

MYANMAR

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MYANMAR*

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Part 1: Overview of Myanmar

A. Country Background

Myanmar Facts ¹	
Geographical size	676,577 sq km
Population	51.48 million ²
Ethnic breakdown ³	Main ethnic groups: Burman (68%) Shan (10%) Karen (7%) Rakhine (4%) Mon (2%)
Official language(s)	Myanmar or Burmese
Literacy rate (aged 15 and above)	89.5% ⁴
Life expectancy	66.8 ⁵
GDP	US\$63.23 billion ⁶ (per capita US\$1,298) ⁷
Government	Unitary presidential republic since 2011. The government is now led by the civilian NLD party. Executive and legislative power is limited by unelected military representatives nominated by the Commander-in-Chief.
Political and social situation	Although the public may expect to gain more freedom on the rights to information and expression, progress in other areas has been less visible.

* Also known as the Republic of the Union of Myanmar or Burma.

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¹ Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census: The Union Report – Census Report, Volume 2*, Nay Pyi Taw: Department of Population, 2015, at 1-2.

² Data from 2014. Ministry of Immigration and Population (see note 1 above).

³ Data from 2018. ‘Myanmar population 2018’ World Population Review, available at <http://worldpopulationreview.com/countries/myanmar-population/>, accessed on 5 September 2018. There are some controversial elements to the 2014 census. For example, religious and ethnic data was withheld until recently: see, Ye Mon Tun, ‘Ethnic data from 2014 census to be released’ Myanmar Times, 3 January 2017, available at <https://www.mmtimes.com/national-news/24393-ethnic-data-from-2014-census-to-be-released.html>, accessed on 5 August 2018.

⁴ Data from 2014. Ministry of Immigration and Population, *Overview of the Results of the 2014 Population and Housing Census*, Nay Pyi Taw: Department of Population, 2017, at 7.

⁵ Data from 2014. Republic of the Union of Myanmar, *The 2014 Myanmar Population and Housing Census: The Union Report. Highlights of the Main Results, Census Report, Volume 2-A*, Myanmar: Republic of the Union of Myanmar, May 2015, at 25.

⁶ Data from 2016. ‘Myanmar’ World Bank, available at <https://data.worldbank.org/country/myanmar>, accessed on 5 September 2018.

⁷ Data from 2017. ‘GDP per capita (current US\$): Myanmar’ The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=MM>, accessed on 5 September 2018.

Myanmar has been a unitary presidential republic since 2011. The government's first term (2011-2015) was led by Thein Sein of the quasi-civilian Union Solidarity and Development Party (USDP) but in the 2015 general election, Aung San Suu Kyi's National League for Democracy (NLD) won the majority vote in both houses of parliament. Thus, in its second term (2016-2020), Myanmar is currently being administered by the civilian NLD party. In March 2018, Parliament elected Win Myint as President to replace Htin Kyaw who reportedly resigned because of health issues.⁸ However, since March 2016, the role of President has largely been ceremonial as NLD leader, Aung San Suu Kyi, effectively heads the government as State Counsellor.⁹ The government is divided into the executive, legislative, and judicial branches.

Despite changes in leadership, the government has limited operational powers due to the military's dominant role in the executive and legislature. For example, the 2008 Constitution grants power to the Commander-in-Chief to appoint the three central ministerial posts of Ministry of Defence, Home Affairs, and Border Affairs.¹⁰ In addition, 25% of the seats in the House of Nationalities and the House of Representatives must be reserved for military representatives nominated by the Commander-in-Chief.¹¹

In the early months of its administration, the NLD committed to a new era of transparency and an expansion of democratic space citing a broad program of legislative reform including the rights to freedom of expression and information.¹² Moreover, current President Win Myint's inaugural speech reiterated the need to uphold human rights and freedom of the press, whilst also promising to tackle corruption and constitutional issues.¹³ Accordingly, the NLD took some positive steps by ratifying the International Covenant on Economic, Social and Cultural Rights, engaging in efforts to resolve past land confiscation cases, and enacting minor reforms to regulate the rights to free speech and assembly. However, at the same time, the government increasingly used repressive laws to prosecute journalists, activists, and critics for peaceful expression deemed critical of the government or military.¹⁴

⁸ Slow, O, 'Myanmar's new president prepared for crucial role' VOA News, 9 April 2018, available at <https://www.voanews.com/a/myanmar-new-president/4338469.html>, accessed on 29 August 2018.

⁹ Tin Htet Paing, 'Military MPs boycott as Lower House passes 'State Counsellor' bill' Irrawaddy, 6 April 2016, available at <https://www.irrawaddy.com/news/burma/military-mps-boycott-as-lower-house-passes-state-counsellor-bill.html>, accessed on 29 August 2018.

