

# HUMAN RIGHTS IN BURMA

## A COUNTRY REPORT

### Introduction

Burma has seen significant political and economic change after a quasi-civilian government was introduced in 2010 and almost fifty years of military rule came to an official end. However, with the 2015 election approaching the reform process has regressed, and authorities are increasingly restricting and abusing fundamental rights to silence those who monitor and speak out against the ruling Union Solidarity and Development Party (USDP) and the military. Restrictions on freedom of religion and freedom of expression, association, and assembly persist. The government actively suppresses perceived dissent, and the space for human rights defenders to operate effectively and without fear of reprisal is diminishing. In Rakhine State, the Rohingya minority continues to face state-sponsored repression and suffer in dire conditions in IDP camps and other areas, which has given way to a regional refugee crisis.

Despite a limited ceasefire agreement, ethnic conflict and violence continues in Kachin and Northern Shan, Karen, and Mon States. Parliament has adopted new legislation to restrict freedom of religion and entrench discrimination against the Muslim minority group. General elections are scheduled for November 8, 2015. Despite nationwide calls by both the National League of Democracy (NLD) and key civil society actors, the government has not allowed key constitutional amendments, casting serious doubts about its sincerity to relinquishing military control and holding free and fair elections. Notably, the constitution allows the military to exercise full veto power on constitutional changes. The constitution also bars opposition leader Aung San Suu Kyi from the presidency.

The Union Election Commission (UEC) has been accused of influencing elections in favour of the ruling party and intimidating the opposition. Additionally, the UEC has stated that it can only guarantee the accuracy of 30% of the voter lists. The withdrawal of so-called white cards, temporary identification cards, has led to systemic exclusion of the Rohingya from the electoral process, further entrenching discrimination and segregation.

### The Situation for Human Rights Defenders in Burma

Since 2010, the space for those working on human rights and issues of social justice has become considerably wider than it had been during authoritarian military rule. Still, human

rights defenders conducting legitimate human rights activities in Burma are unable to operate freely and without fear of reprisal. Defenders are frequently threatened with violence, harassment, imprisonment, and in some cases, torture, enforced disappearance and extrajudicial killing. This year has seen an increase in efforts to silence critics and disrupt the legitimate exercise of freedom of expression, and in October 2015, around 440 human rights defenders were awaiting trial on charges linked to their peaceful activism.

Various legal provisions are broadly applied to unjustly arrest and detain human rights defenders. Many are charged under Article 18 of the Peaceful Assembly and Peaceful Processions Act (relating to unlawful assembly). Other laws, including the Official Secrets Act and laws related to defamation, are also invoked to silence critical voices and shield government affairs from independent scrutiny.

Many human rights defenders report that they are regularly harassed by the Special Branch of the police, and often subjected to surveillance and monitoring. Others are targeted by personal smear campaigns in social media, at times inciting violence and in some cases even death threats. Additionally, women human rights defenders report being frequently subjected to sexual violence, often perpetrated by state actors. Inadequate access to judicial redress for violations is commonplace, where the judiciary lacks independence and the criminal justice system is a central tool in abuses against human rights defenders.

### **The Rohingya**

The situation for the Rohingya has been steadily worsening since the initial outbreak of violence in 2012. In the past three years, more than 100,000 Rohingya have fled sectarian violence in Rakhine State. Approximately 140,000 remain in internal displacement camps in Burma. The ultra-nationalist Buddhist movement has been actively inciting hatred and violence against the Rohingya and Muslim population, escalating tensions.

The Rohingya have been persistently subjected to a systemic, state-sponsored campaign of violence, abuse, and discrimination. The government refuses to amend the 1982 citizenship law that does not recognize the Rohingya as full citizens. This restricts their access to basic services including health and education. They are denied freedom of movement, de facto locked up in deplorable IDP camps. In February 2015, the government rescinded all white cards that conferred voting rights for all holders, the majority of whom are Rohingya.

Many Rohingya have felt forced to leave Burma and have subsequently fallen prey to the hands of human traffickers operating networks of trafficking syndicates between Western Burma and Southern Thailand. The United Nations Refugee Agency estimates that 25,000 Rohingya and Bangladeshis have boarded smugglers' boats between January – March 2015, and documented testimony from hundreds of Rohingya who recounted experiences of captivity, deprivation, torture and other forms of gross human rights abuses.

### **Ethnic Conflict**

The recruitment of child soldiers in Burma still persists, by both the *Tatmadaw* and armed non-state actors. Human rights organizations and the United Nations have documented the on-going use of underage children in Shan, Chin, Mon, and Arakan States. The government of Burma took a step in the right direction and released 51 children from the Burmese Armed Forces on June 4, 2015. Since signing a Joint Action Plan with the UN in 2012 to this end, it has released 646 children to date.

