



## Revisiting human rights in Myanmar

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On 23 May 2012, Amnesty International concluded its first official visit to Myanmar since 2003. During two missions that year, we spent the vast majority of our time either being escorted to and from meetings with government officials, or privately interviewing 35 political prisoners in Insein, Bago, and Moulmein prisons, where we actually felt most free. For fear of putting civil society at risk, we did not request to speak with those actors, while outreach to ethnic minority representatives was similarly cautious.

In contrast, our recent two-week mission to Yangon and Naypyidaw consisted of a very diverse collection of 49 meetings, the majority of which, though confidential, were held in public places. Unfortunately, time did not permit us to travel to an ethnic minority state. We appreciated the opportunity to speak with government officials; political parties and their Members of Parliament; members of the diplomatic community; lawyers and other civil society actors; ethnic minority activists; former political prisoners as well as the families of current political prisoners; and a representative of the National Human Rights Commission.

Amidst a myriad of changes taking place in Myanmar, dating back to the late 2010 national elections, these meetings afforded Amnesty a preliminary opportunity to assess Myanmar's current human rights situation. What has improved since the new government came into power a little more than a year ago? What human rights violations have persisted or even worsened? And what new human rights challenges have the country's recent reform efforts engendered or brought to the fore? In addition to general impressions, we consider these questions under five broad and sometimes overlapping headings most relevant to Amnesty's work on Myanmar over the last 25 years.

### **Political imprisonment**

In a major step forward, between May 2011 and January 2012 the Myanmar government released more than 650 political prisoners and reduced the sentences of many others. A number of former political prisoners noted that they had only been conditionally released under provisions set out in Section 401 of the Criminal Procedure Code, However many told Amnesty International that they have been relatively free to resume their political activity without harassment or intimidation. We are hopeful that the cycle of imprisonment, release, and re-arrest has come to an end, and that in the words of one person we met "the dark nights of fearing the knock on the door are over".

However, Amnesty International believes that hundreds of political prisoners remain behind bars in Myanmar. Due primarily to a lack of transparency by the government, exact numbers are not known. We regard political prisoners as persons who have been



imprisoned on account of their political activity, even if they committed or advocated violence. They should be afforded a prompt and fair trial under an internationally recognized offense, or be released.

Among the cases we investigated during our visit, was one that concluded two days before we arrived. On 8 May, Phyo Wai Aung was sentenced to death for his alleged involvement in a 2010 bombing. His experience has simply been a succession of human rights violations: a confession extracted through torture, an unfair trial held in Insein prison, and the death penalty. Phyo Wai Aung should be released, not least on humanitarian grounds, as he was recently admitted to hospital with a terminal illness.

*Some* government officials told our delegation that Myanmar has never held political prisoners, only persons who have “violated prevailing laws”. They also said that nearly all names on various lists of current political prisoners do not correspond to prisoners of any kind, but are “just names”.

The case of Aye Aung, however, which we also investigated while in Myanmar, suggests otherwise. Arrested in 1998 for staging peaceful student demonstrations and for distributing a student union statement, Aye Aung is held in Kalay prison, in Sagaing Region. He was sentenced to 59 years imprisonment, reduced to 30 years after a January 2012 presidential order. Aye Aung is the only student arrested during those demonstrations still imprisoned, and suffers from a spinal injury that requires surgery. He was severely beaten by military intelligence officers during his initial detention.

Similarly, Khin Kyi was arrested in October 2008 while distributing the logo and message of Generation Wave, a group founded after 2007’s “Saffron Revolution”. He too is one of the last members of his organization still behind bars, and is serving a 15-year sentence in Bago prison.

These people are not just names, they are prisoners of conscience. As we explained to all relevant officials we met in Myanmar, prisoners of conscience are persons imprisoned because of their political or religious beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation, or other status, who have not used or advocated violence. Aye Aung and Khin Kyi, like all prisoners of conscience, should be released immediately and unconditionally.

Because of discrepancies in numbers and definitions of political prisoners, there was broad agreement among nearly every relevant person Amnesty International spoke with in Myanmar—including officials—that the government should initiate a review process. With UN assistance and appropriate non-governmental participation, it should establish a mechanism to review the cases of *all* prisoners in Myanmar to determine the true reason for their arrest. Indeed, since there are undoubtedly political prisoners in Myanmar whose names have not been recorded—particularly in ethnic minority areas—this review process should go well beyond even the longest of the outstanding lists.



While a representative of Myanmar’s National Human Rights Commission expressed interest in this proposal, the current capacity of the Commission—mandate, resources, budget, and staff—is insufficient and should be urgently strengthened by the Myanmar authorities. Moreover, in addition to a review process, the Myanmar government should grant the International Committee of the Red Cross access to its prison system, in such manner as it can work to the fullest extent of its humanitarian mandate.

Finally, aside from political conditions attached to their release, many former political prisoners struggle with reintegrating into a fast-changing society. Long periods of imprisonment have taken an educational and occupational toll on former prisoners, and often a financial toll on their families; skills training and income-generation are increasing challenges. In the words of one young woman released in January this year, “I am seven years late on my future.”

