



EXECUTIVE SUMMARY

NEW EXPRESSION MEETS

OLD REPRESSION

ENDING THE CYCLE OF POLITICAL ARRESTS
AND IMPRISONMENT IN MYANMAR

**AMNESTY
INTERNATIONAL**



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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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Cover photo: A protester writes on a placard at a rally calling for the abolition of repressive laws and an end to politically-motivated arrests. Yangon, 5 January 2013
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1. EXECUTIVE SUMMARY

“One of the most significant progresses that Myanmar has made in its new era is in the area of freedom of expression, freedom of peaceful assembly and of association. No one is arrested or charged for simply exercising their rights peacefully.”

Ministry of Foreign Affairs Press release, 12 August 2015.¹

“In 2012 and 2013 the situation seemed better and more flexible but in 2014 and 2015 people started being charged and jailed again, for example the students, the farmers, the unions, media... This keeps people busy with working for their release and for supporting their families.”

Thet Thet Aung, former prisoner of conscience, July 2015.²

Thet Thet Aung's words speak to the worrying erosion of newly found freedoms of expression, association and peaceful assembly in Myanmar, a country which has seen rapid transformation in the last five years, as it moves from five decades of repressive and authoritarian military rule towards a more open political system.

Since the quasi-civilian government of President Thein Sein came to power in March 2011, Myanmar has embarked on a series of key economic, political and social reforms. The reforms have been accompanied by a number of measures to show that the country is on the path to promoting the rule of law and ensuring better respect and protection for human rights. Key among these measures, and often

¹ Press release, Ministry of Foreign Affairs, published in *The Global New Light of Myanmar*, 13 August 2015.

² Amnesty International interview, July 2015.

cited as one of the hallmarks of the country's transition to date, has been the relaxation of some of the restrictions on freedom of expression, association and peaceful assembly through the passing of new laws and the release of hundreds of individuals imprisoned on politically motivated grounds.

Yet, as people have begun to exercise these new freedoms to assert their rights, the authorities have increasingly cracked down on peaceful expression. Since the start of 2014 hundreds of people have been arrested, charged, arbitrarily detained or imprisoned in politically motivated cases. They include student protesters, political activists, media workers and human rights defenders³ and, in particular land and labour activists.

In part, this has been possible by the use of repressive, vague and broadly worded laws which were commonly used prior to 2011 to arrest and imprison thousands of people. Amnesty International has observed a disturbing resurgence in their use between 2014 and 2015 and calls on the new incoming government to repeal or reform these laws to bring them into line with international law and standards. As long as these laws remain unamended and on the books, human rights defenders and other activists will remain at risk of arrest.

Also of concern is the authorities' use of new laws, enacted during the reform process, to crack down on human rights defenders and activists. The 2012 Peaceful Assembly and Peaceful Procession Act (the Peaceful Assembly Act) and the 2013 Telecommunications Act were both passed as part of attempts to allow for greater space for freedoms of expression and peaceful assembly, yet have become new tools of repression through being used to arrest and imprison human rights defenders and others for their activities.

The use of old and new legislation to stifle criticism and peaceful dissent is further bolstered through the use of other tactics to keep human rights defenders and activists in detention or in prison for lengthy period of time. These include drawing up lengthy charge sheets, filing multiple charges for a single offence and, increasingly, resorting to charging people with non-bailable offences to hold them in pre-trial detention. Furthermore, leaders of peaceful protests and other activist groups have also been targeted by the authorities for arrest and prosecution in an apparent attempt to weaken their social and political movements. The authorities also appear to yield to pressure from Buddhist nationalist groups by harassing and arresting those speaking out for religious tolerance.

While there have been some efforts by the government to address the question of ongoing arrests and imprisonment of human rights defenders and other activists, these efforts have been largely ad hoc and focused on securing the release of only some political prisoners, often at politically advantageous moments, instead of addressing the systemic and structural issues which allow for arbitrary arrests and imprisonment on politically motivated grounds. Myanmar must bring its legal framework in line with

³ Human rights defenders (HRDs) are individuals who take non-violent actions to defend and protect human rights. They can be journalists, lawyers, members of human rights organizations, trade unionists, doctors or other service providers that fulfil essential medical or educational needs, or politicians who promote human rights and speak out against human rights violations. They may be friends or relatives of victims of human rights violations who stand by their loved ones despite threats and intimidation. International human rights law establishes and protects the right to defend human rights, either individually or in association with others, and asserts the exercise and effective enjoyment of the right to defend human rights as fundamental for the effective enjoyment of many other human rights. See the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144, 8 March 1999 (Declaration on Human Rights Defenders).

international human rights law if it is to ensure an end to the cycle of political detention and imprisonment.

