

## Union of Myanmar

### ARTICLE 19 Submission to the UN Universal Periodic Review

*Tenth Session of the Working Group of the Human Rights Council, February 2011*

1. ARTICLE 19: Global Campaign for Free Expression is a non-governmental human rights organisation that works globally to promote and protect freedom of expression and information. ARTICLE 19 was founded in 1987 and has observer status with ECOSOC. ARTICLE 19 first worked on Myanmar in 1991 with the publication of the seminal book *State of Fear: Censorship in Burma* and the naming of Aung San Suu Kyi as an Honorary Member of ARTICLE 19. Since 1991 we have continued to advocate for the right to freedom of expression in the country.

#### **Executive summary**

2. ARTICLE 19 is aware of the magnitude of human rights violations in Myanmar. Given our expertise and scope of activities, this submission focuses on Myanmar's compliance with its international human rights obligations in protecting the right to freedom of expression and right to freedom of information. In particular the major issues of concern are:
  - Failure of the legal framework to guarantee the right to freedom of expression and the right to freedom of information
  - Absence of freedom of expression in electoral processes;
  - Censorship of the media and detention, arbitrary arrests and harassment of journalists and media workers;
  - Prosecution and imprisonment of Aung San Suu Kyi and others exercising the right to freedom of expression;
  - Complete control and censorship of the internet.These concerns are outlined in a greater detail below.

#### **Failure of the legal framework to guarantee the right to freedom of expression and the right to freedom of information**

3. Myanmar is not a party to the International Covenant on Civil and Political Rights and therefore in the interests of international law, the right to freedom of expression must be reviewed in accordance with the obligations for a Member State of the United Nations as set out under Article 19 of the Universal Declaration of Human Rights. Myanmar has also ratified the ASEAN Charter, and therefore committed itself to the promotion and protection of human rights and fundamental freedoms in the country.
4. Despite national and international criticism, until 2008, the military junta ("government") governed Myanmar based primarily on colonial era legislation without any form of a national legal framework for the protection of human rights. On 15 May 2008, a new constitution ("Constitution") was adopted after being approved by an alleged 92.4% of Myanmar people. The drafting process of the Constitution took 17 years to complete and was administered by the National Convention, made up of 1,000 representatives chosen by the government. The process was boycotted throughout by the National League for Democracy ("NLD") and other opposition parties, who maintained that the representatives were never free to express their opinions, and that the government would never permit content not approved by them from being inserted. Similarly the media was almost entirely hampered from reporting on the process, and when

the draft Constitution was published before a referendum to decide its adoption, the majority of people were never permitted access to the draft which they were supposed to vote on, nor were they able to read press reports which analysed the draft from a range of viewpoints. Furthermore, lectures, demonstrations, speeches, posters, statements and material that could be construed as critical were prohibited under the SLORC Act 1996 and Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar Act 2008.

5. Chapter 8 of the Constitution is titled 'Citizen, Fundamental Rights and Duties of the Citizens' and contains the right to freedom of expression under Article 354: *"Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality: a) to express and publish freely their convictions and opinions;..."* The so-called fundamental rights in Chapter 8 are however consistently undermined by the supremacy of the "Defence Services". The Defence Services are permitted to participate in the State's executive function (Article 6), revoke any of the fundamental rights to maintain "peace" (Article 382), and are – rather than the judiciary – responsible for safeguarding the Constitution (Article 20(e)). The right to freedom of expression can also be restricted on the basis of promoting "feelings of hatred, enmity or discord between racial or religious communities or sects" (Article 364) or on the basis of "any act detrimental to national solidarity", or in the situation whereby such expression "adversely affect the interests of one or several other national races", they must "co-ordinat[e] with and obtain[e] the settlement of those affected" (Article 265). These restrictions to the right are at odds with international standards, which only permit exceptional limitations that are provided for by law, serve a legitimate aim, and are necessary.
6. The right to freedom of expression is also severely restricted by a number of other laws within the legislative framework in Myanmar. Section 122 of the Penal Code of Burma 1957 prohibits any criticism of the government or the State, and is regularly used to charge political activists, human rights defenders and journalists, defining their dissent as "high treason" and providing for long terms of imprisonment and even the death penalty. The State Protection Act 1975 is also used to imprison activists such as Aung San Suu Kyi for up to five years without trial. Several laws prohibit the collection, possession or dissemination of information or "false news" which is "detrimental to national interests", and provide for 14 year terms of imprisonment or the death penalty, and are often used to charge media workers who have submitted information to, or spoken with, the foreign or exile media (Official Secrets Act 1923, Emergency Provisions Act 1950, Electronic Transactions Act 2004). Other laws aim to stop people privately disseminating or receiving information, prohibiting the possession or use of radios, fax machines, mobile phones, modems, VCRs, or computers without a licence from the government and provide for up to 15 years imprisonment (Burma Wireless Telegraphy Act 1933, as amended in 1995 and 1996, Computer Science Development Act 1996, Television and Video Act 1996). Several laws also provide for the government's Press Scrutiny Board, Home and Religious Affairs Ministry, broadcasting censorship board, and Myanmar Motion Picture Enterprise to approve all press, television, radio and cinema content before they can publish (Printers and Publishers Registration Act 1962, Martial Law Order 3/89 1989, Motion Picture Act 1996).