Likewise psycho-social problems, including post-traumatic stress disorder for victims of torture and solitary confinement, and estrangement from or by family members. Rehabilitation and reintegration of former political prisoners is urgently needed.

## **The Rule of law**

Most political prisoners in Myanmar have been sentenced under laws that place the country well outside of international norms and standards on the freedoms of expression, peaceful assembly, and association. Legal reform in Myanmar is long overdue. This is actually underway and has yielded some positive results.

Amnesty International had the opportunity in Myanmar to meet with people—representing a wide range of interests—directly associated with or affected by the new Labour Dispute Settlement Law. Not only does the law itself promote and protect the rights of workers, but the government also consulted international experts in drafting it. Both law and process have set a constructive precedent.

This is not the only recent example of legal reform: a new media law, once expected for publication this month, is now anticipated for July. While the government did meet with international experts and local journalists, and the law’s thematic chapter headings were disclosed earlier this year, the law itself has not yet been made public.

Amnesty International was told that Myanmar’s Press Scrutiny and Censorship Board has shortened its reach by a considerable degree since late last year, which marks a definite improvement in the right to freely receive and disseminate information. All the more discouraging then, that reform of the media law and other new legislation has not been more transparent. The worry thus persists that the new law could simply replace the Censorship Board in suppressing free speech.

While our delegation was not able to explore other laws and their formation in detail, we did receive critical feedback on several new laws pertaining to land, agriculture, and forestry. Legal reform should eliminate laws whose language is either so broad that its interpretation



is subject to political abuse, or is so precise that it unduly restricts the rights of Myanmar citizens.

## **Ethnic minorities**

Amnesty International has conducted human rights research on the situation in Myanmar's ethnic minority areas for more than 25 years. Our delegation thus welcomed the reiteration by officials of President Thein Sein's 1 May pledge to eradicate forced labour in Myanmar by 2015, as well as credible reports that the practice is on a downward trend. Though not confined to ethnic minority areas, forced labour has persisted there for decades.

Many ethnic minority areas have experienced—and several continue to experience—insurgencies or armed conflicts between the Myanmar army and various ethnic minority armed groups. While Amnesty International does not take a position on issues of war and peace, because the human rights situation has generally been better in ceasefire areas than in conflict zones, ceasefires recently agreed by the government with 10 of 11 ethnic minority armed groups may lead to a decrease in violations.

Amnesty International does, however, monitor armies' and armed groups' adherence to international human rights and humanitarian law, with a particular focus on the protection of civilians. While there was broad acknowledgement among those we met in Myanmar that civilians are currently bearing the brunt of ongoing fighting in northern Shan and Kachin States, there was almost categorical denial by officials that the Myanmar army is responsible for systematic violations against civilians.

This is starkly inconsistent with credible information our delegation received from Kachins who live and work in areas where a 17-year ceasefire broke down last June. Despite two Presidential directives for the Myanmar army to cease attacks and engage in only defensive actions, we received reports not only of large-scale troop movement to the area, but recent incidents of torture, extrajudicial executions, and sexual violence against civilians. Reports of abuses by the Kachin Independence Army were also received. *All* attacks that target civilians or are indiscriminate in their nature or design, should cease immediately.

With at least 60,000 newly displaced persons, the humanitarian situation in these areas is also grave. Amnesty International was told that access to food, especially for children, is the most pressing concern. As with Myanmar's prisons, the International Committee of the Red Cross should be given full and unfettered access to these areas.

Finally, outside of the conflict areas, ethnic and Muslim minority Rohingyas primarily in northern Rakhine State have experienced no appreciable improvement in the realization of their human rights. They are still not recognized as citizens and are subject to systemic discrimination in marriage, travel and employment. In the words of one Rohingya who spoke with our delegation, there is a sense that "all of these changes taking place are for everyone else". Particularly concerning is that, despite being a state party to the UN Convention on the Rights of the Child, Myanmar continues to deny Rohingya children the right to a nationality.



## **Accountability**

Amnesty International regrets that it can report very little progress on a persistent human rights challenge in Myanmar: official impunity for serious human rights violations, including past war crimes and crimes against humanity. At various times and in various contexts—such as the 2006-2008 military offensive in Kayin State, documented by Amnesty International—the Myanmar army has violated the Geneva Conventions of 1949 or committed human rights violations on a widespread or systematic basis.

Furthermore, in non-conflict zones, Myanmar security forces and government-backed groups have a long and storied history of human rights abuses. This includes the violent suppression of pro-democracy demonstrations in 1988, resulting in an estimated 3,000 deaths; the forced displacement of tens of thousands of Rohingyas in 1991-1992; the deadly attack on Aung San Suu Kyi's motorcade in Depayin in 2003; and the violent crackdown on 2007's Saffron Revolution. Amnesty International is not aware of anyone being held accountable for these and other violations of a similar scale.

