both cases. 'Myanmar arrests three journalists over article on Suu Kyi protégé', *Al Jazeera*, 10 October 2018, available at: <https://www.aljazeera.com/news/2018/10/myanmar-arrests-journalists-article-suu-kyi-protége-181010141035620.html>.

<sup>38</sup> 143.78 (Iceland) (supported); 143.79 (Iceland) (supported).

recommendations to create and maintain a safe enabling environment for human rights defenders, journalists and civil society.<sup>39</sup>

27. The Government of Myanmar has made little progress in implementing these recommendations. Since the 2015 UPR, journalists and human rights defenders have faced grave threats, and at times violence, because of their work.<sup>40</sup> Free Expression Myanmar's annual survey of hundreds of journalists across Myanmar has found that they believe the situation is deteriorating year-by-year.<sup>41</sup> Some have been subject to persistent surveillance or harassment by police or intelligence officers, and foreign journalists have often had difficulty renewing visas.<sup>42</sup> They have also reported threats regarding their coverage of certain events, including pro-military rallies.<sup>43</sup>

28. Redress for these attacks and killings remains elusive. A court convicted two individuals for the murder of prominent lawyer U Ko Ni in February 2019, but the investigation into his killing was deeply flawed and the trial beset by procedural irregularities.<sup>44</sup> Authorities have failed to promptly and thoroughly investigate high-profile murders, including of journalist Ko Par Gyi in 2014,<sup>45</sup> journalist Soe Moe Tun in 2016,<sup>46</sup> and rights activist Naw Chit Pandaing in 2016.<sup>47</sup>

#### 29. Recommendations:

- Ensure the prompt, thorough, independent, and effective investigation of attacks against journalists, human rights defenders and others targeted for their expression.
- Develop and effectively implement legal frameworks and measures to protect journalists and media workers and combat impunity, taking into consideration the gender dimensions thereof, including, where appropriate, through the creation and strengthening of special investigative units or independent commissions, the appointment of a specialized prosecutor, and the adoption of specific protocols for investigating and prosecuting these crimes.

#### **Media freedom**

30. In 2015 Myanmar supported three recommendations calling on it to bring print media laws into line with international standards and to ensure that the Myanmar Press Council could operate independently.<sup>48</sup> It supported one recommendation and noted one recommendation on access to Rakhine State.<sup>49</sup>

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<sup>39</sup> 145.23 (Uruguay) (noted); 144.82 (Chile) (supported); 144.83 (Norway) (supported).

<sup>40</sup> See, for example, Zarni Mann, 'Detained Myanmar Journalists Physically Abused by Karen Border Guard Force', Irrawaddy, 6 March 2019, available at: <https://www.irrawaddy.com/news/burma/detained-myanmar-journalists-physically-abused-karen-border-guard-force.html>; Amnesty International, 'Rakhine journalist receiving death threats: Nay Min Aung (known as Min Min)', 24 April 2017, <https://www.amnesty.org/en/documents/asa16/6108/2017/en/>; Committee to Protect Journalists, 'Journalist abducted, seriously injured in Myanmar', 30 May 2017, available at: <https://cpj.org/2017/05/journalist-abducted-seriously-injured-in-myanmar.php>; Toe Wai Aung, 'Journalist in critical condition after attack in Rakhine's Sittwe', *Myanmar Times*, 21 December 2017, available at: <https://www.mmtimes.com/news/journalist-critical-condition-after-attack-rakhines-sittwe.html>.

<sup>41</sup> Free Expression Myanmar, 'Myanmar's media freedom at risk' May 2018, available at: <http://freeexpressionmyanmar.org/wp-content/uploads/2018/05/myanmars-media-freedom-at-risk.pdf> This survey has been completed for 2020 and has found similar results.

<sup>42</sup> Sean W. Chrispin, Committee to Protect Journalists, 'Threats, arrests, and access denied as Myanmar backtracks on press freedom', 12 February 2018, available at: <https://cpj.org/blog/2018/02/threats-arrests-and-access-denied-as-myanmar-backt.php>.

<sup>43</sup> Khit Thit Media, 10 February 2020, available at: <https://web.facebook.com/khitthitnews/photos/pcb.848454685591879/848454385591909/?type=3&theater>.

<sup>44</sup> International Commission of Jurists, 'Myanmar: ICJ marks 2nd year anniversary of the killing of lawyer U Ko Ni', 29 January 2019, <https://bit.ly/2FR883a>.

<sup>45</sup> ARTICLE 19, 'Myanmar: Government's handling of Par Gyi criticised at UN HRC', 18 September 2015, available at: <https://www.article19.org/resources/myanmar-governments-handling-of-par-gyi-criticised-at-un-hrc/>.

<sup>46</sup> ARTICLE 19, 'Myanmar: Journalist investigating illegal logging killed', 14 December 2016, available at: <https://www.article19.org/resources/myanmar-journalist-investigating-illegal-logging-killed/>.

<sup>47</sup> FIDH, 'Burma: Murder of Ms. Chit Pandaing', 15 December 2016, available at: <https://www.fidh.org/en/issues/human-rights-defenders/burma-murder-of-ms-chit-pandaing>.

<sup>48</sup> 144.80 (Belgium)(supported); 144.81 (Ghana)(supported); 144.31 (Thailand) (supported). See also 145.31 (Austria) (noted).

