

Myanmar: UN HRC must maintain scrutiny on free expression situation

ARTICLE 19 welcomes [the report of the UN Special Rapporteur on the situation of human rights in Myanmar](#) to the 34th Session of the UN Human Rights Council (HRC34), and calls for the renewal of her mandate. In particular, we support the Special Rapporteur's proposed joint benchmarks for measuring progress on the human rights situation in the country, and believe the continuation of the Item 4 mechanism is essential to provide credible information on that progress and to ensure continuing international scrutiny. Guaranteeing the full and effective public participation to these reform processes will be crucial.

This briefing identifies what ARTICLE 19 considers to be the key freedom of expression and information priorities for Myanmar at the 34th Session of the Human Rights Council, many reinforcing the Special Rapporteur's conclusions, recommendations, and proposed benchmarks for measuring progress.

ARTICLE 19 urges all member and observer states to raise these concerns during the interactive dialogue with the UN Special Rapporteur on the situation of human rights in Myanmar, and to ensure that practical recommendations to address these concerns are integrated into a strengthened Item 4 resolution.

Summary

More than one year after peaceful elections and a transition to an NLD-led government, human rights – including the right to freedom of expression – remain under threat, and optimism regarding the reform agenda is quickly fading.

Journalists, lawyers and human rights defenders continue to be the targets of threats and violence. This insecurity has not been limited to conflict areas, as illustrated most recently by the shocking murder in broad daylight of a prominent lawyer in Yangon. The government has not taken adequate measures to ensure the safety of journalists and human rights defenders, and failed to amend outdated and ambiguous laws that continue to be used to target critics, such as through criminal defamation actions. In areas of the country subject to conflict or military action, travel restrictions and harassment have also prevented the media from effectively covering conflict areas, including corroborating allegations of serious rights abuses, possibly amounting to crimes against humanity in Rakhine State.

In the year since the UNHRC last considered the human rights situation in Myanmar, there has been a notable lack of progress on implementing the recommendations of the UN Special Rapporteur's 2015 report, with many indicators showing regression on commitments that have been made to the international community, including through the [Universal Periodic Review process](#).

Freedom of expression and information priorities

A. Safety of Journalists and Human Rights Defenders

During the past year, the situation for the safety of journalists and human rights defenders has remained dire, with little measureable progress. Murders, attacks, threats and harassment against journalists, lawyers and human rights defenders continue, and there are no reliable mechanisms in place to ensure accountability for past violence.

The recent murder of prominent constitutional lawyer [U Ko Ni](#) in a public space at Yangon International Airport raises serious questions about the safety and security of lawyers, journalists and others working on sensitive issues. Nor has there been progress toward accountability for the past killings of journalists, such as that of [Ko Par Gyi](#), a freelance journalist murdered in 4 October 2014, while in military custody.

The situation of journalists reporting on corruption, land confiscation and environmental exploitation is especially insecure. [Soe Moe Tun](#), a journalist for Eleven Media covering illegal logging in the country, was found dead on 13 December 2016 on the side of a road in Monywa in the Sagaing region of Upper Myanmar. There has been no progress in investigations to identify and prosecute those responsible for his murder. [U Oo Nyein](#), a freelance journalist for Hot News Journal covering conflict areas in Kachin State, continues to face harassment, including through vexatious legal proceedings, seemingly to deter him from reporting on illegal activities in the logging and livestock sector.

States should raise the situation facing journalists and human rights defenders, including the above cases, in the interactive dialogue with the Special Rapporteur on her annual report. They should ensure that it is reflected as a priority concern in the resolution renewing the mandate of the Special Rapporteur.

B. Serious Human Rights Violations, and Media Restrictions in Conflict Areas.

There is growing evidence of serious human rights violations, which may amount to crimes against humanity, against the Rohingya Muslim population during recent military operations in northern Rakhine State. Government initiatives to investigate these allegations lack both credibility and independence.

The government and military have blocked access to the affected areas to journalists and human rights workers seeking to report on the military action, and to verify these allegations. The Special Rapporteur herself had her access unjustifiably limited during her most recent visit. National and local media have come under pressure to avoid or censor coverage of allegations of human rights abuses by the military in Rakhine, and there is troubling evidence that civilians that have spoken to the media have been targeted.

For instance, [a Muslim man who spoke with reporters during a government-guided media tour of Rakhine State, was found decapitated on 23 December 2016](#), and [women victims of sexual violence have reportedly been intimidated by security personnel, and shamed in state media](#). Journalists covering the violence have been subject to threats and censorship. In November, a journalist and the editor at The Myanmar Times were dismissed after publishing an article on allegations of rape by military personnel in Rakhine State, reportedly under pressure from the Ministry of Information.

