



**PEN International, PEN Myanmar, PEN Norway, PEN American Center and  
MIDO  
Contribution to the 23<sup>nd</sup> session of the Working Group of the Universal Periodic  
Review**

**Submission on the Republic of the Union of Myanmar**

23 March 2015

1. PEN International, PEN Myanmar, PEN American Center and Myanmar ICT for Development Organisation (MIDO) welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the climate for free expression and human rights in the Republic of the Union of Myanmar since the last Universal Periodic Review (UPR) on 27 January 2011. This submission is based on a PEN International Publishers Circle Delegation to Yangon from 28-31 July 2013<sup>1</sup> and a follow-up field mission by PEN International from 30 January to 7 February 2015.

**Executive Summary**

2. The period under review has been one of state-managed transition from more than five decades of military rule. In March 2011, a quasi-civilian government was formed, and the government of Thein Sein has since initiated some reforms in preparation for general multi-party elections in November 2015 including an ongoing redraft of the 2008 Constitution.
3. The country has seen momentous change in this short time, particularly in relation to freedom of speech. However, the reform process appears to be stalling, and there are significant concerns about the deteriorating human rights situation in the country. These include rising ethnic tension, endemic corruption, and the introduction of new legislation, which does not comply with international standards. Since the start of unauthorized peaceful student protests on 20 January 2015, tension has dramatically escalated.
4. Literature, culture and the media will play a vital educational and awareness-raising role in the run-up to the 2015 elections, and there are fears that this role will be hampered by increased censorship and self-censorship unless rights to freedom of expression are fully protected.

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<sup>1</sup> See <http://www.pen-international.org/newsitems/publishers-circle-myanmar/>  
and <http://www.pen-international.org/newsitems/advancing-freedom-of-expression-and-promoting-literature-in-myanmar-pen-international-president-john-ralston-saul-meets-aung-san-su-kyi/>

5. This submission examines the following key freedom of expression issues:
  - a. constitutional reform (laws and practices affecting freedom of expression)
  - b. self-censorship
  - c. ethnic conflict and hate speech;
  - d. digital freedom and surveillance.
  - e. impunity

Recommendations are listed at the end.

### **Myanmar's International Commitments to Freedom of Expression**

6. Myanmar is bound, like all state parties of the United Nations, by Article 19 of the Universal Declaration of Human Rights that guarantees freedom of expression.
7. During the first UPR cycle in 2011, the government of Myanmar accepted a number of recommendations to consider ratifying and implementing certain key international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). To date, the ICCPR has not been signed or ratified by Myanmar.
8. In the 2011 UPR, 20 States made recommendations relating to free expression in Myanmar.<sup>2</sup> Of these, it accepted one recommendation from Indonesia to take steps to review and amend domestic laws with a view to guaranteeing the right to freedom of expression, association and assembly in accordance with international standards.
9. PEN International welcomes the following key developments:
  - The release of Aung San Suu Kyi in November 2010, and the end of official military rule. The National League for Democracy (NLD) is now part of the political process.
  - Large-scale releases of political prisoners, including many writers and journalists who were main cases of PEN International.
  - The scrapping of pre-publication censorship in August 2012, and a lifting of the ban on gatherings of more than five people.
  - Legislative reform, including new bills on the press, broadcasting, publishing and access to information.
  - The growth of democratic space. Civil society is beginning to develop, and a process of modernization is underway.

### **Ongoing Barriers to Freedom of Expression**

10. Whilst recognizing the significance of the positive reforms that have been implemented by the government of Myanmar since 2010, PEN International is seriously concerned that

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<sup>2</sup> Recommendations on free expression were made by Indonesia, Italy, Canada, Maldives, Greece, Sweden, France, Germany, United States, Argentina, Belgium, United Kingdom, Austria, Greece, Norway, Switzerland, Republic of Korea, Czech Republic, Italy and Norway.

major obstacles to free expression remain which are threatening to derail the reform process. There is a widespread and profound lack of trust amongst key stakeholders<sup>3</sup>, who feel that there is a lack of political will to implement meaningful reform. There is no programme of restorative justice to provide a rights-based framework to the reform process, and the crippling effects of years of economic decline and endemic corruption are major obstacles to sustainable development.

