



## Myanmar

### Amnesty International submission to the UN Universal Periodic Review 23<sup>rd</sup> session of the UPR Working Group, 2-13 November 2015

#### Follow up to the previous review

Since Myanmar's first Universal Periodic Review (UPR) in January 2011, the country has seen a period of major transition. While there have been significant economic and political reforms during this time, the human rights situation in the country remains serious. At the time of its first UPR in January 2011, Myanmar accepted only 74 out of 190 recommendations.

The recommendations Myanmar did accept included recommendations to "consider" ratifying international treaties,<sup>1</sup> to end and prohibit torture,<sup>2</sup> to review domestic law and assure a free and independent media,<sup>3</sup> and to cooperate with the Human Rights Council, Special Procedures and the Office of the UN High Commissioner for Human Rights (OHCHR).<sup>4</sup> Unfortunately, many of the accepted recommendations have yet to be fully implemented, and some have in practice been ignored altogether. Furthermore, many recommendations which were rejected by the government remain relevant and in urgent need of attention.<sup>5</sup> Amnesty International's concerns in this regard are also detailed below.

#### *International human rights treaties*

The government has taken some steps with regard to ratifying international human rights treaties. On 7 December 2011 it ratified the UN Convention on the Rights of Persons with Disabilities. However, it has failed to ratify other key treaties, despite public commitments to do so.<sup>6</sup>

#### *Torture and other ill treatment*

Myanmar has failed to end and prohibit torture and other ill-treatment. Amnesty International has documented numerous cases of torture and other ill-treatment committed by the police since 2012 against ordinary criminal suspects, often from poor and marginalized communities.<sup>7</sup> The organization also continues to receive reports of torture and other ill-treatment by the army, particularly in conflict areas.<sup>8</sup> Torture is still not explicitly prohibited in domestic law, creating a situation where acts of torture can more easily go unpunished.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review: Myanmar, UN Doc. A/HRC/17/9, 24 March 2011, paras 104.1 (Pakistan), 104.3 (Jordan), 104.4 (Ukraine) 104.6 (Argentina), and 104.7 (Philippines).

<sup>2</sup> A/HRC/17/9 para 104.30 (Slovenia).

<sup>3</sup> A/HRC/17/9 para 104.10 (Indonesia).

<sup>4</sup> A/HRC/17/9 paras 104.25 (Poland), 104.26 (Austria), 104.27 (Ukraine), and 104.28 (Singapore).

<sup>5</sup> For example recommendations to review and amendment of the 2008 Constitution in line with international human rights standards the amendment of the 1982 Citizenship Act, the release of all prisoners of conscience and removal of restrictions on the rights to freedom of expression, association and peaceful assembly.

<sup>6</sup> For example, in January 2014 Deputy Foreign Minister U Thant Kyaw told Parliament that Myanmar would ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, see *Myanma Freedom Daily*, "Myanmar to sign UN convention against torture", available at: <http://www.mmfreedom-daily.com/2014/01/27/myanmar-to-sign-un-convention-against-torture/>

<sup>7</sup> Amnesty International interviews, March 2014.

<sup>8</sup> Amnesty International, *Farmers at risk after beating by soldiers* (Index: ASA 16/002/2014), 30 September 2014.

### *Media reforms*

Since Myanmar's last review there has been some significant relaxation of media restrictions – most notably the removal of pre-publication censorship, greater online access to information, the release of detained journalists and the adoption or proposal of new laws relating to the media. However, restrictions on freedom of expression remain entrenched in Myanmar's legislative framework, and journalists remain at risk of arrest and imprisonment simply for carrying out their legitimate activities peacefully. At the time of writing at least 12 journalists were imprisoned in connection with their journalistic activities.

### *Co-operation with UN human rights mechanisms*

Finally, while we welcome Myanmar's facilitation of visits by the UN Special Rapporteur on the situation of human rights in Myanmar and of OHCHR staff to access the country to undertake human rights monitoring, we are concerned that – despite government commitments – the OHCHR has not yet been able to establish an office in the country.