¹⁰ Constitution of the Republic of the Union of Myanmar, s.232(b)(ii).

¹¹ Constitution of the Republic of the Union of Myanmar, ss.109(b), 141(b).

¹² 'Myanmar: HRC must address deteriorating environment for free expression' Article 19, 23 February 2018, available at <https://www.article19.org/resources/myanmar-hrc-must-address-deteriorating-environment-free-expression/>, accessed on 6 September 2018. See also, 'Report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC-37-70)' 9 March 2018, at para 12.

¹³ Slow (see note 8 above).

¹⁴ 'Burma: Events of 2017' Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/burma>, accessed on 29 August 2018.

Sixty-nine candidates, representing 24 political parties, registered for the upcoming 3 November by-election contesting 13 vacant parliamentary seats across national and state legislatures, with four seats open in the Lower House of Parliament, one in the Upper House, and eight across state and regional legislatures.¹⁵

B. International Human Rights Commitments and Obligations

Despite many calls by UN Human Rights Council member nations during its Universal Periodic Review (UPR)¹⁶ and special rapporteurs on its human rights situation to ratify more core treaties, Myanmar has only ratified four out of the nine core human rights treaties, and accepted only one out of three optional protocols under the Convention on the Rights of the Child as shown in Table 1 below. On the other hand, it made few reservations to said treaties upon accession. Thus, aside from Art 29 of CEDAW (on dispute resolution and interpretation of the Convention) and Art 1 of ICESCR (on self-determination), Myanmar has committed to implement all treaty provisions.

Table 1: Ratification Status of International Instruments – Myanmar¹⁷

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)		
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		22 Jul 1997 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 Jul 2015	6 Oct 2017

¹⁵ 'Nearly 70 candidates register for November by-election' DVB, 12 July 2018, available at <http://www.dvb.no/news/nearly-70-candidates-register-for-november-by-election/81233>, accessed on 30 August 2018.

¹⁶ Following its UPR in 2011, it was recommended Myanmar ratify ICCPR and CAT.

¹⁷ 'Ratification status for Myanmar' United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 4 August 2018.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		
Convention on the Rights of the Child (CRC)		15 Jul 1991 (a)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	28 Sep 2015	
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography		16 Jan 2012 (a)
Convention on the Rights of Persons with Disabilities (CRPD)		7 Dec 2011 (a)

Further, Myanmar is doing relatively well in terms of submitting its periodic reports to the relevant treaty bodies although they are invariably late. After submission of an initial report, its next offering usually entails a combined report covering the next two cycles, e.g. its third and fourth cycle reports on child rights were submitted in 2009. In the case of women's rights, Myanmar submitted combined reports for the second and third cycles in 2006 and the fourth and fifth cycles in 2015 respectively but limited itself to addressing such issues as the root causes of trafficking in women and girls and the rehabilitation of victims by the provision of shelters, in addition to legal, medical, and psychosocial assistance. More contentious topics, such as amendment of the citizenship law as previously recommended by the CEDAW and CRC committees were not addressed.¹⁸ Most recently, Myanmar submitted its initial report on CRPD in 2017.¹⁹

C. National Laws Protecting Human Rights

During the second cycle of its UPR in 2015/2016, Myanmar received 281 recommendations, of which 166 were accepted and 15 noted.²⁰ Although implementation was not as recommended by the relevant treaty bodies, the government has nevertheless demonstrated its commitment by either reforming old laws or drafting new legislation/ other agendas. Because the enactment of new legislation is more time-consuming than the preparation of agendas, no specific new laws relating to the rights of children and women have been adopted since 2013 although a bill to protect women against violence was drafted by the Ministry of Social Welfare, Relief, and Resettlement with

¹⁸ CEDAW/C/MMR/CO/4-5 (25 July 2016).

¹⁹ CRPD/C/MMR/1 (6 October 2017).

²⁰ See, 'Report of the Working Group on the Universal Periodic Review: Myanmar (A/HRC/31/13)' 23 December 2015, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>, accessed on 6 September 2018.

the support of international and domestic NGOs.²¹ Discussion on a child rights bill is still ongoing.²²

At the same time, several agendas were developed and adopted. For example, pursuant to a recommendation²³ of the CRC Committee, the government launched a manual on birth registration in 2017. Adopting simplified procedures, the new manual allows responsible persons to issue free birth certificates to unregistered children up to 10 years of age in all parts of the country²⁴ regardless of the parents' nationality, ethnicity, and citizenship status.²⁵ In a similar vein, a National Youth Policy was launched in November 2017 to realize the rights of children.

Regarding overall improvement of economic, social, and cultural rights, the NLD launched its first ever Water, Sanitation and Hygiene for All Strategy and Investment Plan (2016-2030), a National Health Plan (2017-2021) focusing on universal health coverage, an action plan on forced labour, and a notification²⁶ for an increase in the minimum wage from MMK3,600 (US\$2.35) to MMK4,800 (US\$3.10) in 2018.