### **Laws and practices affecting freedom of expression**

11. In March 2014 two new laws regulating the print, publishing, and media sectors were approved by Parliament – the Printing and Publications Enterprise (PPE) Law and the News Media Law. However, national security provisions remain in place, including the 1950 Emergency Provisions Act, the 2000 Internet Act, and the 2004 Electronic Transactions Act, which have been used to imprison journalists and other writers, and will continue to pose a threat to free expression unless they are abolished. There has also been a rise in the application of other existing legislation to criminalize the activities of journalists, accompanied by disproportionately high prison sentences.
12. On 10 July 2014 five journalists with the *Unity* weekly journal were each sentenced under the State Secrets Act of 1923 to 10 years in prison with hard labour over a January 2014 report about an alleged secret chemical weapons factory<sup>4</sup>. Fifty other journalists who staged a peaceful protest against the sentences on 12 July 2014 were also threatened with prosecution under Article 18 of the Peaceful Assembly and Procession Act, which is also widely used to severely restrict freedom of expression<sup>5</sup>. The co-existence of new and old legislation creates a very confusing landscape for writers, journalists, and publishers, who do not know what they can safely write and publish<sup>6</sup>. This climate of uncertainty, intimidation and fear of arrest is having a chilling affect on freedom of expression.
13. Criminal defamation is still on the statutes, and cases against journalists and publishers are on the increase – for example two editorial staff, one reporter and two publishers from *Bi Mon Te Nay* weekly news journal were each sentenced to two years in prison on 17 October 2014 for ‘defamation of the state’ under Article 505(b) of the penal code by Yangon’s Pabedan Township Court. They were initially charged under articles 5(d) and 5(j) of the 1950 Emergency Provisions Act (causing public alarm and undermining security of the state).
14. Although writers and journalists are now free from official censorship, and have been exploring this newfound space with increased confidence, publishers are still tightly controlled. The lack of clear legislation regarding the publication of sensitive information

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<sup>3</sup> Based on interviews with writers, journalists, NGOs and others during a PEN International research mission to Yangon, 30 January-7 February 2014.

<sup>4</sup> See <http://www.pen-international.org/newsitems/myanmar-five-journalists-sentenced-to-10-years-in-prison/>

<sup>5</sup> See Article 19, <http://www.article19.org/resources.php/resource/37484/en/myanmar:-need-for-permission-dropped-from-assembly-law>

<sup>6</sup> According to Lucas Stewart, ‘Now, without pre-publication censorship, it is like walking through a literary minefield with writers unsure of where they can tread’ January 2015. See Lucas Stewart, ‘Writing in Burma: A New Year, Old Fears’ - <http://sadaik.com/2015/01/15/writing-in-burma-a-new-year-old-fears/>

in the new PPE law, the fact that old repressive laws are still on the statutes, and the lack of strong legislation protecting freedom of expression and freedom to publish, means that self-censorship amongst publishers is increasing.

### **2014 Printing and Publishing Enterprise Law**

15. Prior to 2012 the Press Scrutiny and Registration Division governed publishing, licensing and censorship. Prior approval of the complete manuscript was required for every publication. In August 2012, pre-publication censorship was abolished and the Press Scrutiny and Registration Division was replaced by the Copyright and Registration Department. The new PPE Law was drafted by the Ministry of Information, despite strong criticism by the interim Myanmar Press Council (MPC), and was enacted in 2014 after several amendments.
16. Although this law presents a meaningful step forward from the 1962 Printing and Publishing Act, it is unclear in its purpose and objective, and definitions as to who the law applies to are vague, as are articles on content restriction and thus it falls far short of international standards protecting freedom of expression. It is questionable whether a specific law to regulate the printing and publishing sector is needed at all.<sup>7</sup>
17. Publications are now required to register with the Ministry of Information. Printing, publishing or operating a news agency without a certificate from the Ministry, or with a suspended certificate, is an offence (Articles 15 and 16) punishable by a fine of up to five million Kyats. Judgements are final; there is no possibility for a publication to re-register once it has been closed down. International human rights mechanisms have clarified that special registration requirements on the print media are unnecessary, may be abused and should be avoided<sup>8</sup>.
18. Publishers, though keen to participate in the law-making process, feel unrepresented on the Press Council. Representatives of the Myanmar Publishers and Booksellers Association (MPBA) have raised concerns with the Ministry of Information about the effects of new legislation on their businesses, but feel the Press Council does not provide an effective platform for dialogue with the government.

