

Myanmar

Amnesty International submission to the UN Universal Periodic Review

Tenth session of the UPR Working Group, January 2011

B. Normative and institutional framework of the State

The administration of justice in Myanmar is marked by the absence of an independent judiciary and the criminalization of peaceful political dissent. The provisions of the 2008 Constitution and many laws do not meet international human rights standards. Myanmar has only ratified two international human rights treaties, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of the Rights of the Child; however, the provisions of these are not adequately reflected in domestic law.

The Constitution

The new Constitution was adopted in a referendum held in the immediate aftermath of Cyclone Nargis in May 2008. It will come into force after national elections slated to take place towards the end of 2010.

Amnesty International has serious concerns in relation to a number of elements within the Constitution that undermine international human rights standards and enable impunity for perpetrators of human rights violations, including past violations:

- There are no provisions explicitly prohibiting torture and other ill-treatment. There are similarly no provisions guaranteeing the rights of arrested persons to be informed promptly of the nature and cause of any charges against them or to a fair and public hearing, and the right of those arrested to be brought before a court within 24 hours does not extend to "matters on precautionary measures" taken on security and similar grounds. Provisions on freedom of expression, association and assembly are restricted by vague references to "community peace and tranquillity" (Article 354). Other provisions are discriminatory; for example, members of religious orders and persons "who have not yet been declared free from insolvent" are not permitted to vote (Article 392).
- The President is granted broad powers to suspend all "fundamental rights [...] if necessary" during indefinite and undefined states of emergency (Article 414b). The Supreme Court's power to issue writs, including habeas corpus, is similarly suspended in times of emergency (Article 296).
- Article 445 states that "no proceeding shall be instituted against the said Councils (State Law and Order Restoration Council and the State Peace and Development Council) or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties". This risks giving immunity to state agents for human rights violations committed while on duty, rendering accountability for human rights violations in Myanmar an even more difficult prospect.

Electoral Laws

In March 2010, the government promulgated five Electoral Laws and four Bylaws for the first elections in 20 years expected to take place by the end of 2010. Provisions of these laws are in clear violation of the rights to freedom of expression, peaceful assembly, and association:

- The Electoral Laws arbitrarily exclude whole segments of Burmese society, including "persons serving a prison term under a sentence passed by any court".¹ Amnesty International is concerned that this disenfranchises prisoners including the more than 2,200 political prisoners.
- The Political Parties Registration Law bars all political prisoners from belonging to a political party, including Daw Aung San Suu Kyi and hundreds of other imprisoned opposition members.²

¹ Pyithu Hluttaw Election Law, SPDC Law No. 3/2010, Chapter IV, Art. 7(b), (c), (d) and (e), respectively; and Amyotha Hluttaw Election Law, SPDC Law No. 4/2010, Chapter IV, Art. 7(b), (c), (d) and (e), respectively (unofficial translations).

- Two provisions in the Electoral Laws limiting who can stand in the elections could be applied to non-violent opposition groups thus limiting their right to freedom of association and peaceful assembly: ineligible persons include any person against whom there is “credible evidence” of contact with an association declared “unlawful”, groups deemed to have committed “terrorist acts”, and “insurgent organizations in revolt with arms against the State”.³
- The Electoral Laws also list a number of offences and penalties, among them – in blatant violation of the right to freedom of expression -- a vaguely worded provision against “exhorting” persons to vote or not in the elections.⁴

Criminalisation of peaceful dissent by security laws

The authorities have for many years justified the imprisonment of thousands of people on the basis that they were seeking to cause “unrest” or that they posed “threats” to or committed acts deemed to disrupt “law and order”, “peace” and “tranquillity”. These terms are found in a raft of vaguely worded security laws, which allow excessively broad interpretation by the authorities of what constitutes a threat to their rule.⁵

Below are examples of the security laws which have been frequently used by the authorities between 2006 and 2010 to criminalise peaceful political dissent, including in the context of the anti-government protests of August and September 2007, the 2008 Constitutional Referendum, and private relief initiatives in the aftermath of Cyclone Nargis:

