



Republic of the Union of Myanmar

Submission to the UN Universal Periodic Review 23rd Session of the UPR Working Group

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
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1. (A) Introduction

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen’s freedom of association are threatened.
- 1.2** In this document, CIVICUS outlines urgent concerns related to the environment in which civil society activists and human rights defenders operate in the Republic of the Union of Myanmar, and discuss threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.3** CIVICUS is concerned by legislative and extra-legal measures taken by the Government of Myanmar to curtail the legitimate work of civil society organizations (CSOs), in an apparent attempt to suppress criticism and pluralistic debate on government policy.
- 1.4** CIVICUS is also greatly concerned by ongoing legal and policy restrictions on the free exercise of the right to freedom of assembly as well as unwarranted use of excessive force and arbitrary arrest to disperse and discourage nonviolent demonstrations.
- In Section B, CIVICUS highlights concerns related to the freedom of association and restrictions on civil society activities.
 - In Section C, CIVICUS highlights concerns regarding the freedom of assembly.
 - In Section D, CIVICUS expresses concerns involving harassment and arbitrary detention of human rights defenders.
 - In Section E, CIVICUS makes a number of recommendations to address the concerns listed.

2. (B) Restrictions on freedom of association and impediments to civil society activities

- 2.1** Paragraph 354 of the 2008 Constitution guarantees the right to freedom of association and organizations.¹ Furthermore, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Myanmar is party, also safeguards the right to freedom of association. Since the repeal of the highly restrictive 1988 Association Act in 2014, the government has taken a number of progressive steps to create an enabling legal environment for non-governmental organizations (NGOs) to operate without undue interference in line with international human rights standards governing the right to freedom of association. However, while several draconian and disproportionate restrictions have been removed, NGOs operating in Myanmar continue to face unwarranted restrictions under the Association Registration Law signed by President Thein Sein in July 2014.

¹ Constitution of the Republic of the Union of Myanmar (2008):
http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

2.2 Of principle concern for national NGOs are provisions under the Association Registration Law which endow government authorities with excessive discretion to deny registration to NGOs on vague and unspecified grounds. Specifically, Chapter IV (Registration of Local Organizations) of the law permits the Union Registration committee – the government entity mandated to facilitate the registration of organizations – to decline the application of an NGO for “damaging the Rule of law and State Security.” Such provisions are insufficiently precise and allow for subjective and discriminatory interpretation of the law when considering the applications on NGOs. Moreover, as adequate protections already exist under Myanmar’s Penal Code against extra-legal activities of associations and individuals, this article places excessive and redundant restrictions on the activities of NGOs in the country.²

2.3 In addition, under the Association Registration Law, organizations are subjected to arbitrary limitations on the geographical orientation of their operations. Under Chapter VII of the law, organizations which register in specific localities are prohibited from working outside of their officially designated jurisdictions. Provisions, including those under Chapter VI stipulating that “An organization registered in District Registration Committee can operate in respective district territory” severely limit the right to freedom of movement and association for NGOs.³

3. (C) Concerns regarding freedom of assembly

3.1 Paragraph 354 of the 2008 Constitution guarantees the right to assemble peacefully. Furthermore, article 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Myanmar is party, also guarantees the freedom of peaceful assembly. Nonetheless, while the government has taken several legal measures to address restrictions on the right to peaceful protest under the widely criticised Peaceful Assembly and Peaceful Procession Act (2011), severe legal impediments to this right persist. Moreover, security officials continue to subject peaceful demonstrators and organizers to harassment, judicial persecution and excessive and deadly force, gravely subverting the right to freedom of assembly.⁴

3.2 In December 2011, the government adopted the Peaceful Assembly and Peaceful Procession Act, affording greater protections to peaceful assemblies. However, in light of the substantial deficits and unwarranted restrictions contained in the law, the Parliament adopted amendments to the Act in June 2014 (Law No. 26/2014). Despite the laudable efforts to engage civil society actors to address the shortcomings of the law, several provisions of the law retain unjustifiable limitations on holding demonstrations and allow for excessive criminal penalties for noncompliance.⁵

3.3 While the 2014 amendments to Peaceful Assembly and Peaceful Procession Act remove the authorities’ competence to “deny” requests from persons or groups to hold a demonstration, the law retains several unwarranted provisions requiring them to seek the “approval” to hold

² Association Registration Law: http://www.burmalibrary.org/docs19/2014-07-18-Law_Relating_to_Registration_of_Organizations_31-bu.pdf

³ Ibid

⁴ Constitution of the Republic of the Union of Myanmar (2008): http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