Under the PPE law, four copies of each manuscript must be submitted to the Copyright and Registration Department after publication. On 1 February 2015 the government brought in a new requirement that publishers must also submit an electronic PDF file of the manuscript to the Ministry of Information, which is stored in a digital library with free access<sup>9</sup>. The MPBA considers this a theft of their intellectual property and says it is

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<sup>7</sup> See <http://www.article19.org/resources.php/resource/37765/en/myanmar:-printing-and-publishing-law#sthash.QoBnQIOD.dpuf>

<sup>8</sup> Special mandates on freedom of expression stated in 2003, imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical. Accessed at <http://www.osce.org/fom/99558?download=true>

<sup>9</sup> Reported to PEN International during a meeting with the Myanmar Publishing and Printing Association in Yangon on 4 February 2015.

open to abuse. Since the copyright belongs to the writer or illustrator, the publisher has no protection under the law, particularly regarding digital rights management<sup>10</sup>. The MPBA have complained to the Press Council and the Ministry of Information about this new regulation.

### **2014 News Media Law**

19. The interim Myanmar Press Council was set up by the Ministry of Information in June 2012 to draft the News Media law. Two-thirds of its members were pre-appointed by the government, and the remaining third were independent.
20. The law was enacted after strong internal disagreements and various redrafts. Although there are some positive features of the News Media law, such as the use of fines rather than custodial sentences, it provides only qualified protection for freedom of expression and falls short of international standards. Particular concerns include reference to the Myanmar Constitution, which does not fully protect freedom of expression; vague provisions which restrict this freedom; a vague definition of "media workers" which does not protect the rights of journalists; inclusion of responsibilities and offences which are covered by general legislation; and the creation of a Media Council which is not independent of the executive branch<sup>11</sup>.
21. All types of media, including print, broadcast and Internet-based media, remain under the unrestricted control of the government through the News Media Law. The Press Council is not fully independent from government, and fails to sufficiently safeguard the media from government interference<sup>12</sup>. The role of the Press Council in supporting the press to develop its own independent systems of self-regulation, to adopt and enforce ethical standards, and to share information effectively with the general public, remains weak. As a result, although there is an increased diversity of media outlets, the quality is generally poor. The reporting of issues deemed critical or sensitive by those in power, such as official corruption and ethnic conflict, is still very limited.
22. The judiciary is not independent: judges are appointed directly by the President, and are often threatened and over-ruled, leading to irregular procedures in cases against journalists. There is a need for more robust protection under the law to guarantee the rights of journalists, who also do not receive any protection from their media houses in the face of legal harassment and are thus very exposed.
23. On 14 November 2014, 11 journalists from the *Myanmar Thandawsint* (The Myanmar Herald), including the editor and publisher, were charged with "damaging the reputation of the President" in the paper's 9 October 2014 issue under section 25b of the Media Law. The journalists are jointly facing a 1 million-kyat fine for defamation.

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<sup>10</sup> The 1911 Copyright Act is currently being re-drafted.

<sup>11</sup> See *Myanmar: News Media Law*, Article 19,

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

<sup>12</sup> See <http://www.article19.org/resources.php/resource/37623/en/myanmar:-news-media-law#sthash.8i9MkKUr.dpuf>

## Freedom of assembly

24. Licensing and permission regulations for public gatherings are very restrictive and unclear, and often used to curtail press and public events<sup>13</sup>. There are reports of mob pressure whereby unknown individuals break up gatherings and meetings when the required permission or licence has allegedly not been secured. No-one knows under whose authority they operate. Writers groups also report more opaque, subtle forms of harassment and intimidation, such as questioning or intimidation by low-level local township officials during or following public events<sup>14</sup>. Often the pressure is indirect, delivered via the event organiser or host rather than directly to the participants. These tactics are reminiscent of the military era, when licensing regulations were used to control and monitor public events and all participants had to submit their details to local township officials.
25. The Ministry of Information is also widely reported to use intimidating tactics. For example, in December 2014 Poet Saw Wei went to a pay homage ceremony at his former school. Many former pupils attended the ceremony, including members of the military, and gave generously to the teachers (100,000 kyat). He heard afterwards that school officials embezzled the money, and he wrote a critical article about it in the *Irrawaddy Journal*. After the article was published, the school received a phone call from the Ministry of Information threatening to sue them unless he publically apologized for the article.
26. Over the past year the activities of the newly-established PEN Myanmar<sup>15</sup> have been seriously compromised by licensing regulations and interference from the Ministry of Information, which has included a ban on literary readings and discussions in a tea shop for which permission had been granted<sup>16</sup>. Permission requirements must be reviewed in order to enable civil society groups to carry out their legitimate activities without interference and harassment.