To ensure persons with disabilities also have the right to work, a quota system, together with the use of penalties, was applied by the Regulations for the Rights of Persons with Disabilities 2017. Accordingly, private companies or government organizations with at least 50 employees must now employ one person with a disability. Those failing to do so will be subject to a MMK100,000 (US\$65) or MMK200,000 (US\$130) monthly fine. In addition, any employer failing to follow the regulations will be subject to a fine equal to the amount in wages of the minimum number of disabled people they should have employed under the quota system.²⁷

²¹ San Yamin Aung, 'New law to protect women, girls against violence' Irrawaddy, 17 October 2017, available at <https://www.irrawaddy.com/news.com/news/burma/new-law-protect-women-girls-violence.html>, accessed on 10 August 2018.

²² See, Pyidaung Su Hluttaw, available at <https://pyidaungsu.hluttaw.mm/second.bills>. See also, Chau, T, 'Children's Rights Bill inconsistent over child labour regulations' Myanmar Times, 23 August 2017, available at <https://www.mmmtimes.com/news/childrens-rights-bill-inconsistent-over-child-labour-regulations.html>, accessed on 10 August 2018.

²³ CRC/C/MMR/CO/3-4, at para 44.

²⁴ Free birth registration was launched in October 2014 jointly with the Ministries of Immigration and Population, National Planning and Economic Development, Health, Home Affairs, UNICEF, and the European Union. See, 'Government and UNICEF to strengthen birth registration system in Myanmar' UNICEF, 2014, available at https://www.unicef.org/myanmar/media_23117.html, accessed on 6 September 2018.

²⁵ The CRC Committee recommended development of a policy to allow free birth registration covering children up to 18 years of age. See, 'UNICEF and Telenor join hands to introduce mobile birth and death registration in Myanmar' UNICEF, 2018, available at https://www.unicef.org/myanmar/media_27871.html, accessed on 6 September 2018.

²⁶ In March 2018, the National Committee for Setting the Minimum Wage set up a new minimum wage for all employees. See, Nyan Linn Aung and Pyae Thet Phyo, 'Government sets new daily minimum wage at K 4800' Myanmar Times, 6 March 2018, available at <https://www.mmmtimes.com/news/government-sets-new-daily-minimum-wage-k4800.html>, accessed on 12 August 2018.

²⁷ Pyae Thet Phyo, 'After delay, disability rights rules and regulations published' Myanmar Times, 13 July 2018, available at <https://www.mmmtimes.com/news/after-delay-disability-rights-rules-and-regulations-published.html>, accessed on 12 August 2018.

However, it could be argued the government selectively prioritized the above-mentioned issues over other civil and political rights. For example, the right to free speech was not so comprehensively tackled although the controversial 2013 Telecommunications Law was amended in August 2017 to counter strong criticism of governmental misuse. As such, jail sentences were reduced from three to two years and a defendant's right to bail was recognized. Nevertheless, the amendment failed to address the law's most controversial provision, s.66(d), which remains unchanged.

D. National Laws Threatening Human Rights

Under the NLD, the following two laws still pose a threat to journalists, human rights defenders, and ordinary people living in conflict zones.

Official Secrets Act 1923

The Official Secrets Act was formulated by the British colonial government in 1923 to criminalize the sharing of almost any kind of official information. Section 3 criminalizes any person who collects, publishes, or communicates information that may be useful to any enemy. Section 5 also criminalizes any person who has, controls, communicates, uses, retains, or receives information classified as secret under the law, with a prison term of two years. This effectively means the State can classify any information or evidence as an official secret especially in cases of corruption and/or government wrongdoing. Such overly broad provisions allow the State wide discretion to deem any information secret and has been utilized to prevent journalists and other human rights defenders from disseminating material critical of the government.

Further, the above two sections directly hinder the public's right to access information particularly when journalists are restricted admission to conflict zones where many human rights violations occur.²⁸ A clear example can be seen in the arrest of two Reuters News Agency reporters, Wa Lone and Kyaw Soe Oo, for possessing sensitive documents relating to the killing of ten Muslims in August 2017 during a clearance operation by government security forces.²⁹ Thus, it can be seen that even the democratically-elected NLD has sought to control information which is vital for public scrutiny of officials, to enable effective participation in decision-making, and for society to exercise its rights and responsibilities in an informed manner.³⁰ Similarly, in February 2014, four journalists and the CEO of daily newspaper, Unity Journal, were arrested and charged

²⁸ 'Burma: Allow access to investigate abuses in Rakhine State' Human Rights Watch, 17 November 2016, available at <https://www.hrw.org/news/2016/11/17/burma-allow-access-investigate-abuses-rakhine-state>, accessed on 4 September 2018.