## **The national human rights framework**

### *Constitution*

Amnesty International remains seriously concerned about a number of elements within the 2008 Constitution that undermine respect for and protection of human rights and enable impunity for perpetrators of human rights violations, including past violations. There are no provisions for freedom from torture and other ill-treatment, and crucial fair trial safeguards are missing.<sup>9</sup> Provisions relating to freedoms of expression, association and peaceful assembly and freedom of thought, conscience and religion are not in line with international human rights law and standards.<sup>10</sup> Furthermore, the Constitution prevents civilian oversight of the military, and grants the President broad powers to suspend "all fundamental rights [...] if necessary" during indefinite and undefined states of emergency.<sup>11</sup>

### *Laws restricting freedoms of expression, association and peaceful assembly*

Myanmar retains within its legislative framework a number of laws which restrict the rights to freedom of expression, association and peaceful assembly. These laws continue to be used to arrest and detain political activists, human rights defenders, journalists and others simply for the peaceful exercise of their human rights. They include: provisions of the Penal Code,<sup>12</sup> the Peaceful Assembly and Peaceful Procession Law,<sup>13</sup> the Unlawful Associations Act,<sup>14</sup> the Official Secrets Act,<sup>15</sup> the Electronics Transactions Act,<sup>16</sup> the State Protection Act,<sup>17</sup> and the Emergency Provisions Act.<sup>18</sup> The restrictions

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<sup>9</sup> For example, there are no provisions for the rights of persons being arrested to be informed promptly of the nature and cause of the charge 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.

<sup>10</sup> Under Article 254 provisions on freedom of expression, association and assembly are restricted by vague references to "community peace and tranquility", while under Article 34 the right to freedom of expression or belief is guaranteed only to "citizens", thus denying non-citizens these rights on a discriminatory basis.

<sup>11</sup> Article 414(b).

<sup>12</sup> For example, Section 505(b) of the Penal Code criminalizes the act of publishing or circulating information with the intent or likelihood to cause public fear or alarm whereby a person may be induced "to commit an offence against the State or against the public tranquility".

<sup>13</sup> The Peaceful Assembly and Peaceful Procession Law, which was amended in June 2014, requires protesters to apply at least five days in advance for permission to demonstrate (Article 3) and stipulates that an application may be denied if "the security of the State, rule of law, public tranquility and the existing laws protecting the public are to be breached" (Article 13). Demonstrating without authorization can be punished with up to six months' imprisonment (Article 18). See Amnesty International, *Myanmar: Stop Using Repressive Law Against Peaceful Protesters* (Index: ASA/16/025/2014), 15 October 2014.

<sup>14</sup> The Unlawful Associations Act requires associations to register with the government and contains sweeping provisions to arbitrarily outlaw peaceful associations.

<sup>15</sup> Under the Official Secrets Act it is an offence to possess, control, receive or communicate any document or information which, if disclosed could be "prejudicial to the safety or interests of the state". The Act allows the government broad power to determine what classifies as a "secret" and there are no provisions which allow for the disclosure of classified information on public interest grounds.

imposed by these laws are phrased in an excessively broad and vague manner and potentially result in an overreach and discriminatory application of the law.

#### *Proposed laws protecting race and religion*

In January 2015, Parliament began consideration of a package of four laws aimed at “protecting race and religion”. The draft laws are discriminatory and if adopted could result in violations of a number of human rights, including the right to freedom of thought, conscience and religion, the right to privacy, children’s rights, women’s rights and the right to freedom of expression. Two of the bills – the Religious Conversion Bill and the Buddhist Women’s Special Marriage Bill – are inherently flawed and incompatible with human rights. The proposed Population Control Healthcare Bill lacks sufficient safeguards against all forms of discrimination while the Monogamy Bill prohibits extramarital affairs and cohabitation.<sup>19</sup> The four laws were still under consideration at the time of writing.

#### *Laws relating to land acquisition and evictions*

In 2012, the government enacted the Farmland Law, and the Vacant, Fallow and Virgin Lands Management Law.<sup>20</sup> The government retains very broad powers to ‘resume’ possession of land.<sup>21</sup> The laws do not prohibit forced evictions nor do they set out safeguards, as required under international law, that must be complied with prior to evictions. Many people in Myanmar – especially small scale farmers and women headed households – continue to suffer from insecurity of tenure<sup>22</sup> and are at risk of forced evictions when the government takes over land for commercial projects. Neither law includes any provision for a judicial appeal against decisions of the administrative bodies.

#### *Lack of environmental safeguards*

The Environmental Conservation Law, 2012 establishes a broad framework for environmental protection, by setting out the duties and powers of the Ministry of Environmental Conservation and Forestry. However, the law and the rules adopted by the Ministry do not set out substantive requirements in relation to waste disposal, pollution of air, water and soil, or other actions which can be prejudicial to health or create a nuisance. Myanmar still lacks environmental quality standards, an Environmental Impact Assessment framework and the technical capacity within the Ministry to monitor and assess large and complex extractive projects.