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<sup>13</sup> The Demonstrations Act obliges demonstrators to give the police five days notice of the time, place, route, purpose, and even slogans of their planned protest. Permission can then be denied on the basis that the gathering will breach the security of the State, rule of law [or] public tranquillity in which case protesters face one-year jail terms under Article 18 of the Demonstrations Act, two years under Articles 141-3, 145, 151 and 505(b) of the Penal Code, and even longer terms under other statutes and decrees. See *The Rule of Law in Myanmar: Challenges and Prospects*, International Bar Association's Human Rights Institute (IBAHRI) accessed via

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=DEBA1058-8D8D-47E3-B8DB-1BA2BA82E40E>

<sup>14</sup> Dr Ma Thida, President of PEN Myanmar, referred to the hidden hands of power at a meeting with PEN International in Yangon on 31 January 2015.

<sup>15</sup> For more on the activities of PEN Myanmar see <http://www.pen-international.org/pen-myanmar/>

<sup>16</sup> In August 2013 a group of writers from PEN Myanmar started a programme of literary recitals and discussions in a tea shop near the Yangon railway station, which soon became very popular and attracted regular audiences. Permission was secured via one of the Board members who is also a railway official. In September 2013 he was summoned for questioning by the Ministry of Transport over the programme, and pressured by the Ministry of Information. As a result, PEN Myanmar had to stop the project. Shortly afterwards the tea shop was closed down, possibly as a reprisal. In order to avoid licensing regulations and resulting harassment, PEN Myanmar started mobile reading groups with local hosts, but these are less well attended and less successful because they have lost the advantage of having a regular venue and working in a sustained way with a targeted group.

27. Artists and photographers are also affected by licensing regulations over exhibitions in public spaces, which require them to provide a list of exhibits for approval two weeks in advance. On 31 January 2015 photographer Thein Win was denied permission to hold an exhibition of his photographs taken of 1974 protests, already published in book form. The exhibition was due to be held the following day (1 February) in a hotel lobby. He believes that rising tension over the current student protests could be the reason for the exhibition being denied permission.

### **Structural barriers to publishing,**

28. Deep-rooted infrastructural problems create significant challenges for publishers in Myanmar, a legacy of decades of economic stagnation under military rule. Before 1988 the post office had an efficient distribution networks of national ferry, rail and air transport links were good, and the postal service was the preferred method of distribution by publishers. Subsequent lack of investment has crippled the country's infrastructure, leading to enormous distribution problems for publishers. In 2012 the Myanmar Post Office increased its fees. Postal charges are now extremely high and the service slow and unreliable. The new PPE law does not provide guarantees of preferential postal rates for publishers, nor other measures promoting the publishing industry such as abolishing import tariffs and taxes on printing equipment, ink and newsprint. There are no government subsidies or grants for small independent publishers, many of whom are going out of business because of distribution problems and high rental fees. The MPBA have submitted proposals to the government about these issues several times over the past three years, but have received no response.
29. Since 1988 there has been no public library investment of libraries rely on donated books from publishers, as they are unable to buy them. Furthermore, the formerly popular book rental service in Myanmar is in decline, which is hitting publishers hard. Until recently there were an estimated 3,000 book rental shops around the country, and publishers could always sell to them. However these book-rental services are closing down as they are no longer economically viable.
30. The Ministry of Education controls the school syllabus and textbooks are very limited. Only government publications are used in schools. Investment in the education sector goes hand in hand with the development of the publishing industry and the promotion of literacy and culture.
31. Since April 2013 when government lifted restrictions on private newspapers, many private dailies were launched and flooded the market. However they are struggling to compete with large state-run newspapers, which are sold at low prices, and benefit from existing distribution networks and subsidies. Many private newspapers have run into economic trouble, including *Daily Mizzima* which closed in January 2015 as it was not profitable despite being in the top five most sold private dailies in Myanmar. Concrete action is needed to prevent harmful media monopolies developing, and to encourage pluralism and diversity of the press.
32. Preferential access to government advertising budgets are given to pro-government newspapers. The government prioritises "safe" publications when placing adverts and

small independent publications are unable to compete. There is a need for clear and objective criteria to regulate the allocation of government advertising funds, to ensure advertising is not withdrawn or withheld from publishers because they are critical of the government.