In addition, a Committee established in 2013 and reconstituted in 2015 to resolve the cases of political arrests and imprisonment has been largely ineffective, hampered by a lack of independence, transparency, a clear mandate and adequate resources to fulfil its function. However, with sufficient political will, both national and international, such a Committee could become an important mechanism not just to secure the release of prisoners of conscience, but to also address the wider structural issues that allow for arbitrary arrests and imprisonment. Political activists and human rights defenders have a vital role to play in shaping Myanmar's future at this critical juncture. However, they are unable to do so if they are locked up or at constant risk of arrest for their work.

PRISONERS OF CONSCIENCE AND POLITICAL PRISONERS

Individuals in Myanmar who have been deprived of their liberty on politically-motivated grounds are often described as either "prisoners of conscience" or "political prisoners". Although often used interchangeably, these terms have different meanings, which it is important to differentiate at the outset of this report.

Amnesty International considers as a **prisoner of conscience** any person imprisoned or otherwise physically restricted solely because of his/her political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status, or for exercising his or her right to freedom of expression or other human rights, and who has not used violence or advocated violence or hatred. All prisoners of conscience must be set free at once and without conditions, and all charges or other proceedings against them abandoned. Amnesty International uses the term prisoner of conscience in the context of its work on Myanmar, as well as its work worldwide.

There is no agreed definition of a **political prisoner** in international human rights law or standards. However, it is generally used as a descriptive term to apply to a person who has been detained or imprisoned on politically motivated grounds. Unlike prisoners of conscience, political prisoners may have used or advocated violence or hatred, or in some cases they may have committed some minor offence, which is a pretext for a politically-motivated imprisonment. In Myanmar, civil society groups and others often use the term political prisoner and have been campaigning for the government to recognize the term.⁴

In this report the term political prisoner is used to indicate a detainee or prisoner whose case has a significant political element, which can include the motivation of the prisoner's acts, the acts in themselves or the motivation of the authorities in imprisoning them. However this application does not mean that Amnesty International has recognised the person as a prisoner of conscience who should be immediately and unconditionally released.

⁴ Despite efforts to define the term in Myanmar, there is no consensus. See for example *AAPP & FPPS Press Release about the Definition of a Political Prisoner*, 2 September 2014, available at: <http://aappb.org/2014/09/aapp-fpps-press-release-about-the-definition-of-a-political-prisoner/>, accessed 15 February 2016.

RECOMMENDATIONS

Since President Thein Sein came to power in March 2011, Myanmar has experienced rapid transformation. Yet while there have been a number of key reforms increasing the space for freedoms of expression, association and peaceful assembly, many of these do not go far enough and are seriously undermined by the ongoing arrests and imprisonment of human rights defenders and other activists simply for exercising their rights.

The National League for Democracy (NLD) led government will take power at the end of March 2016. This offers an important opportunity to end the cycle of arbitrary arrests and imprisonment and ensure that the rights to freedom of expression, association and peaceful assembly are respected and upheld in the country.

To this end the incoming government should take immediate and concrete steps to:

- Immediately and unconditionally release all those detained simply for the peaceful exercise of their human rights, and drop charges pending against those who are facing imprisonment simply for the peaceful exercise of these rights. Expunge the criminal records of all those convicted simply for the peaceful exercise of their rights. Review the cases of all detainees and prisoners not falling into the above category, who have been subjected to politically motivated prosecutions and/or unfair trials, and determine whether the individual should be released or given a prompt and fair retrial which complies with international fair trial standards;
- Repeal, or review and amend all laws that violate the rights to freedom of expression, peaceful assembly and association, including but not limited to provisions of the Penal Code, the Peaceful Assembly Act, the 1908 Unlawful Associations Act, the 2013 Telecommunications Act, and the 1923 Official Secrets Act to ensure these and other laws comply with international human rights law and standards. Pending the amendment of these laws to bring them in line with international standards, ensure that no one is arrested or detained under these provisions; and
- Relaunch the Prisoner of Conscience Affairs Committee or establish a new Committee, with a mandate to review the cases of all those charged or deprived of their liberty simply for the peaceful exercise of their human rights, with a view to securing their release and having the charges against them dropped; to formulate and present recommendations to the relevant government ministries and other authorities aimed at ending arbitrary arrests and detention. Ensure that the Committee is able to operate independently, effectively and transparently.