⁵ Law No. 26/2014 <http://www.article19.org/data/files/medialibrary/37666/14-08-01-LA-myanmar-assembly.pdf>

protests. Under Article 4 of the law, individuals or groups which request to hold a demonstration must stipulate the “topic” and “purpose” of the assembly and the “chants” that are anticipated to be used during it. Additionally, article 4 specifies that applicants secure approval from the authorities at least 5 days in advance of the proposed activity. Such requirements are incompatible with international best practice which recommends simple notification within 48 hours for larger protests and also prevents the possibility of spontaneous protests which are not deemed to disrupt public order.⁶

- 3.4** Article 12 of the law also places several cumbersome and unjustifiable restrictions on the activities of individuals involved in protests. Particularly, the law states that individuals “must not obstruct or disturb vehicles, pedestrians, and people.” This article further prohibits protestors from “spread[ing] rumors or incorrect information.” Finally, the law places arbitrary proscriptions on recit[ing] or shout[ing] chants other than the ones approved.” Such limitations found in the Peaceful Assembly and Peaceful Procession Act impose illegitimate and disproportionate responsibilities on peaceful demonstrators and provide the authorities with excessive powers to disperse peaceful protestors.⁷
- 3.5** Persons who breach these and other provisions of the law can also be subjected to disproportionate custodial sentences. Under article 18, persons who hold an assembly without permission may receive six months imprisonment and/or a fine of up to 30,000 Kyat (Approx. 30 USD). Moreover, according to article 19 of law, persons that contravene article 12 face up to 3 months imprisonment and a fine of 10,000 Kyat (Approx. 10 USD). Such draconian sentences unjustifiably criminalize the right to freedom of expression and act as a severe deterrent to participating in peaceful assemblies.⁸
- 3.6** In 2014 alone, scores of protestors and demonstrators from several different localities across the country were detained and charged for violating provisions of the Peaceful Assembly and Peaceful Procession Act. For example, on 31 December 2014, land rights activist Tin Tun Aung was sentenced to one month in prison for contravening the Peaceful Assembly and Peaceful Procession Act in Magwe Region. Moreover, on December 22, 2014, 14 people near Rangoon’s Town Hall, who were involved in a two-week protest against forced evictions, were arrested and charged under the Peaceful Assembly Law and under the Penal Code for ‘obstructing the sidewalk’. While they were released on bail their case remains ongoing.⁹
- 3.7** Since Myanmar’s first examination under the UPR in November 2011, security forces have continued to use excessive, indiscriminate and even deadly force to disrupt and disperse public protests. Most recently, on 10 March 2015, police utilized unnecessary force to violently disperse an estimated 200 student demonstrators and supporters near the town of Letpadan in the Pegu region. Nearly 150 protestors, who had gathered to protest against an oppressive education bill, were reportedly severely beaten or arrested during the protest.¹⁰

⁶ Ibid

⁷ Ibid

⁸ 2014 prison census - Burma: <http://www.refworld.org/docid/5498051515.html>

⁹ Myanmar police crack down on student protesters 10 March 2012:

<http://www.aljazeera.com/news/2015/03/myanmar-police-crack-student-protesters-150310123609713.html>

¹⁰ Violent Standoff Continues at Myanmar Mine Protest <http://www.voanews.com/content/violent-standoff-continues-at-myanmar-mine-protest/2570915.html>

3.8 On 22 December 2014, security officials killed one protestor and injured at least 20 more near the Letpadaung copper mine in central Myanmar. The protestors, most of who were from the surrounding Monywa village, have been engaged in a long term dispute with the government and the China-associated mine company to secure adequate compensation for their removal from the land adjoining the mine. This is not the first time protestors in opposition to Letpadaung mine have been subjected to excessive force for their exercising their legitimate rights. On 29 November 2012, more than 100 persons, including monks and local villagers, were injured when security forces raided camps established by protestors near Letpadaung mine.¹¹

4. (D) Concerns involving harassment, intimidation and attacks against human rights defenders, journalists and civil society activists

4.1 Article 12 of the UN Declaration on Human Rights Defenders mandates States to take necessary measures to ensure protection to human rights defenders. The ICCPR guarantees the freedoms of expression, association and assembly. It is a matter of deep concern that human rights defenders engaged in legitimate activity continue to be subjected to reprisals by state officials. A number of human rights defenders exposing human rights violations or advocating on sensitive topics have been arrested and detained to prevent them from continuing their work under widely criticised provisions of the Penal Code and the 1923 Official Secrets Act introduced by colonial authorities. The legislation, which severely restricts freedom of expression, has had a chilling effect on independent dissent and civil society activism in the country.

4.2 While President Thein Sein has overseen the release of an estimated 3,000 political prisoners since being elected in March 2011, dozens of human rights defenders, peaceful protestors and other political activists remain imprisoned. In addition, in 2014, the authorities continued to invoke a number of antiquated and restrictive laws to imprison and silence HRDs.