### **Self-censorship**

33. Despite a 60-year decline of literature in Myanmar, beginning with the 1962 Printers and Publishers Act which introduced prior government censorship for all publications, there is still a lively interest in literature and a strong literary culture. This is most evident in the tradition of literary talks, which dates back to the pre-independence era in Myanmar and has continued even under the most repressive period of military rule during which writers criticised the government. This criticism was mostly tolerated. Literary talks still play a pivotal role in the dissemination of information, especially in towns far away from Yangon and Mandalay and writers who played a significant part in bringing about the changes now taking place in the country continue to shape the political discourse. Formerly imprisoned writers are now leading PEN Myanmar, and are contributing to the development of civil society through innovative literary programmes. The biggest problem they face today is self-censorship and fear.
34. Decades of censorship and repression have resulted in a lack of training and literary skill-base.<sup>17</sup> Younger writers, growing up without models of good writing or access to education and training, lack the skills of the craft, including critical discussion and analysis. People used to communicating via indirect messages to evade censorship are afraid and unused to discussing issues openly with an audience. This is a serious handicap for those whose task it is to hold the government to account and push for greater transparency and democratic space<sup>18</sup>.
35. Decades of censorship have resulted in a lack of editorial expertise. All journalist schools and training courses were closed down in 1988. Editors trained before then report that the younger generation are weak in journalism skills, as well as reading, writing, and general knowledge. Young writers commonly confuse editorial practice with censorship. Lack of skills contributes to mutual fear and distrust amongst the literary community<sup>19</sup> which seriously affects the ability of the many literary organizations and emerging civil society groups to work collaboratively.
36. The damaging effects of distrust and lack of expertise are compounded by an education system based on rote learning so there is almost no literature taught in state schools, and

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<sup>17</sup> According to Pe Myint, 'the censor has taken root in the minds of writers and journalists'

<sup>18</sup> Freelance editorial cartoonist Aw Pi Kyeh chose this pen name because it means 'loudspeaker' in Burmese. He has been working as an editorial cartoonist in Myanmar for over 30 years, and is largely self-taught. He says that about 300 of his cartoons have been inked over and ripped out by censors during the course of his career. Describing the effect of censorship on his work, he uses a football metaphor: under censorship he perfected 'the corner-kick' delivering his critical messages indirectly. When pre-publication censorship was lifted in 2012 and he was suddenly faced with an open goal, he found he lacked the necessary skill to score a penalty.

<sup>19</sup> Reported by members of PEN Myanmar in a meeting with PEN International on 31 January 2015.

the little that is taught is for purposes of propaganda rather than to develop critical thinking. Educational reform is crucial to building the capacity of civil society, but currently this is only taking place in higher education in a limited way.<sup>20</sup>

37. Almost all the political prisoners released since 2011, including writers and journalists, have only had their sentences suspended under penal code Article 401, rather than receiving full pardons. All the repressive laws that put them in prison still remain in place. If convicted again, they would serve the remainder of their old sentence plus any new sentence. High profile PEN members who were formerly imprisoned for the peaceful expression of their views report being closely watched. This creates a climate of fear in which self-censorship flourishes.

### **Lack of restorative justice**

38. Political prisoners, including writers and journalists, were released with no programme of restorative justice. They still have criminal records, and receive no compensation, and no support for the medical care they need to recover from torture and other ill-treatment.<sup>21</sup> They receive no state support to rebuild their lives. A full programme of restorative justice is needed in order to enable former political prisoners to rebuild their lives and develop trust in the reform process.

### **Ethnic conflict and hate speech**

39. Myanmar is one of the most diverse countries in the world, with more than 130 different ethnic groups. Religious conflict and ethnic divisions are historically entrenched<sup>22</sup> and ethnic conflict is now seriously threatening the reform and national reconciliation process. Human rights violations are taking place in states with large numbers of ethnic minorities on a large scale, particularly in Rakhine state where state-sanctioned policies of oppression and exclusion are systematically applied towards the Rohingya Muslims.<sup>23</sup>
40. The democratisation process and national dialogue exclude ethnic diversity across all political parties. The NLD does not have an strategy for ethnic minorities and has been criticised for failing to speak out strongly against violence and internal displacement of ethnic minorities in the key armed conflict zones of Northern Shan state, Chin and Rakhine state. According to the People's Alliance for Credible Elections (PACE)<sup>24</sup>, civil

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<sup>20</sup> Andrew McLoud, Research Fellow, Legal Department of Oxford University, interviewed by PEN International in Yangon on 6 February 2015.

<sup>21</sup> For example, Myo Myint Ngein, editor for *Pae Thin Tan*, spent 12 years in prison for the peaceful expression of his views from 1990-2002 and was a main case of PEN International. He still suffers deeply from the effects of his imprisonment. All the journalists at *Pae Thin Tan* have a background as political prisoners, either directly or via their relatives, and do not work for commercial rates. The journal operates on a not-for-profit basis in return for its independence.

<sup>22</sup> For example the Indian riots of the 1930s

<sup>23</sup> According to Burma Campaign UK, at least a quarter of a million people have been internally displaced by conflict, human rights abuses and violence since Thein Sein became President, at least half of whom are Rohingya who have fled from inter-communal violence which broke out in June 2012. There have also been isolated incidents of ethnic conflict in Yangon, and in July 2014 riots broke out in Mandalay between Buddhists and Muslims in which two people were killed.