<sup>49</sup> 143.121 (Kuwait); 145.9 (Ireland);

31. The Government of Myanmar has attempted to control reporting on ongoing armed conflicts. In March 2020, it blocked several ethnic news websites that regularly report on military abuses.<sup>50</sup> It has at times denied access to northern Rakhine State — the site of widespread systematic atrocities against the Rohingya minority in 2017 — for those seeking to investigate international crimes and human rights abuses, including journalists and even the Special Rapporteur on the situation of human rights in Myanmar and the Independent International Fact-Finding Mission on Myanmar.<sup>51</sup> It has failed to provide guidance on how access to the area can be obtained, with regional and Union authorities each claiming the other was responsible.<sup>52</sup> Access for humanitarian actors remains heavily restricted.<sup>53</sup>
32. The Government of Myanmar has facilitated highly choreographed visits to Rakhine State for diplomats and journalists. Despite the government's claims to the contrary,<sup>54</sup> the movements and activities of participants taking part in these trips have been severely restricted, with journalists unable to conduct interviews in private.<sup>55</sup> Officials have clumsily attempted to fabricate evidence and introduce journalists to 'eyewitnesses' who have been demonstrated to lack credibility.<sup>56</sup>
33. Despite supporting recommendations relating to the media framework, and reform efforts by the Myanmar Press Council, the News Media Law has not been amended since the 2015 UPR. The News Media Law fails to adequately protect and promote media freedom, and incorporates impermissible restrictions on content.<sup>57</sup> The scope of application of the law is overly broad and could apply to non-media actors. It further contains insufficient provision for the safety of journalists.
34. The News Media Law establishes the Myanmar Press Council, but the protections for its independence could be improved by removing government appointment powers.
35. The Law provides another avenue for the prosecution of journalists; journalists failing to abide by certain rules set out in the Law may be fined under section 25. For example, in February 2019, the editor-in-chief of the weekly Tanintharyi Journal was found guilty under the News Media Law of defaming regional officials in relation to a story and fined 500,000 kyats.<sup>58</sup> The case was filed on behalf of a former government official who has since been removed from office and faces corruption charges.<sup>59</sup>
36. The Printing and Publication Enterprise Law was adopted in 2014. While it marked an improvement over the highly repressive 1962 Printers and Publishers Registration Law, it imposes unnecessary and

<sup>50</sup> ARTICLE 19, Myanmar: Immediately lift ban on ethnic news websites, 1 April 2020, available at: <https://www.article19.org/resources/myanmar-immediately-lift-ban-on-ethnic-news-websites/>.

<sup>51</sup> Human Rights Watch, 'Burma: Allow Access to Investigate Abuses in Rakhine State', 17 November 2016, available at: <https://www.hrw.org/news/2016/11/17/burma-allow-access-investigate-abuses-rakhine-state>; Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc A/HRC/39/CRP.2, 17 September 2018.

<sup>52</sup> 'Myanmar Keeps Media Away From Rakhine Conflict Zone', *Radio Free Asia*, 11 November 2018, <https://bit.ly/2UMH2hh>.

<sup>53</sup> United Nations High Commissioner for Refugees, 'The Refugee Brief – 19 February 2020', 19 February 2020, available at: <https://www.unhcr.org/refugeebrief/the-refugee-brief-19-february-2020/>.

<sup>54</sup> See, for example, President's Office, the Republic of the Union of Myanmar, 'Journalists impressed with extensive media access in Rakhine', undated, available at: <https://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-7009>.

<sup>55</sup> See, for example, Konrad Staehelin, *Frontier Myanmar*, 'Playing cat and mouse on a Rakhine reporting tour', 27 February 2020, available at: [https://frontiermyanmar.net/en/playing-cat-and-mouse-on-a-rakhine-reporting-tour?fbclid=IwAR1qi0ruJDlaCRorWagt43Z1omScsYVHTclT5aMAoncA\\_IKz56NoaGiRRYU](https://frontiermyanmar.net/en/playing-cat-and-mouse-on-a-rakhine-reporting-tour?fbclid=IwAR1qi0ruJDlaCRorWagt43Z1omScsYVHTclT5aMAoncA_IKz56NoaGiRRYU); 'Rohingya crisis: At the scene in Rakhine state, Myanmar', *BBC*, 6 September 2017, available at: <https://www.bbc.com/news/av/world-asia-41178692/rohingya-crisis-at-the-scene-in-rakhine-state-myanmar>.

<sup>56</sup> 'Rohingya crisis: Seeing through the official story in Myanmar', *BBC*, 11 September 2017, available at: <https://www.bbc.com/news/world-asia-41222210>.

<sup>57</sup> ARTICLE 19, 'Myanmar: News Media Law, 2014: Legal Analysis', 28 July 2014, available at: <https://www.article19.org/data/files/medialibrary/37623/News-Media-Law-Myanmar-EN.pdf>; Centre for Law and Democracy, *Reforming Myanmar's News Media Law and Printing and Publishing Enterprises Law*, January 2019, available at: [https://www.law-democracy.org/live/wp-content/uploads/2019/01/Media-Law-and-PPEL-Note-Jan19.final\\_.pdf](https://www.law-democracy.org/live/wp-content/uploads/2019/01/Media-Law-and-PPEL-Note-Jan19.final_.pdf).