Despite the signing of a partial ceasefire agreement, ethnic conflict still persists across Burma, including in Kachin and Northern Shan, Karen, and Mon States. In 2011, when a 17 years old ceasefire agreement with the government of Burma and the Kachin Independence Army (KIA) was terminated and violence ensued, an estimated 100,000 people were displaced from their homes. Low-level fighting continues in Northern Shan State between the Burmese Army and the Ta'ang National Liberation Army, representing an ethnic Mon-Khmer group. Human rights and civil society groups have documented violations of international humanitarian law on both sides of the conflict. The government has repeatedly denied full and unfettered access to humanitarian assistance in KIA controlled territory.

### **Rights in Focus**

#### ***The right to life and physical integrity***

Burma is not a signatory to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There are domestic laws prohibiting torture. Cases of torture are reported, particularly in detention facilities and in prisons. Detainees have also been reported to have suffered harsh interrogation techniques such as beatings, and food and sleep deprivation. Former political prisoners have also died upon release from prison, due to illnesses and disabilities they contracted while in custody.

#### ***The right to liberty and security of person***

The conditions in Burma's prison systems are poor. The use of torture has declined, but in prisons, and particularly in labour camps, conditions continues to be harsh and life threatening. Food, water, and medical supplies are scarce and prisoners are forced to pay bribes for basic necessities or rely on family members to bring supplies. Medical and psychological assistance for prisoners is generally lacking. As a result from unhygienic conditions, prisoners are suffering from health problems including malaria, tuberculosis, skin diseases, and stomach problems.

In Burma, laws concerning administrative detention allow persons to be detained without charge, trial and access to legal counsel if they are perceived by the government to have threatened the security of the state.

Human rights defenders are increasingly given shorter prison terms than before, but may face multiple trials instead. Past-imprisoned human rights defenders also experience restrictions on their work. Some student activists who have served time in prison have not been allowed to return to universities to continue their studies. As a result, these students are no longer able to organise other students around human rights issues. Moreover, the Ministry of Home Affairs has denied prominent human rights defenders passports, which has blocked them from carrying out human rights activities internationally.

### ***The right to a fair trial and an effective remedy***

International human rights law provides that all individuals have the right to a fair trial and effective remedy. However, in Burma, the lack of judicial independence makes it difficult to effectively exercise this right. Allegations of state and military interference over judicial proceedings are widespread.

In cases that hold political interest, fundamental principles of due process are routinely ignored and state authorities can exert undue influence to suit political ends. Laws are selectively and broadly applied to persecute those who vocalize criticism against the ruling USDP party and the military. Other factors, including the poor state of legal education, capacity of legal professionals, limited resources, and corruption also adversely impact the right to a fair trial.

According to Burmese law, individuals have the right to a fair trial, but other legal provisions and lack of law enforcement undermine fair trials. Defendants are not treated according to the principle of presumption of innocence and, among other things, do not have adequate time to prepare a defence or to present witnesses as evidence. In politically sensitive cases due process principles are routinely ignored. The judiciary is not independent; there is interference from politicians and the army.

Corruption within the system continues to be a serious problem and human rights defenders covering state corruption risk being silenced and targeted by politically motivated charges. Activists have been detained and charged for carrying out peaceful activities and denied due process rights. Reportedly, the defendants have repeatedly not received access to proper counsel and government officials have allegedly ordered the verdicts. Additionally, family members of activists have not been properly informed of their arrests nor been allowed to visit them in detention or attend their trials.

Impunity is widespread, particularly for crimes perpetrated by the military, including suspected crimes against humanity under the previous regime. Victims of human rights abuses are rarely compensated. The Myanmar National Human Rights Commission, which is not independent and has limited public credibility, lacks a strong mandate. Despite international funding, it has failed to address serious human rights cases brought to it since its establishment in 2011. The commission has also decided not to look into human rights violations in the ethnic minority areas.

***The right to freedom of thought, conscience and religion***

Religious and nationalist extremist groups have been establishing a growing stronghold in recent months, exasperating sectarian tension and in some instances, even directly contributing to and inciting violence against minority Muslim communities across the nation.

The nationalist Buddhist monk group, the Association to Protect Race and Religion, also referred to as “Ma Ba Tha,” has been actively pushing for a package of laws aimed at “protecting” the majority Buddhist population. The legislative package comprises of four laws, including on the issues of religious conversion, polygamy, interfaith marriage, and family planning.

On July 7, 2015, the Parliament approved the highly contentious interfaith marriage law, obligating Buddhist women who wish to marry men of other faiths to register the marriage with local authorities. Following registration, local authorities will display their marriage proposal publicly, and only couples that face no objections by the local community can proceed with marriage. Those who violate the law face imprisonment.

On May 19, 2015 President Thein Sein signed off on the population control bill. The law mandates women to follow a gap of 36-months between giving birth to children. The law allows regional authorities to exercise this discretion in their respective constituencies.