- The 1962 Printers and Publishers Registration Act criminalizes the circulation of any written information without the permission of the official censor. It imposes far greater restrictions on rights and freedoms than are necessary to protect national security, public order or morality. Breaches of this Act are liable to a maximum punishment of three years' imprisonment and a fine.
- The Unlawful Associations Act contains sweeping provisions under which associations that operate peacefully, such as activist groups, trade unions, political parties, student associations and religious organizations, can be arbitrarily declared unlawful. Offences committed under the Act carry a maximum punishment of three years' imprisonment and a fine.
- Section 505(B) of the Penal Code provides for up to two years' imprisonment and a fine for any person who makes, publishes or circulates information which may cause public fear or alarm, and which may incite persons to commit offences “against the State or against the public tranquillity”.
- The Electronic Transactions Law (commonly known as the “Electronics Act”), enacted in 2004, provides for up to 15 years' imprisonment for using electronic transactions detrimental to the security of the State, the prevalence of law and order, community peace and tranquillity, national solidarity, national economy or national culture. Twenty-three members of the 88 Generation Students group, who spearheaded the first anti-government protest in August 2007 which went on to become the “Saffron Revolution”, were each sentenced to 65 years' imprisonment in closed trials on 11 November 2008. Their sentences include 15 years each on four different charges under Section 33 (A) of the Electronic Transactions Law.
- The 1950 Emergency Provisions Act in Articles 2, 3, and 4, which concern assisting people involved in treason, provides for the death penalty or life imprisonment. Article 5 is often used to sentence political detainees, including a number of activists who took part in the “Saffron Revolution”. Article 5/j states:

² Political Parties Registration Law, SPDC Law No. 2/2010, Chapter II, Art. 4(e).

³ Pyithu Hluttaw Election Law, SPDC Law No. 3/2010, Chapter V, Art. 10(n); and Amyotha Hluttaw Election Law, SPDC Law No. 4/2010, Chapter V, Art. 10(n).

⁴ Pyithu Hluttaw Election Law, SPDC Law No. 3/2010 at Chapter XIII, Art. 61(c); and Amyotha Hluttaw Election Law, SPDC Law No. 4/2010, Chapter XIII, Art. 61(c).

⁵ For a more detailed discussion of the relevant laws used to criminalise peaceful dissent, see *Justice on Trial*, July 2003, (AI Index: ASA 16/019/2003).

"Anyone who [...] causes or intends to disrupt the morality or the behaviour of a group of people or the general public or to disrupt the security or the reconstruction of stability of the union [...] shall be sentenced to seven years in prison, fine, or both." These acts are not specifically defined and so are open to abuse by the authorities, stifling the right to freedom of peaceful assembly and association.

The death penalty

Amnesty International considers Myanmar as abolitionist in practice, although the death penalty remains mandatory for certain crimes. In December 2007 and again in December 2008, Myanmar voted against UN General Assembly resolutions 62/149 and 63/168 that sought to establish a global moratorium on the use of the death penalty.

C. Promotion and protection of human rights on the ground

Political imprisonment

Fundamental rights to freedom of expression, association and assembly are severely curtailed. Those who criticize the government are at risk of harassment, arbitrary arrest, torture and other ill-treatment, imprisonment and even extrajudicial execution. At the time of writing, there are more than 2,200 political prisoners in Myanmar⁶ – more than double the number before the "Saffron Revolution" in 2007.

The repression of ethnic minority political activists

Ethnic minority activists have played a key role in the political opposition to the government's repressive conduct, often paying a high price. According to Amnesty International's research during October 2007 – August 2009, these activists have faced extensive surveillance, harassment, religious discrimination, arbitrary arrest, torture and other ill-treatment, imprisonment and extrajudicial execution.

