

General situation for Human Rights Defenders

1. The situation for human rights defenders (HRDs) in Myanmar has improved due to the political reforms that have taken place in the country since 2011, but serious challenges remain. Although more than 1000 political prisoners, including many HRDs were freed, a number of conditions were attached to their release and they could be returned to prison once again should they be accused of similar offences. Furthermore, their release was not accompanied by measures to support their reintegration into society. As a result, many of them face discrimination and have difficulty finding work.
2. **Former imprisoned HRDs** have faced a number of restrictions. Student activists who had served jail terms were not allowed to return to study at their universities, in an apparent attempt to prevent them from organising other students on human rights and political-related issues. Many of them were warned to refrain from any form of human rights activism.
3. Prominent HRDs are not able to obtain **passports**. The Ministry of Home Affairs has refused to issue passports to former political prisoners, in a move that appears to be aimed at curbing their human rights work internationally.
4. Further to the opening of the country and the arrival of foreign companies, land confiscation has increased, along with threats against HRDs working in the field of economic, social, and cultural rights. The criminalisation of legitimate and peaceful protests by communities affected by development projects is of concern, as well as judicial harassment against HRDs who work to support them. Farmers and **land rights defenders** have been harassed, arbitrarily detained, and in some cases killed for challenging land confiscation.
5. The violence against the stateless Rohingya in Arakan state and the Muslim population, which erupted in 2012, made it more difficult for **Rohingya and Muslim HRDs** to work freely. Community leaders working to promote interfaith dialogue and documenting human rights violations faced arrest and charges and were held in pre-trial detention. HRDs working to protect the rights of the Rohingya population are afraid to speak up publicly for fear of persecution as well as of being sidelined within the human rights community.
6. The government has introduced several pieces of **legislation** that, ostensibly, allow fundamental freedoms of association, expression and assembly. However, these laws provide for restrictions on the exercise of those rights and are in practice used to stifle the work of human right defenders. A case in point is the 2011 Peaceful Assembly and Peaceful Procession Act. The law contains stipulations such as the need to apply for permission to assemble, later amended to 'consent' from the authorities. This consent must be applied for five days in advance, with details of the time, place, and slogans, and purpose of the assembly, as well as names and addresses of the organisers. Those who contravene the legislation are criminally liable under Section 18. A number of HRDs have been charged for violations of this law.
7. The Government also enacted the Association Registration Law in 2014, permitting civil society organizations to work officially in Myanmar. However, the legislation contains vaguely worded clauses (e.g. references to organisations which threaten "national security" or being subject to charges under "existing law") or clauses which have the potential to restrict the freedom of associations to operate (e.g. imposing limitations on the geographical scope of their activities).
8. Furthermore, several dated pieces of legislation remain in force, which continue to be used to arrest political opponents and HRDs, including the 1908 Unlawful Association Law and provisions of the 1861 Penal Code.

9. A worrying trend is the intimidation of **journalists** who are covering events the authorities do not want to be in the public domain. A case in point is Aung Kyaw Naing (popularly known as Ko Par Gyi), a journalist who in 2014 was taken into custody, tortured and shot dead by the Army. His body was buried without being returned to his family (see paragraph 19). Par Gyi's death has caused widespread outcry amongst civil society in Myanmar. Another high profile case is that of five journalists of newspaper Unity Journal, who were sentenced to ten years imprisonment with hard labour in July 2014, for reporting the existence of an alleged chemical weapons factory.
10. Focusing on key issues surrounding democratic space, the new UN Special Rapporteur on the human rights situation in Myanmar, Yanghee Lee, in her first report presented in the Human Rights Council (HRC) on 18 March 2015 drew especial attention to the pressure on human rights defenders and journalists, which according to her have a severe "chilling effect on civil society activities."