²⁹ Naw, BH, and Chau, T, 'Govt's use of 'draconian' law against journalists throttles press freedom: Media corps' Myanmar Times, 15 December 2017, available at <https://www.mmtimes.com/news/govts-use-draconian-law-against-journalists-throttles-press-freedom-media-corps.html>, accessed on 4 September 2018.

³⁰ Nderi, A, 'Freedom of information is democracy's cornerstone' Pambazuka News, 18 September 2008, available at <https://www.pambazuka.org/governance/freedom-information-democracy-cornerstone>, accessed on 4 September 2018.

under the Official Secrets Act for publishing a story on an undisclosed chemical weapons plant allegedly being constructed in central Myanmar.³¹ In short, the scope of the legislation means any individual can be harassed and/or prosecuted by the Official Secrets Act. However, it is argued freedom of information should only be limited when there is a clear intent to harm national security. Moreover, despite the reluctance of government officials to provide information and interviews to journalists, Myanmar lacks a right to information law.³²

Unlawful Association Act 1908

To stifle public opinion and political dissent, ss.17(1) and 17(2) of the Unlawful Associations Act continue to be used by the current administration to arrest, detain, and incarcerate people involved in religious organizations, political associations, trade unions, student associations, and a wide array of other activist groups. In 2017, as many as 60 Arakanese men were arrested under s.17(1) for alleged ties to the Arakan Army.

The Act also poses a threat to journalists and ordinary people living in conflict zones. Denial of access to individual journalists and independent observers in conjunction with limited rights to receive official government information has adversely affected the media's ability to cover such areas.³³ For example, in June 2017, three journalists³⁴ were charged for attending a drug-burning ceremony hosted by the ethnic armed organization (EAO), Ta'ang National Liberation Army (TNLA).³⁵ Likewise, in October 2017, a court in Shan State convicted Kachin men, Dumdaw Nawng Lat and Langjaw Gam Seng (a Baptist pastor and youth leader respectively), under the Unlawful Associations Act for facilitating a journalist's trip to the region.

Moreover, the Act can also be used to threaten inhabitants of conflict zones who may be forced to help outlawed armed groups. Thus, villagers may be forcibly recruited into armed groups, asked to supply food, or generally interact with EAOs on a regular basis.³⁶ In 2016, dozens of people living in conflict zones across the country were charged under the Act,³⁷ and according to the report of the Special Rapporteur on the

³¹ 'Submission to the UN Universal Periodic Review 23rd session of the UPR Working Group' CIVICUS, 23 March 2015.

³² 'Access to information: A major challenge in Myanmar' Fondation Hirondelle, 15 September 2017, available at <https://www.hirondelle.org/en/our-work/news/296-access-to-information-a-major-challenge-in-myanmar>, accessed on 4 September 2018.

³³ Human Rights Watch (see note 28 above).

³⁴ U Aye Naing and U Pyae Bone Naing from the Democratic Voice of Burma (DVB) and U Thein Zaw from Irrawaddy were arrested.

³⁵ 'Myanmar: Authorities must immediately release and drop charges against three detained journalists' Amnesty International, 14 July 2017, available at <https://www.amnesty.org/en/documents/asa16/6739/2017/en/>, accessed on 20 August 2018.

³⁶ Macgregor, F, and Aung, TT, 'A reluctant association' Myanmar Times, 8 July 2016, available at <https://www.mmtimes.com/home-page/in-depth/21422-a-reluctant-association.html>, accessed on 20 August 2018.

³⁷ Macgregor and Aung (see note 36 above).

human rights situation in Myanmar, at least twenty young people were arrested and detained for allegedly associating with armed groups in 2017.³⁸

E. Recent Court Cases Relating to Human Rights

The above two cases reflect the connection between freedom of expression and government accountability as regards the misuse of power engendering human rights violations. Moreover, the first demonstrates the difficulty journalists and reporters face uncovering the social injustices experienced by inhabitants of conflict zones or NLD-initiated human rights abuses.

The case of the two Reuters reporters

Following an invitation to meet the police for dinner in Yangon, Wa Lone and Kyaw Soe Oo were arrested on 21 December 2017 on suspicion of violating the Official Secrets Act. During the meeting, they were handed rolled up papers allegedly linking to security force operations in northern Rakhine State.³⁹ At the time of their arrest, the two reporters had been investigating events in the village of Inn Din, Maungdaw Township, including the killing of 8 Muslim men and 2 high school-aged boys during a security force clearance operation.⁴⁰ The Myanmar Police Force publicly announced the journalists had been arrested for “illegally obtaining and possessing government documents” with the intent “to send them to a foreign news agency.”⁴¹ As such, they were held incommunicado for two weeks before appearing in court on 27 December 2017 when they were remanded for another two weeks. After six months of preliminary hearings, on 9 July 2018, they were charged under s.3(1)(c) which carries a maximum sentence of 14 years.⁴² The two reporters were eventually sentenced to seven years in prison on 3 September 2018.⁴³ This landmark case has drawn much criticism for its egregious attack on press freedom and its attempt to intimidate journalists reporting on official crimes.