<sup>58</sup> An appeal is pending. Ye Mon, 'Dawei case deals another setback to press freedom,' *Frontier Myanmar*, 3 March 2019, available at: <https://frontiermyanmar.net/en/dawei-case-deals-another-setback-to-press-freedom>

<sup>59</sup> 'Tanintharyi chief minister arrested on corruption charges,' *Frontier Myanmar*, 11 March 2019, available at: <https://frontiermyanmar.net/en/tanintharyi-chief-minister-arrested-on-corruption-charges>.



vague requirements on publishers, including to register printers and periodicals and to abide by vague content restrictions. Noncompliance can result in fines.<sup>60</sup>

37. A serious shortcoming in the media law framework is the fact that although the Broadcasting Law was adopted in August 2015, it has still not come into force due to the failure of the government to adopt implementing by-laws. This has delayed the establishment of the Broadcast Council, which will regulate and license broadcasters and ensure media diversity.<sup>61</sup> As a result, all television and radio channel licenses are still distributed through an opaque process controlled by the Ministry of Information. Furthermore, TV and radio channels lack diversity, independence, and security of operations.

**38. Recommendations:**

- End the prosecution of journalists exercising their right to freedom of expression.
- Immediately grant full access to journalists, humanitarian actors and the United Nations, to all parts of the country, including conflict areas.
- Create an enabling environment for media pluralism, diversity, and independence, including by amending the News Media Law and repealing or amending the Printing and Publication Enterprise Law so as to do away with registration requirements and content restrictions.
- Adopt democratic By-laws under the Broadcasting Law, appoint a Broadcasting Council which includes respected civil society representatives,<sup>62</sup> and begin the process of licensing broadcasters.

**Right to peaceful assembly**

39. In 2015 Myanmar supported two recommendations to respect the right to peaceful assembly<sup>63</sup> and noted four recommendations relating to legal restrictions on the right.<sup>64</sup>

40. During the UPR period, the Government of Myanmar made no improvements to the legal framework relating to peaceful assembly. It continued to imprison those legitimately exercising their right to peaceful assembly, and at times resorted to the excessive use of force to disperse assemblies. More than 57 cases against over 220 individuals engaging in demonstrations proceeded during the UPR period.<sup>65</sup>

41. The 2012 Peaceful Assembly and Peaceful Procession Law contains vague provisions that are often applied arbitrarily.<sup>66</sup> Despite a 2014 amendment that purported to move from a system of prior-authorisation to prior notification, there are frequent reports of local authorities setting preconditions for protests, resulting in a de facto prior-authorisation system.<sup>67</sup> Human rights organisations have documented opaque requirements enforced by local authorities, as well as arbitrary decision-making in

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<sup>60</sup> ARTICLE 19, 'Myanmar: Printing and Publishing Law: Legal Analysis', November 2014, available at: <https://www.article19.org/wp-content/uploads/2018/01/14-11-11-LA-print-publishing.pdf>

<sup>61</sup> Centre for Law and Democracy, 'Myanmar: Broadcasting Law Delays Undermine Community Radio,' 6 December 2019, available at: <https://www.law-democracy.org/live/myanmar-broadcasting-law-delays-undermine-community-radio/>.

<sup>62</sup> See ARTICLE 19, 'Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation, Principle 13, available at: <https://www.article19.org/wp-content/uploads/2018/02/11-08-08-STANDARDS-access-to-airwaves-EN-2.pdf>.

<sup>63</sup> 143.88 (Botswana) (supported); 144.84 (Brazil) (supported).

<sup>64</sup> 145.33 Delete or amend all legal provisions on peaceful assemblies, which restrict the exercise of the rights to freedom of expression and assembly (France)(noted); 145.34 Review and amend the Peaceful Assembly and Peaceful Procession Act to bring it in line with international standards on freedom of expression and assembly (Sweden)(noted); 145.35 Align domestic legislation on freedom of expression and association, especially the Peaceful Assembly and Peaceful Procession Act, with international norms (Luxembourg)(noted); 145.36 Remove the broad range of restrictions on the rights to peaceful assembly and freedom of expression in the Law on the Right to Peaceful Assembly and Peaceful Procession, replace the system of prior authorization for peaceful assemblies with a system of voluntary notification and remove criminal sanctions for acts protected under international standards on freedom of expression and peaceful assembly (Estonia)(noted).

<sup>65</sup> Athan data.

<sup>66</sup> ARTICLE 19, 'Myanmar: Amended Right to Peaceful Assembly and Peaceful Procession Law', August 2014, available at: <https://www.article19.org/wp-content/uploads/2018/02/14-08-01-LA-myanmar-assembly.pdf>.

<sup>67</sup> Free Expression Myanmar, 'Crackdown on anti-war activists shows protests still need permission' 15 May 2018, available at: <http://freeexpressionmyanmar.org/crackdown-on-anti-war-activists-shows-protests-still-need-permission/>; Su Myat Mon, 'The right to demonstrate? It depends who you are', 11 April 2019, available at: <https://frontiermyanmar.net/en/the-right-to-demonstrate-it-depends-who-you-are>.

relation to protests.<sup>68</sup> Spontaneous protests, which should be exempt from notification requirements under international law, are not recognised in the law.<sup>69</sup> Criminal penalties remain in effect for violations of the provisions relating to notification. Furthermore, section 10(k) of the Law, which subjects protests to 'local' requirements, has been abused by authorities to shut down protests or negotiate with protesters on a wide range of details relating to the protest.<sup>70</sup>