Threats and insecurity are not limited to journalists covering events in Rakhine State. The ability of journalists and civil society to work near areas of ongoing fighting in Kachin and Shan States between the military and ethnic armed groups has been severely curtailed. Intimidation by both the military and armed groups is common. [Langjaw Gam Seng and Dumdaw Nawng Lat](#), two Kachin Baptist leaders, disappeared in December 2016 in Northern Shan State, after assisting journalists reporting on military airstrikes that damaged a church. In January 2017, the military acknowledged that they were in detention and being prosecuted under the Unlawful Associations Act. In January 2017, a Mandalay court rejected the appeal of [Pwint Phyu Latt and Ko Zaw Zaw Latt](#), two Muslim interfaith activists, who had been

sentenced to four years in prison under the Act for photographs posted to social media of a charity trip to displaced people's camps in Kachin State in 2013 and during a visit across the Indo-Burma border to Mizoram State in 2014. The Act makes all journalists who engage with 'illegal armed groups', as defined by the Act, vulnerable to arrest and prosecution.

The HRC must establish a credible and independent *international* investigation into the increasing evidence of ongoing human rights violations in Rakhine State, as well as in relation to the conflicts in Kachin and Shan States, and encompass the deliberate targeting of journalists and human rights defenders within the mandate of that mechanism. These concerns should also be raised during the interactive dialogue.

C. Criminalising Dissent and Criticism

The criminalisation of dissent and criticism has not only continued but in some respects intensified under the NLD government, including against journalists, bloggers and human rights defenders.

Section 66(d) of the Telecommunications Law criminalises "defamation" on the Internet, with a penalty of up to three years in prison. Persons facing charges are often held without bail, and periods of pre-trial detention in themselves raise serious human rights concerns. According to the Telecommunications Law Analysis (published by the Telecommunication Law Research Team on 10 Feb 2017), there are reportedly 49 cases currently before the courts, excluding cases that have been closed following mediation. 42 of those cases have been initiated since the NLD-led government took power in April 2016. Despite a substantial civil society-led campaign to have the provision amended, the Parliament has yet to take action.

Defamation cases have been brought under Section 66(d) by government, military and political party leaders against journalists, activists and ordinary citizens for social media posts perceived as critical. In one prominent case, [the CEO and Chief Editor of Eleven Media were prosecuted for an article alleging corruption by the Yangon Chief Minister](#). In other cases, a NLD district leader filed a case against a local activist, [Daw Amar Ni](#), for a critical Facebook post, and [U Myo Yan Naung Thein](#), an NLD central committee secretary, was prosecuted for a social media post criticising recent military actions.

In addition to defamation cases brought under the Telecommunications Law, other laws introduced by past military governments, and sometimes dating from the British colonial period, have been used to constrain expression – including the Unlawful Associations Act, Electronic Transaction Law, Peaceful Assembly Law and provisions of the Penal Code.

For instance, under Section 505 (b) of the Penal Code, activists including Daw Ohn Hla have been sentenced to lengthy prison terms for publishing information 'with intent to cause fear or alarm to the public.' Editors and journalists at Mizzima were also [prosecuted under the defamation provisions of the Electronic Transactions Law](#) for criticism of coverage by a rival media house.

States must condemn the continued existence and abuse of these provisions during the interactive dialogue with the Special Rapporteur, and ensure that the Resolution renewing the Special Rapporteur mandate makes specific calls for a comprehensive reform agenda to prevent further abuses, to be initiated with the full and effective participation of civil society.

D. Reforming the Legal Framework Governing Freedom of Expression

In addition to the urgent revision of laws that are currently being abused to target the media and constrain critical speech online as well as offline, ARTICLE 19 urges the Government to undertake a broader programme of reform of the legal and regulatory framework affecting freedom of expression and association.

[The current News Media Law requires amendment](#) to bolster the impartiality and credibility of the News Media Council, including establishing an independent appointment process, improving funding transparency, and guaranteeing diverse representation, reflecting the entirety of society. [The Broadcasting Law is also in need of reform](#) to ensure fair treatment of non-state media, increase transparency, and adequate support to community media.

The introduction of new legislation, such as a [proposed bill on “Interfaith Harmonious Coexistence”](#), intended to address “hate speech”, and draft legislation on Freedom of Information, should also be made consistent with international human rights law and standards. In the case of laws addressing “hate speech”, the legislature should follow the guidance of HRC Resolution 16/18 and the OHCHR-led Rabat Plan of Action.

States should encourage the government to take an inclusive and open approach to the legislative process, including with the full and meaningful participation of civil society, to ensure laws comply with international human rights law. A country office of the UN High Commissioner for Human Rights, with a broad mandate, could provide technical assistance in this regard.

ARTICLE 19 also reiterates its call on the government of Myanmar to ratify the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as a matter of priority.