Accountability for human rights violations in conflict zones

Although major human rights violations such as torture, extrajudicial killing, and arbitrary arrest frequently occur in conflict zones, most victims are unwilling to report crimes due to fear, a lack of trust in the legal system, a lack of funds to pursue a case, and

³⁸ A/HRC/37/70, at para 37.

³⁹ Adams, B, ‘Myanmar: Free Reuters journalists, drop case’ Human Rights Watch, 1 July 2018, available at <https://www.hrw.org/news/2018/07/01/myanmar-free-reuters-journalists-drop-case>, accessed on 28 August 2018.

⁴⁰ Thant, AM, and McPherson, P, ‘Reuters journalists face verdict next week on Myanmar secrets charges’ Reuters, 20 August 2018, available at <https://www.reuters.com/article/us-myanmar-journalists/reuters-journalists-face-verdict-next-week-on-myanmar-secrets-charges-idUSKCN1L50F2>, accessed on 28 August 2018.

⁴¹ Adams (see note 39 above).

⁴² Naw, BH, and Chau, T, ‘Ruling deals ‘hammer blow’ to press freedom, judiciary: Rights experts’ Myanmar Times, 10 July 2018, available at <https://www.mmtimes.com/news/ruling-deals-hammer-blow-press-freedom-judiciary-rights-experts.html>, accessed on 4 September 2018.

⁴³ Naw, BH, ‘Reporters’ jail sentence draws criticism’ Myanmar Times, 4 September 2018, available at <https://www.mmtimes.com/news/reporters-jail-sentence-draws-criticism.html>, accessed on 4 September 2018.

a general lack of awareness of their rights.⁴⁴ This is partly due to the fact national courts have no jurisdiction over military cases and immunity provisions in the Constitution enable human rights violators to evade accountability for criminal acts. In response to international criticism on its impunity, the government set up multiple committees⁴⁵ to investigate in 2016/2017, particularly in Rakhine State. However, having repeatedly denied the existence of unlawful killings based on their committees' findings, the government refused independent investigators access to the region, including the UN Fact-Finding Mission and the UN Special Rapporteur for human rights in Myanmar.⁴⁶ It was under these circumstances that the two reporters discussed in the previous section were arrested in December 2017 for allegedly investigating human rights violations in Inn Din village.

In January 2018, the government announced it was investigating the killings of “10 Bengali terrorists” also in Inn Din.⁴⁷ As a result, four officers were denounced and permanently dismissed from the military and sentenced to 10 years of hard labour in a remote prison. For their involvement in the massacre, three other soldiers were demoted to the rank of ‘private,’ permanently dismissed from the military, and sentenced in April to 10 years of hard labour in a remote prison.⁴⁸ The case is significant because it constitutes the military’s first admission of crimes perpetrated by security forces during clearance operations. However, in a recent report, ND-Burma documented a further 50 human rights violations from 2014 to 2017 for which victims failed to seek justice,⁴⁹ indicating that government accountability in conflict zones is still a serious concern.

Part 2: Outstanding Human Rights Issues

A. Freedom of Expression/Assembly

Since 2011, Myanmar has transformed itself politically, economically, and socially. Under the USDP, one remarkable change that occurred was the liberalization of freedom of expression and access to information (albeit with some limitations) after

⁴⁴ *Report on the Human Rights Situation in Burma, January-December 2017*, Burma: Network for Human Rights Documentation, 2018, at 14. See also, ‘Burma: Military burned villages in Rakhine State’ Human Rights Watch, 13 December 2016, available at <https://www.hrw.org/news/2016/12/13/burma-military-burned-villages-rakhine-state> and Solomon, F, ‘Violence escalates in Western Burma as army launches air strikes near Rohingya villages’ Time, 14 November 2016, available at <http://time.com/4569242/burma-myanmar-rohingya-arakan-rakhine-hrw-wfp-islamic-militants/>, both accessed on 6 September 2018.

⁴⁵ Since 2011, the government has commissioned several inquiries into allegations of human rights violations such as the Investigation Commission on Sectarian Violence in Rakhine state (2011), the Letadaung Taung Investigation Commission (2012), and the Rakhine State Investigation Committee (2016).

⁴⁶ Human Rights Watch (see note 14 above).

⁴⁷ Adams (see note 39 above).