The anti-government protests of August and September 2007

Small-scale marches began in Yangon, Myanmar's largest city, on 19 August 2007 against sudden fuel and commodity price rises, but quickly grew in size and significance. In the six weeks that followed, tens of thousands of protesters took to the streets, adding calls for the release of all political prisoners and demanding a process of national reconciliation to end the long-standing political impasse in Myanmar. The peaceful protests, known as the "Saffron Revolution" because of monk-led protests in September 2007, marked the largest show of public discontent against the military government since 1988; however they were brought to an end in a violent five-day crackdown by the authorities in late September 2007.

More than 100 people are believed to have been killed in the crackdown, and there are at least 72 confirmed cases of enforced disappearance. Several thousands were detained in deplorable conditions. Monasteries were raided and closed down, property was destroyed or confiscated and monks were beaten and detained. Monks held in detention were forcibly de-robed and purposely fed in the afternoon which their vows prohibit. Protesters' homes and hiding places were raided, usually at night, and authorities took friends or relatives as hostages to put pressure on wanted persons and to discourage further dissent. Leading activists of the 88 Generation Students group and the All Burma Monks Alliance became the main targets.

Human rights violations in the aftermath of Cyclone Nargis

⁶ While there are nearly 2,200 known political prisoners in Myanmar, the real number of political prisoners is likely to be substantially higher. See Amnesty International's recent report *The Repression of ethnic minority activists in Myanmar*, listed in the annex

Cyclone Nargis struck Myanmar on 2 and 3 May 2008, devastating much of the Ayeyarwady (Irrawaddy) delta and surrounding areas. Over 140,000 people were left dead or missing, and at least 2.4 million people were affected. The government refused to acknowledge the scale of the emergency and for three weeks rejected international assistance, blocking access to the Ayeyarwady delta at a time when survivors most needed food, shelter, and medicine. When aid was eventually allowed into the country on 26 May 2008, there were widespread reports that it was confiscated, diverted or otherwise misused by soldiers and local government officials. Cyclone survivors were also forcibly evicted from temporary shelters.

While the Myanmar government obstructed international assistance, private donors in the country raised and distributed aid. Despite assurances from the authorities that private donors would be given free access to cyclone affected areas, a number of them – including popular comedian Zarganar – were arrested for joining the voluntary aid effort. At the time of writing, at least 20 people remain imprisoned for their involvement in various private relief initiatives.

The May 2008 constitutional referendum

In the immediate aftermath of Cyclone Nargis, the government proceeded with a planned referendum on a new Constitution. It announced on 28 May 2008 that 98.1 per cent of eligible voters had voted during the referendum and that 92.4 per cent of these were in favour of the new Constitution.

However, reports of intimidation and coercion of voters pointed to the continuation of the pattern of human rights violations that had characterised the run-up to the referendum. After enacting a new law prohibiting public criticism of the referendum in February 2008, the government and its socio-political organization, the Union Solidarity and Development Association, sought to advance the “Vote Yes” campaign, while severely restricting the “Vote No” movement through cash incentives, monopolization and manipulation of the media, harassment, arrests, and violent attacks on individuals. Over 70 “Vote No” activists were arrested in April 2008; to date, Amnesty International is aware of at least 55 individuals who are still behind bars.

Mass sentencing of peaceful political activists

Since October 2008, when the government began sentencing en masse those who had peacefully taken part in the anti-government protests of August–September 2007, almost 400 political activists have been imprisoned. In November 2008 alone, 215 activists were sentenced in summary and grossly unfair trials held in special closed courts. Most defendants were denied access to legal counsel or adequate time to prepare a defence. The courts accepted blatantly non-credible evidence from the prosecution and forced confessions, and legal representatives were harassed by the authorities. Twenty-three members of the 88 Generation Students group, including Min Ko Naing, Mie Mie and Nilar Thein, were each sentenced to 65 years’ imprisonment for their role in the peaceful uprising.