42. Prosecutions under the Law have been on the rise since the last UPR, from 4 cases documented in 2016 to 31 cases in 2018.<sup>71</sup> A large proportion of those charged in the past year have been youth human rights defenders.<sup>72</sup> In September 2019, Kachin youth leaders Seng Nu Pan and Paw Lu were convicted under section 19 of the Law for their role in a gathering commemorating the war in northern Myanmar.<sup>73</sup> The same month, Karen human rights defenders Naw Ohn Hla, Saw Albert Cho, and Saw Thein Zaw Min were convicted under section 20 of the Law and sentenced to fifteen days' imprisonment for organising a ceremony commemorating Karen Martyr's Day,<sup>74</sup> after the protest location was changed from the location included in their notification and local authorities prohibited use of the word 'martyr'.<sup>75</sup>
43. In May 2018, authorities arrested more than twenty anti-war protestors in a series of rallies in Yangon, Mandalay and Myitkyina under sections 19 and 20 of the Law.<sup>76</sup> In July 2018, 82 mostly ethnically Karenni individuals were arrested after they protested the erection of a statue of General Aung San in Loikaw.<sup>77</sup>
44. A ban on protests in Yangon has been in effect since March 2017.<sup>78</sup> Special permission has been granted for pro-military rallies supported by ultranationalist groups, but denied to groups calling for justice for human rights abuses.<sup>79</sup>
45. A number of farmers protesting land confiscations have been arrested.<sup>80</sup> In September 2018, for example, eight residents of Patheingyi Township were arrested under section 19 of the Law after

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<sup>68</sup> See, e.g. Karen Human Rights Group, "Development Without Us," Village Agency and Land Confiscations in Southeast Myanmar,' pp, 59, 94, available at: [https://khrq.org/sites/default/files/inside\\_development\\_without\\_us\\_-\\_english\\_full\\_report\\_august\\_2018.pdf](https://khrq.org/sites/default/files/inside_development_without_us_-_english_full_report_august_2018.pdf).

<sup>69</sup> Ibid.

<sup>70</sup> Progressive Voice, 'Time to Hear Our Voices Freedom of Assembly and the Youth Peace Movement in Myanmar', July 2018, p 9, available at: [https://progressivevoicemyanmar.org/wp-content/uploads/2018/07/PV\\_Briefing\\_Final\\_Web.pdf](https://progressivevoicemyanmar.org/wp-content/uploads/2018/07/PV_Briefing_Final_Web.pdf); Karen Human Rights Group, 'Dooplaya Interview: Saw G---, February 2018', 25 July 2018, available at: <https://khrq.org/2018/07/18-24-a2-i1/dooplaya-interview-saw-g-february-2018>.

<sup>71</sup> Athan, 'Cases under Peaceful Assembly and Peaceful Procession Law', 12 December 2018.

<sup>72</sup> Athan, '2019 Mid-year Report on Status of Freedom of expression in Myanmar,' 2 September 2019, available at: [https://drive.google.com/file/d/1\\_chaUs7HTCSbrjvaqkcl0VPgh4--eAJA/view](https://drive.google.com/file/d/1_chaUs7HTCSbrjvaqkcl0VPgh4--eAJA/view).

<sup>73</sup> ARTICLE 19, 'Myanmar: Kachin Youth Leaders face Imprisonment for Commemoration of War Anniversary,' 30 August 2019, available at: <https://www.article19.org/resources/myanmar-kachin-youth-leaders-face-imprisonment-for-commemoration-of-war-anniversary/>.

<sup>74</sup> Naw Betty Han, 'Activists Protest After Three Sentenced for Karen Martyr's Day Ceremony,' 3 October 2019, available at: <https://frontiermyanmar.net/en/activists-protest-after-three-sentenced-for-karen-martyrs-day-ceremony>.

<sup>75</sup> Ibid.

<sup>76</sup> Zarni Mann, 'Two Anti-war Demonstrators Jailed for 2 Months Over Yangon Protest', *Irrawaddy*, 22 May 2018, available at: <https://www.irrawaddy.com/news/burma/two-anti-war-demonstrators-jailed-2-months-yangon-protest.html>.

<sup>77</sup> Fortify Rights, 'Myanmar: End Crackdown, Drop Charges Against 82 Activists in Karenni State', 8 February 2019, available at: <https://www.fortifyrights.org/mya-inv-2019-02-08/>. The charges were later dropped. Zue Zue, 'Cases Dropped Against 55 Karenni Anti-Statue Activists', *Irrawaddy*, 13 February 2019, <https://www.irrawaddy.com/news/cases-dropped-55-karenni-anti-statue-activists.html>.

<sup>78</sup> Su Myat Mon, 'The right to demonstrate? It depends who you are', 11 April 2019, available at: <https://frontiermyanmar.net/en/the-right-to-demonstrate-it-depends-who-you-are>.

<sup>79</sup> Ibid. For example, in September 2018, organisers who planned a protest demanding the release of jailed Reuters journalists Wa Lone and Kyaw Soe Oo were prevented from holding the protest. Su Myat Mon, 'Authorities ban protests against jailing of Reuters journalists, threaten arrests', *Irrawaddy*, 13 September 2018, available at: <https://frontiermyanmar.net/en/authorities-ban-protests-against-jailing-of-reuters-journalists-threaten-arrests>.