<sup>24</sup> Sai Ya Kyaw Swar Myint, Executive Director of PACE, was interviewed by PEN International on 4 February 2015.

society organisations working on these issues in these regions are not included in the government consultation workshops regarding constitutional reform, and there are no mechanisms to include them. Even civil society groups working on these issues in Yangon report being unable to effectively participate in the law-making process due to lack of information and inadequate consultation. The Union Electoral Commission needs to proactively engage with communities and civil society groups at a local level, particularly in the ethnic regions. A lack of political will and a lack of capacity are both contributing factors to this lack of engagement.

41. The past two years in Myanmar have seen a disturbing rise in religious intolerance, often fuelled by hard-line Buddhist nationalist groups, directed particularly at Muslims. Although there are laws under the penal code to prevent incitement to racial hatred and religious insult, their implementation depends on the political will of the government and this has been apparently lacking. Anti-hate speech campaigners, including blogger Nay Phone Latt<sup>25</sup>, report a rise in incidences of hate-speech after the 2012 by-elections, when the NLD stood and won a landslide victory. The use of inflammatory language is creeping into the national political arena. For example, insulting and discriminatory language was recently used against both Muslims and the NLD leader by Buddhist nationalists during a public event. Those responsible have not been held to account<sup>26</sup>.
42. Until recently, incidents of religious insult in the press have been handled through the Complaints Committee of the interim Press Council, and resolved through dialogue<sup>27</sup>. However, this process is no longer always followed. In October 2014, Htin Lin Oo, a writer and former information officer for the National League for Democracy (NLD), gave a speech at a literary event condemning religious extremism in the country in which he criticized some groups for taking advantage of religion to stoke discrimination. A short excerpt from his speech was circulated on social media. Taken out of context, the comments caused a storm among hardline Buddhist nationalists that led to his arrest. He is currently detained in the central Sagaing region, facing trial under Section 295 (a) and Section 298 of the Penal Code for ‘insulting religion’ and ‘wounding religious feelings’.
43. The Myanmar parliament is currently debating four proposed laws to ‘protect race and religion’ which include provisions that analysts say are deeply discriminatory on religious and gender grounds and likely to further fuel inter-ethnic violence<sup>28</sup>.
44. The power of social media to inflame debate, combined with a low level of digital security awareness, means that online incitement and discrimination spreads easily and affects the off-line community – for example children sell print-outs from the internet on the street to make money. Training and capacity-building programmes run by civil

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<sup>25</sup> In December 2013 an anti-hate-speech campaign called the ‘travelling flower speech’ was launched at the Asian Peoples Forum. Blogger and PEN member Nay Phone Latt is a leading member, in collaboration with other famous writers.

<sup>26</sup> The word ‘kala’ (kular in Hindi) is racially offensive and insulting, and was recently used to describe Aung San Suu Kyi by a Buddhist extremist speaker in a literary talk in upper Myanmar. The speaker has not been held to account.

<sup>27</sup> Reported by Pe Myint, who is on the complaints committee of the Press Council.

<sup>28</sup> See a legal analysis by Amnesty International and International Commission of Jurists (ICJ): <https://www.amnesty.org/en/articles/news/2015/03/myanmar-race-and-religion-laws/>

society groups are having some effect in promoting awareness about the effects of inflammatory language online and off-line, particularly in the ethnic regions<sup>29</sup>. However, the authorities should support these efforts with effective measures to combat religious and ethnic intolerance.

45. Equally, responsible reporting by the press needs to be developed and protected.<sup>30</sup> Although the News Media law provides some protection for journalists seeking to report from conflict zones, access to information continues to be a major problem in these areas where journalists' movements are restricted by both opposition groups and the military. On 17 February 2015, martial law came into effect in the Laukkai region of northern Shan State, undermining the rights of journalists seeking to cover both sides of the ongoing conflict<sup>31</sup> and presenting a serious threat to press freedom. Stronger measures are needed to protect the rights of journalists working in conflict zones.
46. Civil society and media groups running capacity-building workshops to tackle religious and ethnic intolerance all agree that the long-term solution is education. Human rights education in schools is much needed to challenge deeply-ingrained discriminatory views in many parts of society and to foster respect and understanding of religious and ethnic groups. However civil society groups are not currently permitted to work within the state school system, and radical educational reform is badly needed, particularly at primary and secondary levels.