⁴⁸ Shoon Naing and Thu Thu Aung, ‘Seven Myanmar soldiers sentenced to 10 years for Rohingya massacre’ Reuters, 11 April 2018, available at <https://www.reuters.com/article/us-myanmar-rohingya-military/seven-myanmar-soldiers-sentenced-to-10-years-for-rohingya-massacre-idUSKBN1HH2ZS>, accessed on 27 August 2018.

⁴⁹ *Report on the Human Rights Situation in Burma, January-December 2017*, Burma: Network for Human Rights Documentation, 2018.

decades of military dictatorship. When the NLD came to power in 2016, the government was expected to further liberalize freedom of expression as promised in its electoral campaign and the inaugural commitments of its two Presidents.⁵⁰ However, press freedom and the general public's right to free speech is still prohibited with offenders even being imprisoned due to increased use of s.66(d) of the Telecommunication Law 2013 and the Peaceful Assembly and Peaceful Procession Law 2012 (PAPPL).

Although the Telecommunication Law was enacted in 2013, regular application of s.66(d) to counter criticism of either the government or the military in any media did not gather speed until late 2015.⁵¹ Of 106 identified criminal complaints brought under s.66(d) between November 2015 and November 2017, 90% occurred under the NLD-led government.⁵² In response to severe international criticism,⁵³ the Telecommunications Law was amended in 2017 to shorten prison sentences from three to two years and to recognize the defendant's right to bail. Nevertheless, s.66(d) remained unchanged with President Win Myint and the Military Chief even reiterating its importance, citing that victims of defamation needed legal protection because the Penal Code's defamation clause was inadequate in this regard.

In the meantime, the government has also restricted the right to protest which is crucial for the population to express itself, collectively defend human rights, and raise public awareness about vital issues. As Myanmar has a long history of suppressing protests, the promulgation of the PAPPL in 2012 marked a positive step towards protecting the rights of protestors. However, its vague provisions have also been used arbitrarily to restrict freedom of expression and criminalize protestors. Thus, in November 2017, the Yangon Region Security and Border Affairs Minister instructed police to refuse permission to peaceful assemblies in 11 townships to "avoid public annoyance and anxiety" and traffic disturbance contrary to the PAPPL. This broad and arbitrary measure contradicts the right to freedom of peaceful assembly.⁵⁴ Similarly, in January 2018, five ethnic Karenni men were convicted of violating the PAPPL and sentenced to 20 days' imprisonment for organizing a protest in Loikaw calling for military accountability following the execution of unarmed Karenni soldiers.⁵⁵

⁵⁰ Both President Htin Kyaw and his replacement, President Win Myint, made public commitments to reform the media sector.

⁵¹ 'Myanmar: HRC must address deteriorating environment for free expression' Article 19, 23 February 2018, available at <https://www.article19.org/resources/myanmar-hrc-must-address-deteriorating-environment-free-expression/>, accessed on 4 September 2018, at 1-4.

⁵² Kean, T, 'Myanmar's Telecommunications Law threatens its democratization process' ISEAS YUSOF ISHAK Institute, 11 July 2017, No 50, available at https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2017_50.pdf, accessed on 5 September 2018, at 2.

⁵³ See, 'Myanmar: HRC must address deteriorating environment for free expression' Article 19, 23 February 2018, available at <https://www.article19.org/resources/myanmar-hrc-must-address-deteriorating-environment-free-expression/>, accessed on 5 September 2018.

⁵⁴ 'Burma: Withdraw protest ban in Yangon' Human Rights Watch, 15 November 2017, available at <https://www.hrw.org/news/2017/11/15/burma-withdraw-protest-ban-yangon>, accessed on 20 August 2018.

⁵⁵ Zue Zue, '5 Karenni men sentenced under Peaceful Assembly Law' Irrawaddy, 15 January 2018, available at <https://www.irrawaddy.com/news/burma/5-karenni-men-sentenced-peaceful-assembly-law.html>, accessed on 18

Recent amendments to the PAPPL (approved in March 2018) now constitute an even greater cause for concern. Under s.4, a notification letter must be submitted to the authorities at least 48 hours in advance of any public assembly together with the approximate number of attendees, its estimated budget, and the source of its funds. However, it is suggested these requirements are unnecessarily burdensome and may prevent civil society from exercising its rights. Under the PAPPL, one may also receive a three-year prison sentence and an unspecified fine if found guilty of provoking, persuading, or urging anyone to join a peaceful assembly or procession through the provision of money or assets or other means, with the intent of shattering state security, law, and order. Thus, in principle, this law could allow the police to arrest and charge individuals for simply offering a bottle of water to protestors.