<sup>80</sup> Karen Human Rights Group, 'Toungoo Interview: Saw A---, January 2016', 2 February 2017, available at: <https://khrq.org/2017/02/16-10-a8-i1/toungoo-interview-saw-january-2016-2> Human Rights Watch, 'The Farmer Becomes the Criminal: Land Confiscation in Burma's Karen State,' November 2016, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/burma1116\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/burma1116_web_0.pdf)

protesting the construction of a cement factory and road expansion project by Myint Investment Company.<sup>81</sup>

46. Proposed amendments to the Peaceful Assembly and Peaceful Procession Law passed by the Upper House of Parliament in 2018 would further limit the exercise of the right to peaceful assembly,<sup>82</sup> imposing criminal penalties on those who provoke, persuade, or urge others to join protests and requiring advance disclosure of sources of funding for protests.<sup>83</sup> A campaign by civil society resulted in the proposal being delayed, but there are concerns that it will be returned to Parliament before the 2020 elections.<sup>84</sup>
47. As noted above, those joining peaceful assemblies have also at times been prosecuted under provisions of the Penal Code. In September 2018, two human rights defenders were sentenced to two years' imprisonment for 'provocation' and 'incitement' under sections 153 and 505(b) of the Penal Code after joining a protest in support of the arbitrarily detained child soldier Aung Ko Htwe.<sup>85</sup> In September 2018, Tin Maung Kyi was charged under section 505(b) of the Penal Code for a protest that called on the international community to prosecute the Myanmar military.<sup>86</sup>
48. Police forces have resorted to the use of force to disperse protests on several occasions. In March 2017, police fired rubber bullets at a group protesting the impacts of the Letpadaung copper mine in Sagaing Division, injuring at least 10.<sup>87</sup> In January 2018, police opened fire on protesters in Mrauk-U, Rakhine State, killing at least seven.<sup>88</sup> On 12 February 2019, authorities fired rubber bullets into a crowd that had gathered to protest the erection of a statue of General Aung San, causing injuries to several people.<sup>89</sup> In May 2019, 17 people were wounded by rubber bullets fired by police after protesting the construction of a coal-powered cement factory in Mandalay Division's Patheingyi Township.<sup>90</sup>

#### 49. Recommendations:

- Amend the Peaceful Assembly and Peaceful Procession Law to bring it into line with international law, including by removing content-based restrictions on protests and criminal liability for failure to notify authorities in advance of protests, and withdraw the proposed amendments to the Law.
- Immediately and unconditionally release all those arbitrarily detained for their exercise of the right to freedom of peaceful assembly and drop all outstanding charges.
- Cease the use of unlawful and disproportionate force against peaceful protesters and ensure prompt, independent, thorough, and effective investigations into the unlawful and disproportionate use of force against protesters by the authorities.

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<sup>81</sup> Zarni Mann, 'Court Refuses Bail for Elderly Trio Detained Over Land Protest', *Irrawaddy*, 26 September 2018, available at: <https://www.irrawaddy.com/news/court-refuses-bail-elderly-trio-detained-land-protest.html>.

<sup>82</sup> ARTICLE 19, 'Myanmar: Peaceful Assembly and Peaceful Procession Bill', 16 May 2016, available at: <https://www.article19.org/resources/myanmar-peaceful-assembly-and-peaceful-procession-bill/>. Translation of Bill of Amendment of the Peaceful Assembly and Peaceful Procession Law by Free Expression Myanmar, available at: <http://freeexpressionmyanmar.org/wp-content/uploads/2018/02/Peaceful-Assembly-and-Peaceful-Procession-Law-draft-amendment-2018-EN.pdf>.

<sup>83</sup> Human Rights Watch, 'Dashed Hopes', 31 January 2019, available at: <https://www.hrw.org/report/2019/01/31/dashed-hopes/criminalization-peaceful-expression-myanmar>; Free Expression Myanmar, '5 Violations That Need Addressing in Protest Law Amendment', 28 February 2019, available at: <http://freeexpressionmyanmar.org/5-violations-that-need-addressing-in-protest-law-amendment/>.

<sup>84</sup> Ibid.

<sup>85</sup> Lawi Weng, 'Activists Jailed for a Year for Protesting on Behalf of Ex-Child Soldier for Tatmadaw', *Irrawaddy*, 12 September 2018, available at: <https://www.irrawaddy.com/news/activists-jailed-year-protesting-behalf-ex-child-soldier-tatmadaw.html>.

<sup>86</sup> Amnesty International, 'Activist Charged for Peaceful Anti-Military Protest', 5 November 2018, available at: <https://www.amnesty.org/download/Documents/ASA1693362018ENGLISH.pdf>.

<sup>87</sup> Amnesty International, 'Myanmar: Investigate police use of force against protestors at troubled mine', 28 March 2017, available at: <https://www.amnesty.org/en/documents/asa16/5983/2017/en/>.

<sup>88</sup> Amnesty International, 'Myanmar: Investigate police killings of Rakhine State protesters', 17 January 2018, <https://www.amnesty.org/en/latest/news/2018/01/myanmar-investigate-police-killings-of-rakhine-state-protesters/>.

<sup>89</sup> ARTICLE 19, 'Myanmar: End crackdown on protesters in Kayah State', 12 February 2019, available at: <https://www.article19.org/resources/myanmar-end-crackdown-on-protesters-in-kayah-state/>.

<sup>90</sup> Zarni Mann, '17 Injured as Police Break up Protest Against Cement Factory Project in Mandalay' *Irrawaddy*, 15 May 2019, available at: <https://www.irrawaddy.com/news/burma/17-injured-police-break-protest-cement-factory-project-mandalay.html>.