Parliament adopted the remaining bills criminalizing polygamy and approval for religious conversion in August. These laws are inherently discriminatory and are clearly aimed at marginalising the Muslims and other minority groups. Alongside directly infringing on religious freedoms, they also negatively impacts on women’s reproductive rights.

Additionally, the “969 Movement” of ultra-nationalist Buddhist Monks, that allegedly holds the support of some senior government officials and influential monk leaders, has repeatedly used inflammatory rhetoric against the Muslim minority. On multiple occasions, the group has incited violent attacks on the minority Muslim population.

The October 2012 attacks that led to an escalation of violence against the Rohingya in Rakhine state—directly contributing to the on-going crisis—were corroborated by Buddhist monks and led by Rakhine nationalists.

### ***The right to the freedom of expression***

In the lead-up to elections, authorities appear to have intensified a crackdown on freedom of expression, where even satire is possible basis for arrest. In two separate incidents in October 2015, the Telecommunications Law and the Electoral Transactions Law were used to charge two people for online postings in social media. On October 14, police arrested peace activist Patrick Kum Jaa Lee, showing him a screenshot of a Facebook posting where he had joked about a senior military official. Chaw Sandi Tun was arrested for a Facebook posting where she compared Aung San Suu Kyi's green *sarong* to military attire. Alongside the expansion of the telecommunications industry in Burma, online censorship and repression is becoming a worrying trend.

### ***The right to freedom of assembly and association***

The Peaceful Assembly and Peaceful Processions Act places a number of restrictions on the exercise of peaceful assembly that do hamper an effective realization of the right to freedom of assembly. The current legislation provides that all protests require prior permission from authorities before proceeding. Consent to hold assembly is granted only after providing onerous details, including the actual slogans and chants used during the protest. Deviating from formally approved slogans is possible basis for prosecution.

Following the violent crackdown on student protesters and others in Letpadan in March this year, the right to freedom of assembly has repeatedly come under attack. Authorities have continued to arrest, detain, and harass student leaders and those who vocalize support for the students. During the Letpadan protests, riot police violently beat on protestors with batons. Directly after the protests, authorities arrested over 100 students, others were taken into custody later.

On June 30, 2015, approximately 100 students and protestors gathered in downtown Yangon to protest against the military's veto power in parliament. In response, authorities charged five student leaders involved in the protest under Article 18 of the Act (an article that requires prior permission for all acts of assembly). In another incident in Mandalay in 2014, an activist was arrested for making calls for national unity and also charged under Article 18. He was the sole person present at the site of alleged 'protest.'

These incidents reflect, more broadly, a growing intolerance of independent voices critical of the state, including human rights defenders. Many incidents point to the liberal and targeted

application of the Assembly Act to incriminate people exercising their legitimate right to freedom of assembly.

### ***The right to political rights***

The 2008 constitution grants citizens certain rights and freedoms, but includes numerous problematic articles that undercut the protection of human rights. The constitution codifies the military's influence in politics and law-making by granting them 25 per cent of seats in parliament. Article 436 requires over 75 per cent of votes in parliament to make major constitutional amendments, effectively giving the military veto power over such changes. Also contested is an article that bars anyone with foreign family members from the presidency. By-elections in April 2012 allowed the leading opposition party, the National League for Democracy (NLD), to compete for the vacant seats in the 440-seat strong parliament. It won a landslide victory, with 43 of its 44 candidates winning (out of a total of 46 contested seats). Aung San Suu Kyi, previously in house arrest, was voted into parliament.

Minority groups and women remain underrepresented in political institutions and it is still unclear whether smaller, ethnically based parties will be able to challenge NLD, let alone the ruling USDP.

### ***The right to protection against discrimination***

Authorities continue to arbitrary arrest, detain, and persecute LGBT persons. Section 377 of the Penal Code, a colonial-era provision that criminalizes sodomy, is utilized to target the LGBT community. Hate speech and propaganda is frequently used to target LGBT persons, making it difficult for the community to live openly and without fear of persecution.

During a parliamentary session in Mandalay in August 2015, the regional Minister of Border and Security, Myint Kyu, called on police to arrest all gay people and stated that they were actively detaining gay people at police stations, before "educating them." Media reports quote him saying, "the existence of gay men who assume they are women is unacceptable and therefore we are constantly taking action to have the gays detained at police stations, educate them, then hand them back to their parents."

In another incident in Mandalay in 2013, a group of transgender women were arbitrarily arrested by local police officers. They were reportedly forced to strip naked in public, and then beaten and abused. During detention, they were subjected to further humiliation, torture, and abuse.

Both incidents reflect direct involvement by state actors in discrimination against the LGBT community, including through actions that may encourage violence against an already vulnerable population.



WE EMPOWER PEOPLE

### **The Role of Civil Rights Defenders in Burma**

Since 2011 Civil Rights Defenders has cooperated with human rights defenders in Burma's civil society. We provide support to human rights groups, including capacity building and financial support, and connect them with human rights defenders from across the world.

Among our partners are human rights lawyers and human rights networks.