## **The human rights situation on the ground**

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<sup>16</sup> The Electronics Transactions Act criminalizes acts by using electronic transactions technology deemed “detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture” (Article 33(a)).

<sup>17</sup> The State Protection Act outlaws any act that may be considered as an “infringement of the sovereignty and security of the Union of Burma”, or as a “threat to the peace of the people” (preamble).

<sup>18</sup> The Emergency Provisions Act includes provisions to criminalize the spread of “false news, knowing, or having reason to believe that it is not true” (Article 5(e)) as well as any act that may “affect the morality or conduct of the public or a group of people in a way that would undermine the security of the Union or the restoration of law and order” (Article 5(j)).

<sup>19</sup> For a detailed legal analysis of the four laws see Amnesty International and the International Commission of Jurists (ICJ) *Myanmar: Parliament must reject discriminatory ‘race and religion’ laws* (Index: ASA 16/1107/2015), 3 March 2015.

<sup>20</sup> The Vacant, Fallow and Virgin Lands Management Law, 2012 regulates vacant and fallow land (land that was previously cultivated and then abandoned by the tenant) as well as virgin land (defined as new land or woodland which has previously not been cultivated). The law recognizes that farmers are already using vacant, virgin and fallow lands without formal recognition from the government and, along with the Farmland Law, provides an avenue for them to obtain land use certificates. The main focus is on making land available for large scale commercial agriculture, livestock and poultry farming, aquaculture and mining projects (Sections 4 and 10). However, the vast majority of Myanmar’s farmland is cultivated by small-scale farmers who may find it harder to register their land because of lack of documentation and complex registration systems.

<sup>21</sup> The state remains the original owner of all lands and retains the right to ‘resume’ possession of the land in the interest of the state or the public. People are given the ‘right to farm’ lands designated for farming under the Farmland Law. The government can however ‘rescind’ this right if conditions, including on types of crops that can be grown, are not met. See Amnesty International, *Open for Business? Corporate crime and abuses at Myanmar copper mine*, (Index: ASA 16/003/2015), (Amnesty International, *Open for Business?*), February 2015, pp. 123 – 125.

<sup>22</sup> Organisation for Economic Co-operation and Development (OECD), *OECD Investment Policy Reviews: Myanmar 2014*, p. 43.

### *The rights to freedom of expression and peaceful assembly*

The rights to freedom of expression and peaceful assembly remain severely restricted in Myanmar, with a range of laws used to criminalize peaceful activism and political dissent, as described above. Despite a series of prisoner releases, human rights defenders, journalists, political activists and farmers continue to be arrested, prosecuted and imprisoned solely for the peaceful exercise of their rights. In areas that are being acquired for commercial projects, the government has used Article 144 of the Code of Criminal Procedure to block access to land, allowing the authorities to arbitrarily arrest farmers who have tried to return to their land, and to restrict any assembly in those areas.<sup>23</sup>

There are continued reports of intimidation and harassment against human rights defenders, lawyers and journalists.

Amnesty International also remains concerned about official inaction regarding the rights and needs of many former prisoners of conscience who suffered long periods of imprisonment, often in solitary confinement, which has taken a toll on them and their families. To date there is no official government programme to provide appropriate support, rehabilitation and reintegration to these individuals and their families.

### *Human rights violations by the security forces*

Amnesty International continues to receive credible reports of human rights violations committed by the security forces in Myanmar, including torture and other ill-treatment,<sup>24</sup> unnecessary and excessive use of force and firearms when carrying out arrests and public order policing,<sup>25</sup> unlawful killings,<sup>26</sup> and failure to protect victims of human rights abuses. A particularly egregious example was the police's use on 29 November 2012 of white phosphorus munitions against monks and villagers who were peacefully protesting against the Letpadaung mine in central Myanmar.<sup>27</sup> Investigations into such allegations are rare, and perpetrators are seldom brought to justice. There are no effective accountability mechanisms, meaning victims and their families do not have access to effective remedies.

### *Business and human rights*

Amnesty International has conducted a detailed investigation into illegality and related serious human rights abuses linked to the Monywa copper mining project, in Sagaing Region.<sup>28</sup> The Monywa project has a long history of forced evictions. In 1996 and 1997, the government nationalised 5,411 acres of land to make way for the project. Thousands of villagers were driven from their homes and farmland – without any due process, consultation, or payment of adequate compensation – depriving them of their primary source of livelihood. No corrective action was taken.