## **Promotion of pluralism, diversity, and tolerance and combating discrimination**

50. In 2015, Myanmar supported 13 recommendations calling for the promotion of religious and ethnic tolerance, dialogue, and diversity, and noted 33 recommendations calling for the ending of discrimination, reforming discriminatory legislation, combating intolerance, and promoting the rights of minorities.<sup>91</sup> The government supported one recommendation to increase its efforts to combat hate speech and incitement to violence, while noting another recommendation to prohibit and prosecute hate speech and discriminatory practices that incite violence towards minorities, and to grant equal rights to minorities in Rakhine States.<sup>92</sup>
51. The proliferation of hate speech, including advocacy of hatred constituting incitement to violence, directed against the Rohingya and other Muslim communities in Myanmar has been linked to the Myanmar military's operation against the Rohingya in Rakhine State in mid-2017.<sup>93</sup> In its 2018 report, the Independent International Fact-Finding Mission on Myanmar concluded that the Myanmar authorities 'fostered a climate in which hate speech thrives.'<sup>94</sup> Since 2012, more than 100 mosques have been shut down as a result of communal violence.<sup>95</sup>
52. The response of the Myanmar government to the proliferation of hate speech, discrimination and incitement to violence in Myanmar has been halting at best and at times has directly contributed to the problem. While officials have made broad statements supporting tolerance and harmony,<sup>96</sup> authorities have, at times, actively participated in campaigns to deliberately spread disinformation concerning the Rohingya. In December 2016, the Information Committee in Aung San Suu Kyi's office issued a press release dismissing reports of sexual violence against Rohingya women as 'rumours' under a banner stating 'Fake Rape'.<sup>97</sup> The same office has repeatedly dismissed reports of human rights violations as 'fake news', often posting photos of weapons purportedly captured from Rohingya militants and the bodies of alleged victims of their attacks. Some of the photographs shared by the Information Committee in order to advance the narrative that Rohingya villagers were burning their own homes have been shown to have been staged.<sup>98</sup>
53. Dehumanizing language has also been used by government officials. In October 2016, a member of an official state-level commission investigating the Rakhine State crisis denied reports of rape by military personnel, telling a BBC reporter that soldiers would not want to rape Rohingya women because they are 'very dirty [and] have a very low standard of living and poor hygiene.'<sup>99</sup> Further, since 2015, high

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<sup>91</sup> 143.23 (Russian Federation)(supported); 143.24 (Slovenia)(supported); 143.89 (Sudan)(supported); 143.90 (Malaysia)(supported); 143.91 (Turkey)(supported); 143.92 (China) (supported); 143.93 (Republic of Korea)(supported); 143.94 (Indonesia)(supported); 143.27 (Ethiopia)(supported); 143.25 (Holy See)(supported); 143.60 (Nepal)(supported); 143.61 (Ecuador)(supported); 143.62 (Sweden)(noted); 143.63 (Japan)(supported); 145.50 (Djibouti)(noted); 145.51 (Egypt)(noted); 145.65; 144.47 (Mexico)(noted); 144.48 (France)(noted); 144.49 (Nigeria)(noted); 144.51 (Algeria)(noted); 144.85 (Oman)(noted); 144.86 (Portugal)(noted); 145.10 (Austria)(noted); 145.13 (Turkey); 145.19 (Canada); 145.20 (Germany); 145.21 (Australia); 145.14 (Lithuania)(noted); 145.15 (Denmark)(noted); 145.16 (Uruguay)(noted); 145.17 (Italy)(noted); 145.18 (Czech Republic)(noted); 145.30 (Slovenia); 145.54 (Turkey)(noted); 145.41 (Pakistan)(noted); 145.55 (Iceland)(noted); 145.56 (Saudi Arabia)(noted); 145.57 (Canada)(noted); 145.58 (Slovenia)(noted); 145.59 (Mexico)(noted); 145.60 (Malaysia)(noted); 145.61 (Saudi Arabia)(noted); 145.62 (Australia)(noted); 145.63 (Netherlands)(noted); 145.64 (United Kingdom of Great Britain and Northern Ireland)(noted); 145.65 (Sweden)(noted); 145.66 (United States of America)(noted).

<sup>92</sup> 143.62 (New Zealand)(supported); 145.12 (Norway)(noted).

<sup>93</sup> Human Rights Council, 'Report of the independent international fact-finding mission on Myanmar,' UN Doc A/HRC/39/64, 12 September 2018, para 73.

<sup>94</sup> *Ibid.*

<sup>95</sup> Khin Myat Myat Wai, *Myanmar Times*, Muslims seek reopening of 100 mosques across country, available at: <https://www.mmtimes.com/news/muslims-seek-reopening-100-mosques-across-country.html>.

<sup>96</sup> See, e.g., 'We cannot let ethnic or religious differences become an excuse to revert to authoritarianism,' *New Light of Myanmar*, 17 July 2013.

<sup>97</sup> Information Committee, State Counsellor Office, 'Information Committee refutes rumours of rape', 26 December 2016, available at: <https://www.statecounsellor.gov.mm/en/node/551>.

<sup>98</sup> "Proof" of Rohingya-set fires in Myanmar fails inspection,' *Associated Press*, 12 September 2017.