Although we recognize that the timing and nature of accountability are critically important, it is equally important that justice ultimately be done and be seen as being done in Myanmar. So long as its independence and impartiality are assured, a domestic process *could* be as appropriate as an international mechanism, including a UN-established Commission of Inquiry, for which Amnesty International advocated exclusively in 2010 and 2011. One member of civil society told our delegation, "It need not be trials, just some public acknowledgement of what they have done". Another, however, was more pointed: "The Burmese people want justice."

Myanmar's National Human Rights Commission, whose formation last year was a positive step, is not the appropriate body to take this forward. As explained to Amnesty International by one of its representatives, it is only empowered to consider complaints relating to acts which took place after its establishment on 5 September 2011. While it has received complaints of human rights violations that have taken place in Kachin State since that time, political will among key individuals in Myanmar for holding perpetrators of grave human rights violations to account, is lacking.

This is true not only within the country but internationally as well. While questions of timing and form must be considered—to say nothing of the vast array of other legitimately competing priorities—accountability should be placed back on the agendas of policy-makers in Myanmar.

## **Economic, social and cultural rights**

For many years, discussion of the human rights situation in Myanmar has been heavily dominated by civil and political rights. While challenges certainly remain in that area, more attention and resources should be afforded to the promotion and protection of economic, social, and cultural rights in Myanmar.



Our delegation welcomed the reiteration by a number of officials, of the President's express commitment to rural development and poverty alleviation. We also heard a chorus of emphasis on economic, social, and cultural rights in most of the 49 meetings we held, which again, cut across a very broad spectrum of interests and perspectives.

The government has allowed the Global Fund to Fight AIDS, Tuberculosis, and Malaria to restart its programmes in Myanmar; has raised substantially state pensions for nearly a million people, most of them poor; and has allowed poor farmers access to micro-credit. These are very positive steps. It also reduced the export tax on agricultural products by 80%, thus increasing the price farmers can get for their goods. In March this year, the government facilitated greater access to areas facing humanitarian challenges in Myanmar, including conflict-ridden Kachin State, and on 1 April it floated the exchange rate for its currency.

Alongside the government, the international donor community needs to continue increasing its response to the "humanitarian imperative" in Myanmar, so long as they are satisfied that distribution of humanitarian aid is transparent, for the purposes agreed upon, and based solely on need. International financial institutions, already reengaging, have a critical role to play as well in sustainable development that has human rights and the environment as non-negotiable concerns.

Yet, the Myanmar government should—and can—make additional moves of its own. It should further widen the humanitarian space for agencies to work in conflict zones. As the exchange rate flotation allows for transparency in the national accounts, and thus a more targeted and efficient distribution of national resources, the government should reallocate more to the social, educational, and public health sectors, which combined receive only about 5% of gross domestic product (GDP). And it should utilize the estimated \$7 billion in foreign reserves it has accumulated over the years, mostly from the sale of natural resources, toward advancing the economic, social, and cultural rights of its people.

As Myanmar's economy opens up to both domestic entrepreneurs and foreign investment, Amnesty International adds its voice to those concerned about the rights of farmers, fishers, and those who live and work in Myanmar's fast-decreasing forests. While two-thirds of Myanmar's people earn their livelihood in these areas, two new land laws, for example, reportedly afford very little protection of their rights. There is no access to the court system, and customary rights to land are no longer taken into account when determining land registration and title.

Similarly, large-scale industrial, extractive, or infrastructure projects, such as the Dawei industrial port and the Shwe Gas pipeline, have already yielded credible reports of land-grabbing and forced evictions—abuses that the Myanmar government should both prevent and punish. And in ethnic minority areas experiencing armed conflict, as one person told our delegation, "people have lived on arms for too long, and must be given the chance to live on something else".



Since they were first enacted, Amnesty International has not taken a position on the imposition of economic sanctions or other punitive measures on Myanmar. Our delegation did note, however, the message from many concerned individuals that “sanctions did not cause Myanmar’s economic decline, but they are hindering its economic recovery”. To the degree that a viable economy is a necessary, if insufficient, part of promoting and protecting economic, social, and cultural rights, Amnesty International believes that countries must continue to take a critical look at their current policies on Myanmar.

Finally, human rights education is a fast-emerging human rights issue in Myanmar. Discussion of human rights is no longer prohibited, but understanding what they mean and how to claim them—especially in rural areas—is lacking among the general population. The international community should work with the Myanmar government on this long-term educational investment.

Amnesty International is sometimes reminded that ‘Rome wasn’t built in a day.’ To the extent that the only thing less desirable than a lack of legal reform is legal reform poorly done, this reminder is well-received. Different time frames are clearly warranted for delivering a prisoner review mechanism, accountability for human rights abuses, and full realization of social, economic, and cultural rights.. Capacity is limited, and the development of certain ‘human rights infrastructure’ is advisable before particular changes are made.

But insofar as prisoners of conscience can be readily identified and set free, and attacks against civilians can stop in response to clear orders, it takes less than a day to undertake some important human rights changes.

Myanmar should continue to improve its human rights record accordingly.