Between 2011 and 2014, more people were forcibly evicted from their homes and farmland after land was acquired for the Letpadaung mine, which is part of the Monywa project. The government-appointed Letpadaung Investigation Commission – established to investigate social and environmental impacts of the Letpadaung mine – found that the authorities had misled people about the land acquisition and evictions. Concerns have also been raised about the adequacy of resettlement sites. As of May 2014, 196 households had refused to move. Thousands of people remain at risk of forced eviction.

There are ongoing concerns also over the environmental impacts of the Monywa project. The government has failed to protect people living in the vicinity from pollution which can negatively impact their rights to water and health. The pollution is linked to hazardous waste materials discharged from the mine from 1995-6 and to a sulphuric acid factory illegally set up by the military-owned Union of Myanmar Economic Holdings Limited in 2007. The Environmental and Social Impact Assessment for the new Letpadaung project does not adequately address the high risk of adverse

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<sup>23</sup> Amnesty International, *Open for Business?*, pp. 17 – 18, 23, 56 – 60.

<sup>24</sup> Amnesty International, *Take immediate steps to safeguard against torture* (Index: ASA 16/011/2014), 26 June 2014 and *Farmers at risk after beating by soldiers* (Index: ASA 16/002/2014), 30 September 2014.

<sup>25</sup> Amnesty International, *Myanmar: Violent police crackdown against protesters must end*, 10 March 2015.

<sup>26</sup> Amnesty International, *Ensure independent and impartial investigation into the death of journalist* (ASA 16/028/2014).

<sup>27</sup> Amnesty International, *Open for Business?* pp. 41 – 55.

<sup>28</sup> Amnesty International, *Open for Business?*.

environmental and human rights impacts.<sup>29</sup>

The corporate actors involved in the Monywa project, which include Canadian, Chinese, and Myanmar companies, have profited from and in some cases colluded with the Myanmar authorities in these abuses – yet the governments of Canada, China and Myanmar have failed to carry out proper investigations and hold the companies to account. The Myanmar government has been unwilling to monitor, regulate and provide remedies against companies with the aim of protecting human rights or to investigate its own officials.

Amnesty International's wider research in this area indicates similar human rights concerns about other extractive and large projects in Myanmar.

#### *The situation of the Rohingya minority*

The situation of the Rohingya<sup>30</sup> has deteriorated significantly since large-scale and widespread violence erupted between Buddhist communities and mostly Rohingya communities in Rakhine State in 2012. Scores were killed and tens of thousands displaced by the violence. However, the authorities have yet to conduct an independent, impartial and effective investigation into the attacks, or to bring all those responsible to justice. The authorities have also failed to take action against those who advocate or incite violence, hostility and discrimination against the Rohingya, and other ethnic and religious minorities.

Over two years later, an estimated 139,000 people – mainly Rohingya – remain displaced, living in deplorable conditions in makeshift camps in Rakhine state. Humanitarian aid organizations have had limited access, with the expulsion of some organizations in February and March 2014, and the withdrawal of others following attacks against them in March 2014. Although access has resumed for some organizations, humanitarian assistance has not returned to the levels prior to the attacks. The situation in Rakhine state is fragile, and security concerns for people there are serious.

The Rohingya continue to face discrimination in law, policy and practice. The vast majority remain stateless and are deprived of nationality under the 1982 Citizenship Act,<sup>31</sup> and as a result they continue to face restrictions on their freedom of movement, with repercussions for their access to places of work and livelihoods.

#### *Conflict in ethnic minority areas*

The situation in some of Myanmar's ethnic minority areas remains serious, with fighting in Kachin and Northern Shan States now in its fourth year. There are ongoing reports of unlawful killings and torture and other ill-treatment, including rape and other crimes of sexual violence – in particular by the Myanmar security forces. Amnesty International also receives reports of international humanitarian law violations and human rights abuses by armed groups aligned with certain ethnic groups. Impunity persists for violations and abuses by all sides, with perpetrators rarely, if ever, brought to justice. Furthermore, the government continues to deny full and sustained access for humanitarian actors to displaced communities.

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<sup>29</sup> See Amnesty International, *Open for Business?*, pp. 86 – 98 and pp. 129 – 42.