<sup>99</sup> Nikhil Kumar, 'Reprisals, Rape, and Children Burned Alive: Burma's Rohingya Speak of Genocidal Terror', *Time*, 12 December 2016, available at: <https://time.com/4596937/burma-myanmar-rohingya-bangladesh-refugees-crimes-against-humanity/>. In September 2017, a Rakhine State minister made a similar claim regarding rape allegations. Lucy Pasha-Robinson, 'Rohingya Muslim crisis: Burmese colonel dismisses ethnic cleansing claims, asking 'who would want to rape



ranking military and civilian authorities have made statements denying the existence of the Rohingya as a distinct ethnic group, instead using the term 'Muslims from Rakhine State', or 'Bengalis'.<sup>100</sup>

54. Advocacy of discriminatory hatred is not limited to attacks against Rohingya. Ethnic and religious minorities, women, LGBT+ persons, as well as human rights defenders and journalists acting on their behalf have all experienced increases in hateful attacks, particularly online.<sup>101</sup>
55. The Government or Myanmar's proposed approach to the problem hinges on deeply flawed legislation which does not respect the rights to freedom of opinion and expression, freedom of religion or belief, and the right to equality and non-discrimination. A series of proposed laws rely primarily on criminal measures to curtail speech, rather than the positive policy measures called for in Human Rights Council Resolution 16/18 and the Rabat Plan of Action.<sup>102</sup>
56. As noted above, authorities have frequently used broad criminal provisions to target those criticizing the military or government. At the same time, authorities have failed to thoroughly investigate those most responsible for disseminating hateful statements against ethnic minorities, including ultranationalist monk Wirathu whose preaching tours were linked by the UN Fact-Finding Mission to attacks against Muslims.<sup>103</sup> Wirathu now faces prosecution not in relation to anti-Muslim rhetoric, but instead for comments critical of the ruling party. This practice raises concerns that the proposed legislation would not be used to target speech that should be prohibited under international law but rather legitimate criticism of the authorities.
57. **Recommendations:**
  - Adopt a national action plan to address the problems of hatred and intolerance, including through measures set out in Human Rights Council Resolution 16/18 and the Rabat Plan of Action.
  - Refrain from adopting any legislative measures to combat hate speech that do not comply with international standards.
  - Ensure that public officials at all levels immediately refrain from perpetuating hateful narratives and instead promote the official condemnation of all intolerance, discrimination and violence directed at the Rohingya and other ethnic and religious minorities in Myanmar.

## **Digital Rights**

58. During the last UPR, the Government of Myanmar noted a recommendation calling for any new laws affecting the Internet to be in line with international standards.<sup>104</sup> However, measures taken since the 2015 UPR show that this has not been followed.
59. On 20 June 2019, the Ministry of Transport and Communications ordered all telecommunications operators to restrict mobile internet services in nine townships in Rakhine State and Chin State, pursuant to section 77 of the Telecommunications Act.<sup>105</sup> Section 77 empowers the Ministry to order telecommunications providers to halt services in 'emergency situations'.<sup>106</sup> The restrictions were lifted in Maungdaw township in May 2020, but remain in effect in the eight other townships.<sup>107</sup>

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them?"; *Independent*, 11 September 2017, available at: <https://www.independent.co.uk/news/world/asia/rohingya-muslim-myanmar-latest-aung-san-su-ki-ethnic-cleansing-news-colonel-rape-a7941556.html>.

<sup>100</sup>Poppy McPherson and Thu Thu Aung, 'Myanmar religion minister says Rohingya 'brainwashed' to 'march' on the country', Reuters, 4 December 2018, <https://www.reuters.com/article/us-myanmar-rohingya-idUSKBN1O31AX>.

<sup>101</sup> See, e.g. monitoring by Real or Not, available at:

[https://www.realornotmm.info/?fbclid=IwAR2k8MLtJCDY0tjwY1tIcDpWB4eFPdKqENwxfp3VuJf5YWKsj1s5EzJ\\_w](https://www.realornotmm.info/?fbclid=IwAR2k8MLtJCDY0tjwY1tIcDpWB4eFPdKqENwxfp3VuJf5YWKsj1s5EzJ_w).

<sup>102</sup> ARTICLE 19, 'Myanmar Briefing Paper: Countering "Hate Speech"', 4 February 2020, available at:

<https://www.article19.org/resources/myanmar-briefing-paper-countering-hate-speech/>.

<sup>103</sup> Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc A/HRC/39/CRP.2, 17 September 2018, paras 742 and 1325-1326.

<sup>104</sup> 145.32 (Latvia)(noted).

<sup>105</sup> Telenor, 'Network shutdown in Myanmar,' 21 June 2019, available at: <https://www.telenor.com/network-shutdown-in-myanmar-21-june-2019/>.

<sup>106</sup> ARTICLE 19, 'The Right to Information and Natural Resources in Myanmar,' 31 July 2019, available at:

<https://www.article19.org/resources/myanmar-the-right-to-information-and-natural-resources/>.

<sup>107</sup> Aung Nyein Chan, 'Internet ban lifted in Maungdaw township', 5 May 2020, available at: <https://myanmar-now.org/en/news/internet-ban-lifted-in-maungdaw-township>.