METHODOLOGY

This report is based on field research conducted by Amnesty International and focuses on arbitrary arrests⁵ and restrictions on freedoms of expression, association and peaceful assembly in Myanmar since the start of 2014, following a wide-ranging Presidential pardon announced on 30 December 2013. It builds on Amnesty International's long standing work in documenting, reporting on, and monitoring arbitrary arrests and political imprisonment in Myanmar and is part of a wider programme of work on restrictions on freedoms of expression, association and peaceful assembly in the country.

The findings of this report are based primarily on visits to Myanmar by Amnesty International in June to July 2015 and in December 2015. Amnesty International delegates visited Yangon and Mandalay where they interviewed 71 human rights defenders, activists, lawyers and journalists, members of civil society organizations, former prisoners of conscience and political prisoners, and relatives of imprisoned individuals. Interviews were conducted either in English or in the Myanmar language (Burmese) with English interpretation. All interviewees were informed of the purpose of the interview and how their information might be used. None received compensation or other financial incentives for their testimony. Due to security concerns for interviewees, some interviews were conducted by telephone. Telephone interviews and regular e-mail communication continued up until the time of publication.

Amnesty International delegates also met representatives from international non-governmental organizations (NGOs), the Myanmar National Human Rights Commission (MNHRC), the United Nations (UN), and diplomatic missions in Myanmar. Finally, the report draws on regular contact with lawyers defending political detainees; daily news monitoring of issues relating to freedoms of expression, association and peaceful assembly; extensive analysis of laws in Myanmar; previous visits to Myanmar and Thailand,⁶ and in-depth review of relevant academic and other professional publications.

On 16 December 2015, Amnesty International sent seven letters to the Myanmar authorities, each with a detailed set of questions arising from the research. Letters were sent to the President's Office, the Chair of the Prisoner of Conscience Affairs Committee, the Minister of Home Affairs, the Attorney General, the Vice-Director General of the Attorney General's Office, Parliament's Rule of Law, Tranquility and Stability Committee and the Bill Committee, with a request for input by 8 February 2016.⁷ To date no responses have been received.

Amnesty International extends its thanks to the individuals and organizations who consented to meet with its delegates and provide information for this report. In particular, the organization wishes to extend

⁵ There are three main situations where arrest, detention or imprisonment is arbitrary: when an individual is deprived of their liberty without a clear basis in law; where persons are detained solely for the peaceful exercise of certain rights such as freedom of expression or association; or in cases of sufficiently serious violations of the right to fair trial. See Fact Sheet No. 26, The Working Group on Arbitrary Detention, Section IV(A)-(B), available at: <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>, accessed 15 February 2015. Arbitrary arrest, detention and imprisonment are prohibited under international human rights law, for example, in Article 9 of the Universal Declaration of Human Rights (UDHR) and Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). It is also prohibited in Article 37(b) of the Convention on the Rights of the Child (CRC), to which Myanmar is a state party (acceded to on 15 July 1991).

⁶ Specifically, visits to Myanmar in March 2014 and to Thailand in December 2014, when Amnesty International delegates met representatives of local and international NGOs as well as lawyers, human rights defenders, and others.

⁷ Internal correspondence, references: TG ASA 16/2015.029; TG ASA 16/2015.030; TG ASA 16/2015.031; TG ASA 16/2015.032; TG ASA 16/2015.033; TG ASA 16/2015.034; TG ASA 16/2015.035.

its deep appreciation to the victims, their families and representatives who shared their stories and entrusted Amnesty International to raise their concerns. If interviewees have consented, their real names are used. Otherwise names and other identifying information have been withheld for safety and confidentiality reasons.

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ENDING THE CYCLE OF POLITICAL ARRESTS AND IMPRISONMENT IN MYANMAR

Since it came to power in March 2011, the government in Myanmar has embarked on a major transition from five decades of authoritarian military rule towards a more open political system. A series of economic, political and social reforms have included a welcome relaxation of restrictions to freedoms of expression, association and peaceful assembly and the release of hundreds of prisoners of conscience.

However, despite these reforms, activists continue to face arrest, prosecution and imprisonment for their peaceful activities. As people have become more assertive of their rights, the authorities have used a range of tactics to keep human rights defenders and activists behind bars. A worrying resurgence in the use of repressive laws has fostered an environment in which they are at constant risk of arrest for their work.

The landslide victory won by the opposition National League for Democracy in the November 2015 elections offers a fresh opportunity for further reforms. This report – “We don’t want to waste our time behind bars”: Ending the cycle of political arrests and imprisonment in Myanmar – highlights the pattern of politically motivated arrest and imprisonment since the start of 2014. It offers concrete recommendations to the new government to respect the rights to freedom of expression, association and peaceful assembly, and to put an end to the repressive practices which fuel arbitrary arrests and imprisonment.

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