

Repressive Domestic Legislation

Whilst fundamental rights are protected at least in theory in Burma under the Constitution, in reality the government of Burma continually utilizes draconian legislation to criminalize and impede the activities undertaken by those that seek to protect their civil and political rights. The following are the main laws under which political prisoners are sentenced; often these laws are used in conjunction with each other, so that those targeted are subject to longer terms of imprisonment.

Right to Peaceful Assembly and Peaceful Procession Act

Section 18 of the Right to Peaceful Assembly and Peaceful Procession Act (PAPPA), is frequently utilized to arrest and imprison political activists peacefully protesting for their rights, and severely curtails political freedom in Burma. The wide-ranging use of section 18 allows political activists to be handed sentences overwhelmingly disproportionate with their alleged offence, and since its adoption on July 5 2012, hundreds have been sentenced under it. Whilst the PAPPA was amended following months of campaigning by activists throughout the country on June 24 2014, it remains in violation of international standards.

The amended PAPPA still requires prior authorization from the authorities before a protest is staged, despite the Special Rapporteur on the rights to freedom of peaceful assembly and of association's assertion that States should not impose prior authorization and should require prior notification "at the most".¹ To obtain permission, citizens must submit their request an entire five days before the proposed assembly, along with overly detailed information, which even includes the exact "chants" that will be used during the assembly. Whilst the authorities can no longer outright reject permission requests for assemblies, Section 5 stipulates consent shall be issued if the application is "submitted in accordance with the rules of consent"², which leaves the issue of granting permission for assembly open to wide interpretation. Moreover, Section 18 remains, albeit with slight amendments, imposing a maximum jail sentence of six months, rather than one year for conducting a peaceful assembly or procession without obtaining prior permission.³ As such, even in its amended

¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

² ARTICLE 19, "Myanmar: Amended Right to Peaceful Assembly and Peaceful Procession Law," August 2014, <http://www.article19.org/data/files/medialibrary/37666/14-08-01-LA-myanmar-assembly.pdf>

³ ARTICLE 19, "Myanmar: Amended Right to Peaceful Assembly and Peaceful Procession Law," August 2014, <http://www.article19.org/data/files/medialibrary/37666/14-08-01-LA-myanmar-assembly.pdf>

state, the authorities in Burma continue to use the PAPPAs to imprison political activists, peaceful protestors and human rights defenders.

The Emergency Provisions Act 1950

The Emergency Provisions Act is frequently used to sentence journalists and writers, as its Section 5 (e) makes it a criminal offence to “spread false news, knowing, or having a reason to believe that it is not true.”⁴ It also condemns anyone who is considered to have contributed towards the diminishment of respect or disloyalty among members of the civil service or the military towards the government. Section 5 (j) allows punishing any person whose actions may “affect the morality or conduct of the public or a group of people in a way that would undermine the security of the Union or the restoration of law and order.” These offences are punishable by seven years imprisonment.

The Unlawful Associations Act 1908

Despite the enactment of the Association Registration Law, Section 17(1) of the Unlawful Associations Act, passed when Burma was under colonial rule, is continually used to suppress political opposition, most often in the case of ethnic minority groups. Under Section 17(1) association with any organization that the President declares illegal is punishable by two to three years imprisonment, along with a possible fine.⁵

The Official Secrets Act 1923

Another colonial-era law enacted by the government of Burma to stifle freedom of expression is the Official Secrets Act 1923. The Official Secrets Act criminalizes the possession and dissemination of information deemed as classified by the State and is used to judicially harass, sentence and imprison political activists, journalists and HRDs. Anyone found guilty of an offence under the act can receive up to two years imprisonment, and/or a fine.⁶ The overly broad nature of the Official Secrets Act means that critics of the government of Burma can be punished under the guise of protecting national security. A proposal late last year to amend the archaic law was rejected and dismissed out of hand, revealing the lack of political will to bring legislation in line with international human rights standards.⁷

⁴ The Emergency Provisions Act, 1950, http://www.icnl.org/research/library/files/Myanmar/Section_5_of_the_Emergency_Provisions_Act-en.pdf

⁵ The Unlawful Associations Act (India Act XIV), 1908, <http://www.icnl.org/research/library/files/Myanmar/UNLAWFUL.pdf>

⁶ The Burma Official Secrets Act (India Act XIX), 1923, <http://www.icnl.org/research/library/files/Myanmar/secrets.pdf>

⁷ “Proposal to reform State Secrets Act rejected”, *Myanmar Times*, 29 September 2014, <http://www.mmtimes.com/index.php/national%5Enews/11798%5Eproposal%5Eto%5Ereform%5Estate%5Esecrets%5Eact%5Erejected.html>

The Penal Code

Another section of law often used to target political activists is Section 505(b) of the Penal Code, which criminalizes the act of publishing or circulating information with the intent or likelihood of causing public fear or alarm whereby a person may be induced “to commit an offense against the State or against the public tranquility”.⁸ Overly vague terms such as “offense against the State” and “public tranquility” leave this section of the law open to abuse by the Burma authorities.

In addition, Section 500 of the Penal Code stipulates a prison sentence for criminal defamation, in contravention of international laws and norms on the right to freedom of expression. Moreover, General Comment 34 of the Human Rights Committee calls for the decriminalization of defamation⁹, as does the report of the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression.¹⁰ Other standard criminal charges under the Penal Code used to sentence political prisoners are kidnapping and abduction (Articles 359-368), vandalism (Article 427) and trespassing (Article 447).

Article 401

The majority of political prisoners granted amnesty in Burma are released conditionally under Article 401 of the Code of Criminal Procedure with outstanding criminal records. These conditions are often detrimental to the lives and freedoms of released activists and undermine the notion of true freedom from imprisonment. Worryingly, Article 401 states that if the authorities deem the FPP has violated the terms of their release they will be re-arrested “without warrant and remanded to complete the un-expired portion of the sentence”.¹¹ Thus political prisoners live in a constant climate of fear upon release, whereby they may be re-arrested at any time. The former Special Rapporteur on the situation of human rights in Myanmar has stated on several occasions that the

⁸ Myanmar Penal Code, 1861, http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf

⁹ United Nations Human Rights Committee, General Comment No. 34, 2011, <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

¹⁰ United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17_en.pdf

¹¹ Article 401, [http://aappb.org/wp-content/uploads/docs/Definition_of_401_\(eng\).pdf](http://aappb.org/wp-content/uploads/docs/Definition_of_401_(eng).pdf)

release of political prisoners “must be without any conditions”,¹² a sentiment reiterated by his successor.¹³

¹² Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana, 2013, <http://www.ohchr.org/Documents/Countries/MM/A-HRC-22-58.pdf>

¹³ Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/545/25/PDF/N1454525.pdf?OpenElement>