### **Digital freedom and surveillance**

47. Myanmar is among the fastest-growing telecommunications markets in the world<sup>32</sup> but faces enormous infrastructure challenges, including lack of access to electricity outside the three major cities. State telecommunication companies Oradu and Telenor have made a commitment to 50% mobile network coverage in 2015. They are now competing with privatised companies. Cheap sim cards are available.
48. The 1996 Computer Science Development Law is the only piece of existing legislation on digital freedom, and is currently being re-drafted. There have been some amendments to the Electronic Transactions Act: for example prison terms have been reduced to 5-7 years. New legislation regulating digital media and surveillance is badly needed.

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<sup>29</sup> . For example, MIDO is working on an anti-hate speech campaign with leading writers who travel to the ethnic regions to give literary talks and panel discussions to raise awareness about hate speech and discuss its impact in the local context.

<sup>30</sup> Since 2012 Mizzima has been running conflict-sensitive journalism training programmes in the ethnic minority regions, as well as workshops in Yangon, and reports a changed mindset amongst the groups they have worked with.

<sup>31</sup> See PEN Myanmar statement: <http://www.nationmultimedia.com/aec/PEN-Myanmar-concerned-over-media-freedom-in-Laukka-30254765.html>

<sup>32</sup> An estimated 13% of the population have mobile phones; 9% have internet access (according to the Myanmar Computer Federation. See also the Myanmar Centre for Responsible Business <http://www.myanmar-responsiblebusiness.org/news/rights-safety-at-risk-without-lawful-interception-rules.html>)

49. An Access to Information Law is currently being drafted because Myanmar made a commitment to President Obama in 2012 that it would join the Open Government Partnership Association (OGPA) by 2016. In December 2014 a group of NGOs<sup>33</sup> released a joint public statement opposing joining the OGPA at the moment. They argue that pressing concerns such as constitutional reform, justice and a genuine peace process, rule of law, and urgent legal and judicial reform need to be addressed and prioritized before initiatives such as OGPA can be effective.
50. Rules governing the interception of communications by law enforcement officials, otherwise known as lawful interception, a key part of Myanmar's telecommunications legal framework have yet to be finalised. This legal framework should ensure that law enforcement officials have the necessary legal tools to fight crime but should also prevent the misuse of lawful interception and provide appropriate protection to freedom of expression and privacy. While law enforcement authorities may have legitimate reasons to intercept the communications of certain individuals and organisations, they may misuse the same technology, putting individuals or specific groups, such as political activists or minorities, under arbitrary surveillance, often part of a wider pattern of intimidation. The conditions under which communications can be intercepted, by which authorities, and for which suspected crimes, have not been established in Myanmar. The government's promised public consultation before draft regulations on lawful interception are approved is a welcome step.
51. Civil society is keen to participate in the law-making process, but there are widespread complaints that the consultation process is not genuine or transparent. Draft laws are published in national newspapers (for example the popular *New Light of Myanmar*) and on the government website, but insufficient time is allowed for civil society organisations to respond to them or to consult with legal experts (typically only 3-7 days). More workshops and public awareness programmes are needed, so that the consultation process is fully inclusive.
52. Although there are some reports from political activists who have experienced mobile phone/internet/email interception, digital surveillance is not yet widely used due to lack of capacity and economic constraints. However, observers and activists expect the use of digital surveillance to grow, particularly in relation to terrorism and extremism, as internet and phone usage spreads. In northern Myanmar there is growing surveillance as a result of increased border security linked to the human trafficking issue.
53. There are concerns that the government is resorting to restrictions on access to digital media for its own purposes which have a negative impact on freedom of speech. Over the past year there have been instances of the government slowing down internet speeds to limit public protests, notably during the Mandalay riots in July 2014. Officials also blocked Facebook. There are also reports that the internet has been slowed down during

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<sup>33</sup> Myanmar Alliance for Transparency and Accountability (MATA), Spectrum of Sustainable Development Knowledge Network; and Paungku; Enabling Legal Environment. MIDO did not officially add their name to the statement because they are not officially registered as the name Myanmar cannot yet be used legally. A new NGO registration law has been passed which would change this, waiting for the by-law before it is fully approved

recent student protests. Whilst recognising that the balance between protecting fundamental rights and maintaining order is often difficult, the Myanmar authorities should take measures to ensure that rights to peaceful expression and assembly are protected in line with international standards.

54. As a result of the growth of social media and digital technology, a new generation of IT-literate civil society groups and citizen journalists is emerging, able to exploit innovative ways of holding the government to account.<sup>34</sup> Through digital technology the capacity of civil society organisations at a grass-roots level is developing, but many activists report that they are in need of training and expertise to carry out advocacy at a national and international level.