Judicial harassment and criminalisation of human rights defenders

11. **Judicial harassment** is the most common tool employed to punish and silence HRDs. This becomes possible due to the lack of an independent and effective judiciary. HRDs face fabricated charges and heavy jail terms. In addition, bail is often not granted. When it is granted, it is often set at an disproportionately high amount when compared with the alleged offence. Front Line Defenders documented a number of cases of judicial harassment of HRDs, a selection of which is present below.
12. Mr **Ko Htin Kyaw**, who leads the community-based organisation Movement for Democracy Current Force, has received at least 14 sentences totalling 13 years and 4 months since June 2014. The HRD has repeatedly been arrested for his peaceful protests, including in August and December 2013. In February 2014, the United Nations Working Group on Arbitrary Detention found that the detention of Ko Htin Kyaw in December 2013 was arbitrary.
13. Ms **Naw Ohn Hla** has been a human rights defender for decades and has been instrumental in calling for the suspension of the Letpadaung Copper Mine project at Salingyi township, Sagaing region, due to environmental concerns. On 29 August 2013, the HRD was found guilty of disturbing public tranquillity under Section 505(b) of the Penal Code and was sentenced to two years in prison. She was later released on presidential amnesty on 15 November 2013. She was again arrested on 30 December 2014 with other HRDs for protesting against the killing of a villager in connection with the Letpadaung mining project. She remains in detention at the time of writing.
14. On 25 April 2013, human rights defenders **U Aung Soe**, **U Maung San** and **Ko Soe Thu** were arrested, without a warrant, after protesting against the Letpadaung mining project. They spent 30 days in incommunicado detention in an unknown location before being sentenced in court proceeding held behind closed doors at Shwebo Township court. U Aung Soe was sentenced to 18 months in prison, while U Maung San and Ko Soe Thu were given prison terms of six months each under section 188 of the Penal Code for disobedience of an order by a public official. On 8 July 2013, additional sentences were handed down increasing their prison terms: U Aung Soe received an additional 11 years and six months while U Maung San and Ko Soe Thu were sentenced to two years and six months.
15. On 10 July 2013, Messrs **Wai Phyo**, **Zar Ni** and **Wai Phyo Aung**, all members of Generation Wave, were arrested for their participation in the *Free Political Prisoners* poster campaign, a nation-wide campaign organised by Generation Wave in July 2011 to call for the release of all political prisoners. They were sentenced seven months later to three months of imprisonment and a 30,000 Kyats fine.

16. On 15 July 2013, 75-year-old Rohingya human rights defender and community leader Mr **Kyaw Hla Aung** was arrested in Sittwe Township, Arakan State, in connection with protests on 26 April 2013 at the Thetkalpyin camp for internally displaced persons (IDPs). A number of Rohingya people who were held in the camp were resisting attempts by officials to register them as 'Bengali'. Protests turned into violent clashes between Rohingya IDPs and immigration officials, which forced authorities to suspend the registration process. Kyaw Hla Aung did not participate in the protests and, moreover, he made efforts to contact camp leaders, advising them to keep the protests non-violent. He was later charged of "rioting" and sentenced to one year and six months imprisonment. He was released on a presidential amnesty on 7 October 2014.

Fabricated charges against HRDs

17. In addition to judicial harassment in relation to real events, such as protests, the use of completely fabricated charges against HRDs has also been reported.
18. Ms **Phyu Hnin Htwe** is a human rights defender and member of the All Burma Federation of Student Unions (ABFSU), working to build awareness among villagers protesting the Letpadaung mining project. On 13 September 2014, she was arrested based on a complaint lodged by the mining company operating in Letpadaung alleging that she was involved in the abduction of their employees. Phyu Hnin Htwe was released on 15 October 2015, spending over a year in detention, after the company withdrew the complaint against her during a hearing at the Yinmabin District Court, Sagaing Division.