<sup>30</sup> The Rohingya are a Muslim ethnic minority, the vast majority of whom live in northern Rakhine State in western Myanmar.

<sup>31</sup> Rohingya are deprived of nationality under Myanmar's 1982 Citizenship Act. According to this law, only individuals belonging to the eight "national" and 135 "ethnic" groups listed in the law can acquire citizenship. As such, nationals and ethnic groups not included in the list, including Rohingya, are discriminated against, on the basis of race and ethnicity, in their access to citizenship. The 1982 Citizenship Act has had the effect of rendering the vast majority of Rohingyas ineligible to be Myanmar citizens. This in turn impacts Rohingya's ability to exercise other rights which are conferred only to "citizens". The law also makes no provision in relation to stateless persons.

### *The death penalty*

Although there have been no executions since 1988, the death penalty remains part of the legislative framework and courts continue to impose death sentences. Under a Presidential Order dated 2 January 2014, all death sentences were commuted to life imprisonment, however since then at least 17 individuals have been sentenced to death.

## **Recommendations for action by the State under review**

### **Amnesty International calls on the Government of Myanmar to:**

#### *Co-operation with the UN*

- Facilitate the establishment of an OHCHR country office in Myanmar, able to operate throughout the country with a full promotion and protection mandate.

#### *The national human rights framework*

- Amend the 2008 Constitution to bring it into line with international human rights law and standards, including by ensuring it explicitly prohibits torture and other-ill-treatment in all circumstances, provides key fair trial safeguards, and remove all provisions which enable impunity for perpetrators of human rights violations.
- Repeal or amend all laws that violate the rights to freedom of expression, association and peaceful assembly – in particular Section 505(b) of the Penal Code, the Peaceful Assembly and Peaceful Procession Law, the Unlawful Associations Act, the Official Secrets Act, the Electronics Transactions Act, the State Protection Act, and the Emergency Provisions Act – to ensure these conform with international human rights law and standards.
- Reject the four proposed laws “protecting race and religion” and ensure that all legislation affecting women, religious and ethnic minorities contains explicit provisions to protect against discrimination and complies with international human rights law and standards.
- Urgently enact and enforce legislation prohibiting forced evictions and strengthen environmental safeguards to ensure that people are protected against infringements of their human rights caused by pollution of water, air or soil by extractive and manufacturing industries.
- Ratify and effectively implement the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### *The rights to freedom of expression and peaceful assembly*

- Immediately and unconditionally release all prisoners of conscience and drop all charges against those who are facing imprisonment solely for the peaceful exercise of their human rights.
- Provide reparations, including rehabilitation and medical, psychological, and mental health services and treatment, as well as economic and educational support to former prisoners of conscience and their families.
- Ensure human rights defenders and journalists can carry out their legitimate work in security and without fear of reprisal.

#### *Human rights violations by the security forces*

- Ensure prompt, independent, impartial and effective investigations into allegations of human rights violations by members of the security forces; that those suspected of responsibility – including those with command responsibility – are brought to justice in fair trials in an independent, civilian court; and that victims receive reparations.

#### *Business and human rights*

- Immediately halt the construction of the Letpadaung mine and suspend the Monywa project until the environmental and human rights concerns about the project are resolved in genuine consultation with all affected people.
- Revoke orders under Article 144 of the Code of Criminal Procedure that are currently operational in the mining areas.
- End forced evictions and ensure that no evictions are undertaken unless all procedural safeguards required under international human rights law have been put in place.

#### *The situation of the Rohingya minority*

- Ensure that humanitarian aid organizations have full and unfettered access to all displaced persons throughout the country.
- End all discrimination in law, policy and practice against ethnic and religious minorities, and ensure the Rohingya have equal access to citizenship rights based on objective criteria that comply with the principle of non-discrimination, including by amending the 1982 Citizenship Act;
- Conduct independent, impartial and effective investigations into all incidents of sectarian violence, including the 2012 violence in Rakhine state, and hold to account in fair trials all those responsible for violence or for advocating racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

#### *Conflict in ethnic minority areas*

- Immediately put an end to violations of international humanitarian and human rights law – including rape and other crimes of sexual violence – especially against members of ethnic minority groups, and hold to account all those responsible, including those with command responsibility, before independent, civilian courts, in fair trials which do not impose the death penalty.

#### *The death penalty*

- Commute all death sentences to prison terms and revise all laws that contain provisions allowing for the death penalty. Pending the revision of these laws, ensure that no-one is sentenced to death.