Conditions in detention

Amnesty International consistently receives credible reports of torture and other ill-treatment in Myanmar’s prisons. Many political prisoners are held in poor conditions and many are denied adequate food and become malnourished. Access to medical care is limited, and the poor prison conditions contribute to or exacerbate ill-health. Several leading activists, including Su Su Nway, Htay Kywe, and Ko Mya Aye, are known to have been held in solitary confinement. Some political prisoners are also known to have been held with prisoners on death row.

At least 238 political prisoners have been moved to remote prisons, restricting access to relatives, lawyers and medical personnel. Political prisoners often rely on family members to provide them with basic medicines, food and clothing. The International Committee of the Red Cross has been denied access to prisons in Myanmar since early 2006.

Crimes against humanity, armed conflict and displacement

Between November 2005 and mid-2008, the army waged a military offensive against ethnic Karen civilians in Kayin (Karen) State and Bago (Pegu) Division, on a scale amounting to crimes against humanity.

An estimated 147,800 people were internally displaced in Kayin State and eastern Bago Division as a result. During this period the army and its allies subjected many Karen civilians to unlawful killings, torture and other ill-treatment, enforced disappearance and arbitrary arrest; forced labour, including portering for the army; destruction of villages and homes, and destruction or confiscation of crops and food-stocks. In some villages the army prevented farmers from cultivating their land or purchasing food supplies, announcing a shoot-to-kill policy for those found outside their villages.

In the past two years, the army has continued to attack various ethnic minority armed groups. In June 2009, attacks by the army and the government-supported Democratic Karen Buddhist Army internally displaced thousands of ethnic minority Karen civilians and caused 4,800 refugees to flee to Thailand.

In August 2009, the most intensive attacks in 10 years against the armed opposition group, the Shan State Army-South, and Shan civilians forced more than 10,000 people to relocate; most were internally displaced. The attacks were characterized by extrajudicial executions and sexual abuse. In the same month, the army attacked the Myanmar National Democratic Alliance Army, causing more than 30,000 mostly ethnic minority Kokang to flee into China, almost all of whom subsequently returned to Myanmar. At the time of writing, internal displacement throughout Myanmar has increased to over 500,000 people.

Appendix 1: Recommendations for action by the State under review

Amnesty International calls on the government of Myanmar:

Protection of human rights in national legislation

- To repeal or amend domestic legislation, in particular the 2008 Constitution, the 1962 Printers and Publishers Registration Act, Electronic Transactions Law, Section 505(B) of the Penal Code, The Unlawful Associations Act, and The 1950 Emergency Provisions Act to ensure that ambiguous provisions are clearly defined or removed, so that they cannot be applied in an arbitrary manner to suppress peaceful political dissent, opposition and freedom of expression;
- To ratify and effectively implement international human rights treaties, including the International Covenant on Civil and Political Rights and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination; as well as the Rome Statute of the International Criminal Court;
- To fulfil existing obligations under international law and to ensure effective implementation of treaties to which Myanmar is a state party, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the ILO Conventions.

Restrictions on freedom of expression and assembly

- To remove all restrictions on freedom of association and assembly, including by refraining from penalizing peaceful political opposition activities;
- To remove restrictions on independent media, including international journalists, that violate the right to freedom of expression and end practices such as excessive media censorship and surveillance;
- To end surveillance, harassment, religious discrimination, arbitrary arrest, torture, and imprisonment of ethnic minority political activists.

Political imprisonment

- To release immediately and unconditionally all political prisoners arrested solely on the basis of their peaceful political activity, ethnicity or religion;
- To ensure that all trial proceedings conform to international fair trial standards, including the rights to a fair and public trial by a competent, independent and impartial tribunal, access to legal counsel of one's choosing, the presumption of innocence, and the opportunity to appeal through a process of judicial review.

Prison conditions

- To improve conditions in all prisons and detention facilities to ensure compliance with international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners;
- To allow unrestricted access to all places of detention for independent human rights monitors.