Killing of human rights defenders

19. On 30 September 2014, freelance journalist and HRD Mr **Ko Par Gyi** was detained by the military in the Kyaikmayaw Township of Mon State, upon his return from an insurgent-controlled area. The journalist was covering armed clashes in a region between Karen ethnic insurgents and the Myanmar army. On 24 October 2014, military officials issued a statement acknowledging the arrest and his death in custody, claiming that he was killed by the military when he "tried to seize a gun from a guard and run away". On 5 November 2014, during the exhumation of the body of the HRD, witnesses observed clear signs of torture on his body.
20. On 4 June 2014, at around midnight, land right activist Mr **San Tun** was taken from his home by two unidentified men. The next day his body was found outside his village in Shan State with bullet holes in his back and his head. San Tun was supporting local villagers attempting to get back land confiscated by the military.

Using non-state actors against human rights defenders

21. A common tactic used by the military junta during the military regime was to use individuals not linked to state institutions to commit assaults or arson attacks. During the Saffron Revolution of 2007, there were concerns that regime-backed thugs were out on the streets, whipping up fear and confusion. The same pattern of using thugs or plain-clothes vigilantes appears to be arising ahead of the 2015 election.
22. On 10 March 2015, during a violent **crackdown on student protesters** in Yangon, individuals who appeared not to be police officers, were filmed first attempting to agitate student activists, then aiding police in breaking up the demonstration. They wore red armbands emblazoned with the word "duty" in Burmese. During the crackdown, leaders of the All Burma Federation of Student Union (ABFSU) were arrested. The demonstrations had been called to protest the National Education Bill, seen as restrictive of academic freedom.

Development since the previous UPR Cycle

23. During its last UPR in 2011, Myanmar accepted only 74 of the 190 recommendations made. Norway and Austria made two specific recommendations on HRDs, calling respectively for the release of all HRDs, democracy activists and other political prisoners, and for the end of the persecution of HRDs; both recommendations however were noted – not accepted – by Myanmar. As noted above and as this report shows, while the situation for HRDs has improved from the time of the military dictatorship, very serious challenges remain.
24. Despite its pledge to ratify core international human rights treaties, Myanmar is yet to accede to several of the core treaties including ICCPR and ICESCR. Myanmar also promised to review and amend its laws to guarantee the fundamental rights to freedom of expression, association, and peaceful assembly. However, several repressive laws remain unchanged and newly introduced ones have been used to limit those rights.
25. Myanmar expressed its commitment in the last UPR to ensure the independence and impartiality of the judiciary. However, courts across the country have continued to hold trials that are not in accordance with accepted international norms of due process. This is particularly evident in criminal prosecutions of human rights defenders.

Recommendations

26. Front Line Defenders calls upon the member states of the UN Human Rights Council to urge the Myanmar government to prioritise the protection of human rights defenders and in doing so to:
 - a) Cease judicial harassment of human rights defenders, particularly those working on democracy related and land rights issues, and ensure that all human rights defenders in Myanmar are able to carry out their legitimate human rights activities free from arbitrary arrest and judicial harassment;
 - b) Immediately release all human rights defenders held in pre-trial detention and drop the charges against them;
 - c) Review and quash the conviction of, and release, all human rights defenders who have been sentenced on grounds of their human rights work and who remain in detention;
 - d) Carry out an immediate, effective and independent investigation into all reported cases of killing of human rights defenders;
 - e) Review all laws and regulations that are not in compliance with international human rights standards, including 1908 Unlawful Association Law, the Myanmar Penal Code of 1861, 2011 Peaceful Assembly and Peaceful Procession Act and Association Registration Law of 2014 and bring them into full compliance with international standards;
 - f) Ensure full respect for the right to freedom of association and review current practices regarding this right; in particular, ensure that human rights defenders are able to register associations should they wish to do so;
 - g) Accept the recommendations on human rights defenders that will be made in the course of the UPR, and consider how best to implement them in a transparent and participatory

manner, including through consultation with human rights defenders;

- h) Publicly recognise the positive and legitimate role played by human rights defenders in society;
- i) Ratify and ensure full respect of the International Covenant on Civil and Political Rights and the UN Declaration on Human Rights Defenders, including in particular the right to freedom of expression, association and assembly.