4.3 Of critical concern is the government's routine use of Section 505(b) of Myanmar's Penal Code to silence the legitimate activities of peaceful human rights defenders. Under the law, individuals can be imprisoned for "making, publishing or circulating information which may cause public fear or alarm, and which may incite people to commit offences against the State or against the public tranquillity".¹²

4.4 Recently, on 30 October 2014, Ko Htin Kyaw and Naung Naung, of prominent civil society organization, the Movement for Democracy Current Force (MDCF), were sentenced under Section 505(b) of the Penal Code in Yangon. Both activists were sentenced to over two years in

¹¹ Burmese troops crack down on mine protest before Aung San Suu Kyi visit

<http://www.theguardian.com/world/2012/nov/29/burma-mine-protest-letpadaung>

¹² Myanmar Penal Code. http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf

prison for sharing letters and leaflets about the election of an interim government in Myanmar.¹³

4.5 The Official Secrets Act (1923) was also regularly employed by the government in 2014 to harass and persecute human rights defenders. Section 5 of the law criminalizes the “possession, control, receipt or communication of any document or information, the disclosure of which is likely to affect the sovereignty and integrity of the state or friendly relations with foreign states or otherwise prejudicial to the safety of the state.” Such over broad provisions endow the government with wide discretion to deem government information as secret and worryingly continues to be used to prevent journalists and other HRDs from disseminating information critical of the government.¹⁴

4.6 In February 2014, four journalists and the CEO of daily newspaper Unity Journal, were arrested and charged under the Official Secrets Act (1923) for publishing a story on 25 January on a undisclosed chemical weapons plant allegedly being constructed in central Myanmar’s Pauk township. On 10 July 2014, the five journalists, including Yazar Soe, Sithu Soe, Lu Maw Naing and Paing Thet Kyaw, were sentenced to 10 years in prison. While their sentences were reduced to seven years upon appeal in October 2014, the conviction and sentencing of the journalists represents a flagrant violation of the rights to freedom of expression and association.¹⁵

5. (F) Recommendations to the Republic of the Union of Myanmar

CIVICUS calls on the Government of the Republic of the Union of Myanmar to create an enabling environment for civil society to operate, in accordance with the rights ensured by the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In light of this, the following specific recommendations are made:

5.1 Regarding restrictions on the freedom of association

- The Association Registration Law should be suitably amended to guarantee that undue restrictions on freedom of association are removed;

¹³ Prominent Myanmar activist group left leaderless. <http://www.ucanews.com/news/prominent-myanmar-activist-group-left-leaderless/71906>

¹⁴ The Official secrets Act: <http://www.icnl.org/research/library/files/Myanmar/secrets.pdf>

¹⁵ Myanmar journalists on trial for reporting alleged chemical weapons factory: <http://www.reuters.com/article/2014/02/16/us-myanmar-journalists-idUSBREA1F03D20140216>

- Chapter IV (Registration of Local Organizations) of the Association Registration Law which endows government authorities with excessive discretion to deny registration to NGOs on vague and unspecified grounds. Specifically, should be suitably amended;
- Chapter VII of the law, prohibits NGOs from working outside of their officially designated jurisdictions, should be duly amended.

5.2 Regarding restrictions on freedom of assembly

- The Peaceful Assembly and Peaceful Procession Act should be suitably amended to ensure that freedom of assembly is respected without undue interference;
- Release and drop the charges against all persons unlawfully imprisoned for exercising their right to freedom of peaceful assembly;
- Recourse to judicial review and effective remedy should be provided, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities;
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms;
- The use of excessive force in the dispersal of protests should be publically condemned and a formal investigation into such instances should be launched.

5.3 Regarding the arbitrary detention and harassment of civil society activists

- Civil society members, journalists and human rights defenders should be provided a safe and secure environment to carry out their work. All instances of violations of their rights should be independently investigated;
- The authorities should release all persons arbitrary detained for exercising their legitimate rights to freedom of expression, association, assembly and movement;
- The Republic of the Union of Myanmar should investigate and bring to justice perpetrators of violence against human rights defenders in the country;
- Investigations currently suspended into attacks, harassment and intimidation of activists should be re-launched;
- Initiate the process of repeal or amendment of legalisation and decrees which unwarrantedly restrict the legitimate work of human rights defenders;
- Specifically, the government should revise the Penal Code, including Section 505(b), to ensure that it cannot be used as a pretext to arrest or harass HRDs;

- The Official Secrets Act (1923), including Section 5 of the law, should be repealed.

5.4 Regarding access to UN Special Procedures mandate holders:

A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Independence of Lawyers and Judges. The Republic of the Union of Myanmar should also publicly reiterate its commitment to fully cooperating with the UN Special Rapporteur on Myanmar.