60. These restrictions on mobile Internet services violate the right to freedom of expression and information as they are not necessary or proportionate to ensure protection of a legitimate aim.<sup>108</sup> They inhibit dissemination of information relating to safety and security; prevent civilians from contacting one another in case of an emergency; impede access to basic rights, including healthcare; impede organisations working and delivering aid in rural areas; and undermine the documentation of human rights abuses.<sup>109</sup> The Special Rapporteur on the situation of human rights in Myanmar condemned the shutdown, emphasizing the potential impact on humanitarian operations. In September 2019, the UN Human Rights Council called on the Government of Myanmar to immediately restore internet access to Rakhine State, and to repeal section 77 of the Telecommunications Law.<sup>110</sup>
61. Personal data protection is a key component of the right to privacy. The Government of Myanmar is discussing the adoption of a Cyber Law that would include provisions relating to data protection, but it has not yet adopted such a law. Any new laws relating to data protection should include robust provisions on how data is to be protected, including through robust mechanisms of personal data protection, access to information, data classification and data subject identification. Laws should also include rights for data subjects, such as the right to information about and access to personal data, and should place clear limitations and conditions on lawful interception.<sup>111</sup> Civil society are concerned that any cyber law may include more criminal restrictions on expression.
- 62. Recommendations:**
- Fully protect freedom of expression online, and cease all deliberate interference in Internet connectivity, and communications networks.
  - Repeal section 77 of the Telecommunications Law. Any restrictions on service in times of emergency should be narrowly defined, subject to prior judicial approval, exceptional, and strictly time-limited. Blanket shutdowns should be prohibited entirely.
  - Enact a comprehensive data protection law in line with international law in consultation with a wide range of stakeholders, including civil society.

### **Access to Information**

63. In 2015, the Government of Myanmar noted a recommendation that an access to information law should be in line with international standards.<sup>112</sup>
64. Despite a number of consultations and some progress on the development of an access to information law in Myanmar, including the preparation of a draft that attracted broad consensus in December 2017, no such law has so far been adopted or even placed before parliament. Having such legislation is a key democratic need and is an important step to promote the right to freedom of expression under international law. The Government of Myanmar should prioritize the adoption of this legislation, holding further consultations with civil society and making revisions to ensure the draft meets international standards and best practices.
65. The Government of Myanmar has made some efforts to increase transparency in the country. These include disclosure requirements for business, notice and comment periods in relation to land acquisition, and mandatory environmental impact procedures.<sup>113</sup> However, a serious concern is the prosecution of journalists merely for possessing government information, as in the prosecution of *Reuters*' journalists Wa Lone and Kyaw Soe Oo.

<sup>108</sup> For a full legal analysis, see, ARTICLE 19, 'Briefing Paper: Myanmar's Internet Shutdown in Rakhine and Chin States,' 2 August 2019, available at: <https://www.article19.org/resources/briefing-myanmars-internet-shutdown-in-rakhine-and-chin-states/>.

<sup>109</sup> Ibid.

<sup>110</sup> UN Office of the High Commissioner for Human Rights, 'Myanmar: UN expert 'fears for civilians' after Internet shutdown', 24 June 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24733&LangID=E>.

<sup>111</sup> Myanmar Centre for Responsible Business, 'Policy Brief: A Data Protection Law that Protects Privacy: Issues for Myanmar,' January 2019, available at: [https://www.myanmar-responsiblebusiness.org/pdf/2019-Policy-Brief-Data-Protection\\_en.pdf](https://www.myanmar-responsiblebusiness.org/pdf/2019-Policy-Brief-Data-Protection_en.pdf).

<sup>112</sup> 145.32 (Latvia)(noted).

<sup>113</sup> ARTICLE 19, 'Report: The right to information and natural resources in Myanmar', 31 July 2019, available at: <https://www.article19.org/resources/myanmar-the-right-to-information-and-natural-resources/>.

66. In December 2019, the Government of Myanmar passed the National Records and Archives Law. The law weakens access to information in Myanmar by providing the government full discretion, without independent review, to classify documents which would then not become public for thirty years.<sup>114</sup> It also introduces prison sentences for those 'accessing or publishing information without government permission'.<sup>115</sup>

67. The Computer Science Development Law provides that anyone who 'sets up a computer network, or connects a link inside the computer network' without prior permission of the relevant ministry may be imprisoned for between seven and 15 years and fined.<sup>116</sup> An identical punishment is prescribed for acts undermining state security, or for obtaining or distributing information relevant for state security using a computer network or any information technology.<sup>117</sup> Section 36 prohibits importing computer software or information prohibited by a council established in accordance with that law; those convicted may be imprisoned for five to ten years and fined.<sup>118</sup> These provisions do not protect a legitimate interest and risk arbitrary application against those exercising their right to freedom of expression.

**68. Recommendations:**

- Fully protect the right to information, including by passing comprehensive right to information legislation in line with international standards.
- Revise the National Archives and Records Law to bring it into line with international standards.
- Repeal sections 32, 34, and 36 of the Computer Science Development Law.

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<sup>114</sup> Thompson Chau, 'Public access to info: Planned archives law alarms civil society', Myanmar Times, 22 July 2019, available at: <https://www.mmtimes.com/news/public-access-info-planned-archives-law-alarms-civil-society.html>.

<sup>115</sup> Free Expression Myanmar, 'New Bill a big step backwards for RTI', 18 July 2019, available at: <http://freeexpressionmyanmar.org/new-bill-a-big-step-backwards-for-rti/>; Centre for Law and Democracy, Myanmar: Archives Law Fails to Respect the Right to Information, 28 August 2019, available at: <https://www.law-democracy.org/live/myanmar-archives-law-fails-to-respect-the-right-to-information/>.

<sup>116</sup> The State Law and Order Restoration Council Law No. 10/96 The 8th Waxing Day of Tawthalin, 1358 M.E., 20 September 1996, section 32.

<sup>117</sup> Ibid, section 34.

<sup>118</sup> Ibid, section 36.