Crimes against humanity

- To immediately halt all violations of international human rights and humanitarian law by the security forces, including extrajudicial executions and other unlawful killings, torture and other ill-treatment, and forced labour;
- To ensure that all acts violating international human rights and humanitarian law are subject to prompt, independent and impartial investigation, and that suspected perpetrators, including those suspected of

ordering these acts, regardless of rank, are brought to justice in proceedings which meet international standards of fairness, and without the imposition of the death penalty;

- To cooperate fully with any international investigation of violations of international human rights and humanitarian law, including by giving investigators full access to the country.

Survivors of Cyclone Nargis

- To facilitate and support the UN and international aid agencies to provide long-term assistance to survivors of Cyclone Nargis and contribute to the reconstruction of affected areas;
- To ensure that all international aid workers are granted visas to work in the country without delay and given unfettered access to areas requiring humanitarian assistance;
- To release immediately and unconditionally those who were arrested and imprisoned for organising private relief efforts in the aftermath of the cyclone.

The death penalty

- To immediately impose a moratorium on executions, with a view to complete abolition of the death penalty, in line with UN General Assembly Resolutions 62/149 and 63/168.

Appendix 2: Amnesty International documents for further reference⁷

- Myanmar's 2010 Elections: A Human Rights Perspective, May 2010, AI Index: ASA 16/007/2010
- Myanmar: The repression of ethnic minority activists in Myanmar, February 2010, AI Index: ASA 16/001/2010
- Amnesty International Report 2010, Myanmar entry [http://thereport.amnesty.org/sites/default/files/AIR2010_AZ_EN.pdf#page=183]
- Myanmar must end arrests of activists and continue aid after Cyclone Nargis , November 2009 [<http://www.amnesty.org/en/news-and-updates/myanmar-must-end-arrests-activists-and-continue-aid-after-cyclone-nargis-2009112>]
- Myanmar: Daw Aung San Suu Kyi's new sentence "shameful", August 2009 [<http://www.amnesty.org/en/for-media/press-releases/myanmar-daw-aung-san-suu-kyi%E2%80%99s-new-sentence-quotshamefulquot-20090811>]
- Myanmar: Urgent Health Concerns of Prisoners of Conscience, May 2009, AI Index: ASA 16/004/2009
- Cyclone Nargis: One year on, 21 people imprisoned for helping the victims, May 2009 [<http://www.amnesty.org/en/for-media/press-releases/cyclone-nargis-one-year-21-people-imprisoned-helping-victims-20090504>]
- Amnesty International Report 2009, Myanmar entry [<http://report2009.amnesty.org/en/regions/asia-pacific/myanmar>]
- Myanmar: Harsh sentences for 14 dissidents reveal government's true intentions, November 2008 [<http://www.amnesty.org/en/for-media/press-releases/myanmar-harsh-sentences-14-dissidents-reveal-government%E2%80%99s-true-intention>]
- Myanmar Briefing: Human rights concerns a month after Cyclone Nargis, June 2008, AI Index: ASA 16/013/2008
- Myanmar: Crimes against humanity in eastern Myanmar, June 2008, AI Index: ASA 16/011/2008
- Myanmar: Constitutional referendum flouts human rights, May 2008, AI Index: ASA 16/010/2008
- Imprisoned for giving water to monks, March 2008 [<http://www.amnesty.org/en/news-and-updates/news/imprisoned-giving-water-monks-20080331>]
- Amnesty International Report 2008, Myanmar entry [<http://archive.amnesty.org/air2008/eng/regions/asia-pacific/myanmar.html>]
- Myanmar: Briefing Paper: No Return to "Normal", November 2007, AI Index: ASA 16/037/2007
- Amnesty International Report 2007, Myanmar entry [<http://archive.amnesty.org/report2007/eng/Regions/Asia-Pacific/Myanmar/default.htm>]
- Justice on Trial, July 2003, AI Index: ASA 16/019/2003

⁷ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/myanmar>