In April and May 2018, numerous participants joining peace rallies in Myitkyina, Yangon, Mandalay, and Bago were arrested and charged under s.19 of the PAPPL. In total, approximately 50 human rights defenders were arrested, charged, and convicted for giving speeches at rallies and for peace activism in general.⁵⁶

The above examples demonstrate the deterioration of freedom of expression in Myanmar under the democratically elected NLD government.

B. Internal Displaced Persons in Conflict Zones

Ongoing conflict in Kachin, Northern Shan State, and Rakhine has displaced many people in the region, both internally and across the border. As of 31 July 2018, the total number of internally displaced persons (IDP) is 96,727 in Kachin State, 8,815 in Shan State, and 128,141 in Rakhine State.⁵⁷ Due to lost homes and livelihoods as a result of man-made disasters, IDP are intensely vulnerable as a group. As such, their rights to enjoy minimum standards of human rights should be upheld including the right to physical protection, shelter, food, clothing, basic health, work, the integrity of the person, and the right to family as the most fundamental of social units. The responsibility of providing assistance to IDP rests first and foremost with the national government which is also obliged to accept international cooperation if unable to provide such aid itself. Nevertheless, since 2016, the government has only permitted limited access to international humanitarian organizations to deliver food or other relief supplies into conflict zones despite calls from the UN-Secretary-General and other senior UN officials to allow unhindered humanitarian access.⁵⁸

August 2018.

⁵⁶ 'A month-in-review of events in Burma' Burma Bulletin, 23 August 2018, at 4.

⁵⁷ 'Myanmar: IDP sites in Kachin State (as of 31 July 2018)' OCHA, 21 August 2018, available at <https://m.reliefweb.int/report/2751884/myanmar/myanmar-idp-sites-kachin-state-and-northern-shan-states-31-july-2018>, accessed on 5 September 2018.

⁵⁸ 'Myanmar: Humanitarian Bulletin, Issue 3, 2017 (23 September-13 November 2017)' OCHA, at 2.

Currently, in Kachin, about 43% of displaced people are located in areas beyond government control, where international actors have limited humanitarian access but local humanitarian organizations continue to operate, despite mounting constraints.⁵⁹ A similar situation can be found in northern Rakhine where many humanitarian organizations have also proved unable to adequately meet the needs of populations they normally assist. The UN World Food Programme (WFP), Red Cross, World Health Organization, and the ASEAN Coordinating Center for Humanitarian Assistance have all provided support to IDP in Rakhine State through the government's responsible ministries. In addition, the government established a new "Union Enterprise for Humanitarian Assistance, Resettlement, and Development in Rakhine" to support cooperation between the Union government, the people, the private sector, local and international NGOs, CSOs, partner nations, and UN agencies in order to implement projects across all sectors of Rakhine State.⁶⁰ Thus, many IDP now rely almost exclusively on community-based mechanisms. Nonetheless, local organizations also face increasing difficulties, for example, as a result of long processing times to obtain permission from the authorities to access camps. Accordingly, delivery of items is often delayed.⁶¹ Such disruptions have affected life-saving activities, e.g. health services, including access to sexual and reproductive health services for women and girls, and nutritional assistance for malnourished children and the elderly.⁶² Education remains inadequate at all levels, from early childhood to secondary school, limiting opportunities to access higher education in particular and diminishing growth and learning opportunities for young people in general.⁶³

C. Protection of Survivors of Child Rape

The increase in the number of child rape cases in Myanmar without adequate victim support systems to mitigate the effects on both victim and community threatens not only the livelihood of survivors but also the future of Myanmar. Based on official statistics, there were 671 reports of girls under the age of 16 being raped in 2016 rising to 879 in 2017, an increase of 226.⁶⁴ These shocking statistics raise questions about public security and the rule of law, with some even calling for the death penalty to

⁵⁹ Since 2016, the government and military have not permitted international humanitarian organizations to take food or other relief supplies into areas beyond government control. Even in government controlled areas, international humanitarian organizations have experienced unprecedented delays in obtaining travel authorizations for staff and this has affected the delivery of assistance and the quality of humanitarian operations: UN and Partners, *Humanitarian Needs Overview: Myanmar*, Myanmar: OCHA, 2017, at 9 (col 2).

⁶⁰ OCHA (see note 59 above), at 2.

⁶¹ Tasmiah Nuhiya Ahmed, 'Internally displaced peopled in Myanmar' *The Independent*, 19 December 2017, available at <http://www.mmpeacemonitor.org/conflict/idps-and-refugees>, accessed on 22 August 2018. See also: OCHA, 'Humanitarian Bulletin: Myanmar (23 September-13 November 2017)' Issue 3, 2017, at 7.

⁶² UN and Partners (see note 59 above), at 9 (col 1).