### **Impunity**

55. The death of freelance journalist Aung Kyaw Naing, better known as Ko Par Gyi, while in army custody on 4 October 2014 is the first known case of an official investigation into the death of a civilian in army custody. Ko Par Gyi, aged 43, was arrested while covering the outbreak of fighting between the government army and the Democratic Karen Benevolent Army (DKBA) in Kyaikmayaw Township, Mon State, on 30 September 2014. His wife received no news of his whereabouts, and on 8 October she reported his disappearance to the local media and travelled to Mon State to look for him. She says she was greatly helped by the Mon National Party and local media, who pressured the Ministry of Regional Security to provide information about the case. Ma Thandar filed a complaint at the Kyaikmaraw Police Station in Mon State demanding that authorities conduct an investigation into the disappearance of her husband. On 24 October 2014 the Ministry of Defence released a statement that Ko Par Gyi had been shot dead on the night of 4 October whilst trying to escape from the custody of Light Infantry Battalion No. 208, accusing him of being an information officer for a branch of the rebel Democratic Karen Benevolent Army (DKBA). The Tatmadaw (army) has not provided any evidence to support this claim, and the DKBA have denied any links with Aung Kyaw Naing. His body had been buried that same night in an unmarked shallow grave outside the village of Shwe Wa Chung.
56. On 26 October 2014, the Kyaikmaway Town Police registered an investigation case into Ko Par Gyi's death, and on 31 October 2015 President Thein Sein ordered the Myanmar National Human Rights Commission (MNHRC) to lead the investigation into Ko Par Gyi's killing. On 5 November 2014 Ko Par Gyi's body was exhumed, and a post-mortem examination showed signs of trauma consistent with torture. His exhumation is believed to be the first time that Myanmar's Army has ever fulfilled a request to produce the body of a civilian casualty.
56. On 2 December 2015 the MNHRC released its report, which is full of inconsistencies, and does not include key pieces of evidence including witness statements from the military and full details of the forensic reports from doctors who carried out the post-mortem on Ko Par

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<sup>34</sup> This is particularly evident in relation to the up-coming elections. MIDO plans to carry out an election monitoring program using social media technology, by developing a platform for citizen journalists to report incidences of election fraud to local media via a specialised website. Target users will be trained in how to use it, and the program will complement the role of official election observers.

Gyi's body. The MNHRC report recommends that the case be tried in a civil court, but since then there has been no progress in the investigation and no one has yet been brought to justice for Ko Par Gyi's killing. Ma Thandar reports being closely monitored. This case represents one of the first efforts to obtain redress for a victim of human rights violations in Myanmar. The work of his widow, civil society, politicians and the media to obtain justice for Ko Par Gyi is admirable, and the government now needs to implement the recommendations of the Myanmar National Human Rights Commission and bring to justice those responsible for Ko Par Gyi's killing.

## **Recommendations**

- All journalists and other writers currently detained in violation of their right to freedom of expression must be immediately and unconditionally released.
- Implement a programme of restorative justice for all former political prisoners, including journalists and other writers.
- Repeal or amend all existing legislation which unduly restricts the right to legitimate expression, especially the News Media law and the 2014 Printing and Publications Enterprise law and ensure that all new legislation including any laws regulating the internet or access to information complies with international human rights standards protecting freedom of expression.
- Consider abolishing the requirement for publications to register. At the very least, simplify and clarify the process in the law and allow publications whose license is suspended to challenge the suspension in court.
- Invest in infrastructure and implement measures to facilitate the distribution of printed material around the country
- Take steps to ensure that harmful monopolies which limit media diversity do not develop
- Amend the Peaceful Assembly and Peaceful Procession Act law, in particular the requirement for prior permission, so that civil society groups can carry out their activities without interference and harassment.
- Strengthen protection for journalists reporting in armed conflict zones.
- Promptly investigate alleged human rights violations committed by the military and other armed groups, including the death in custody of Ko Par Gyi and bring to justice anyone found responsible.
- Ensure greater involvement by civil society and relevant stakeholders in the legislative process, including through inclusive public consultation, over draft laws.
- Implement concrete measures to combat religious and ethnic intolerance.

- Include an effective programme of human rights education in the state school curriculum.
- Ratify and implement the International Covenant on Civil and Political Rights.
- Allow the establishment, without further delay, of an OHCHR country office with a full protection mandate.
- Urge the continued substantive and full cooperation with the Special Procedures of the Human Rights Council, including the Special Rapporteur on the Situation of Human Rights in Myanmar