⁶³ Myanmar National Human Rights Commission Statement No 7/2018, available at <http://www.mnhrc.org.mm/myanmar-national-human-rights-commission-statement-no-7-2018/>, accessed on 5 September 2018.

⁶⁴ Ministry of Home Affairs, *Myanmar Alin*, 15 February 2018.

be applied to rapists.⁶⁵ As such, the National Strategic Plan for the Advancement of Women (NSPAW) 2013-2022 was introduced to eliminate all forms of violence against women and girls and to respond to the needs of victims. Further, the core law on the Prevention and Protection of Violence against Women was also drafted to approach the issue from a holistic and more comprehensive viewpoint.

CSOs providing direct psychosocial, material, and financial support, temporary shelter,⁶⁶ and referrals to other institutions include the Myanmar Maternal and Child Welfare Association (MMCWA) and the Myanmar Women Affairs Federation (MWAF).^{67,68} However, measures to provide effective counselling and shelter for victims are less visible.⁶⁹ Another problem can be seen in the fact that few survivors seek help from the police and courts which tend to minimise gender-based violence. Similarly, aside from the provision of forensic examinations, medical facilities have limited capacity to deal with such cases whilst also lacking referral mechanisms to other support services.⁷⁰ A final issue is illustrated by an article that appeared in a state-owned newspaper calling on girls to dress appropriately and to avoid going out alone at night,⁷¹ indicating that in Myanmar, the societal tendency of victim-blaming is still very much in evidence. As a result, there may be an increase in HIV, unwanted pregnancies, unsafe abortions, traumatic fistula, and even death. At the same time, few medical support services or safe shelters are available to aid victims of gender-based violence.⁷²

⁶⁵ Thein, C, 'The sexual abuse of children is widespread in Myanmar but attempts to increase the penalty for child rapists have twice ended in failure' *Frontier*, 18 October 2016, available at <https://frontiermyanmar.net/en/lifting-the-lid-on-child-sex-abuse>, accessed on 4 September 2018. See also, Tan, ZX, 'Rising child rape cases in Myanmar show desperate need for action' *ASEAN Today*, 21 December 2016, available at <https://www.aseantoday.com/2016/12/rising-child-rape-cases-in-myanmar-show-desperate-need-for-action/>, accessed on 4 September 2018. See also, 'Stop sexual violence against children' *Global New Light of Myanmar*, 3 June 2018, available at <http://www.globalnewlightofmyanmar.com/stop-sexual-violence-children/>, accessed on 4 September 2018.

⁶⁶ There are only 9 shelters offering basic counselling, legal services, and health care (GenMyanmar).

⁶⁷ According to the government's report to CEDAW in 2007, 54 counselling centres have been established in various states, regions, and districts.

⁶⁸ Gen Myanmar, *Service Provision for Gender-Based Violence Survivors in Myanmar*, Myanmar: Gender Equality Network, 2018, available at http://www.genmyanmar.org/system/research_and_publications/rap_file_engs/000/000/028/original/Service_Provision_for_Gender-Based_Violence_Survivors_in_Myanmar_-_English_Version.pdf, accessed on 6 September 2018.

⁶⁹ 'Dateline Irrawaddy: Sexual abuse and stigma' *Irrawaddy*, 16 December 2017, available at <https://www.irrawaddy.com/dateline/dateline-irrawaddy-sexual-abuse-stigma.html>, accessed on 29 August 2018.

⁷⁰ See, GenMyanmar (note 68 above), at 38-39.

⁷¹ Maung Thaug Win, 'Rising rape cases threatening young girls' *Global News Light of Myanmar*, 20 February 2018, available at <http://www.globalnewlightofmyanmar.com>, accessed on 23 August 2018.

⁷² Aye Thiri Kyaw, 'Violence against women: A hidden public health crisis in Myanmar' *Teacircleoxford*, 5 February 2018, available at <https://teacircleoxford.com/2018/02/05/violence-against-women-a-hidden-public-health-crisis-in-myanmar>, accessed on 25 August 2018.

Part 3: Conclusion

Before 2010, when Myanmar was under direct military rule, freedom of expression, the right to information, and other human rights were strictly curtailed. Post 2010, progress was made under the quasi-civilian government – for example, the notorious pre-censorship system was abolished and press-related laws and an assembly law (although flawed) were enacted. Following election of the civilian NLD government, those rights, especially as relating to inhabitants of conflict zones, were expected to markedly improve in comparison to previous administrations but such an assumption has proved too optimistic. Instead, different laws were applied to restrict journalists and individuals seeking to educate the public and international communities on Myanmar's human rights situation. In conclusion, it is argued that not only do such arrests undermine Suu Kyi's commitment to freedom of expression, they also undermine her progress towards economic growth because curbing press freedom also limits the ability of journalists to report on mismanagement, illegal business practices, and corruption.