7. In addition to the lack of legislative framework for the protection of the right to freedom of expression, the judicial system lacks independence and operates as an enforcer of government policy, rather than a safeguard against its arbitrariness. Trials are conducted in hidden courts and determined by arbitrary decisions by judges, often within prisons, and away from public scrutiny. Defendants rarely have access to legal representation, and when they do, the courts often evade the contestation by not allowing lawyers to meet their clients in advance of trial and by simply not informing the lawyers of the date or location of the trial. Those lawyers who do attempt to contest the charges often find themselves the victim of supplementary contempt of court charges.

#### **Absence of freedom of expression in electoral processes**

8. Following the adoption of the new Constitution, elections are due to take place in 2010. Whilst the NLD has decided not to take part in the elections due to the absence of fairness and democratic processes and the banning of thousands of political prisoners from taking part, and is therefore now officially disbanded, those parties that have decided to take part are severely limited in what campaigning they are allowed to do. The media, including radio, television and press, is devoting all its coverage to the campaigns of those parties that are linked with the military and the current government. Dissenting voices, alternative viewpoints, and more autonomous political parties are all but silent.

#### **Censorship of the media and detention, arbitrary arrests and harassment of journalists and media workers**

9. The press within Myanmar is entirely controlled by the government, via the Press Scrutiny Board. The Board mainly consisting of relatives and supporters of the government, must clear all content before publication, sometimes taking more than six months. Furthermore, whilst there are many newspapers and journals in Myanmar, all conduct pre-publication self-censorship, including the small privately owned press, as they are reluctant to cover political issues or criticism of policies, including for example the recent referendum on the Constitution, or ethnic or gender issues. Instead they cover less politically sensitive topics such as football, health and religion, or simply only ever cover visits or gift-giving by the government and military. In the instances whereby the press criticises opposition to the government, the opposition is never permitted the right to reply. The government has also made specific attempts to manipulate the press from within by assimilating government supporters into the media at all levels.
10. The government also entirely controls broadcast media. Myanmar has two national state-owned radio stations on FM frequencies, which either play Burmese classical music or information about the government. There are seven television stations in Myanmar of which one is private. One of the stations, MRTV3 broadcasts content in English and is often used by the government to challenge and refute reports about Myanmar by foreign and exiled media that are forbidden to operate in the country.
11. Because of government control over all sources of information within Myanmar, the people have little knowledge of what is happening either within or outside of the country. Even mobile phones must be registered with the government. The few people who can afford to, try to obtain information from the vibrant exile media which has developed bases in the United Kingdom, Norway, Thailand and India. To suppress this, the government tunes all radios to government stations.

- Only illegally imported radios are able to pick up exile and foreign stations, with those found to possess them at risk of arrest and imprisonment. Satellite receivers are also illegal to own, although some people watch satellite television covertly.
12. The government discourages any contact with foreign or exile media. Foreign journalists rarely obtain visas to enter the country, except under the pretence of tourism, and foreigners are prohibited from visiting much of the country, barring a few towns and cities. Journalists who do attempt to get in on tourist visas, such as the BBC's Andrew Harding, are deported upon arrival for violation of immigration rules. All foreigners must agree upon entry to only visit designated places and not to visit politically sensitive people. They are watched and followed at all times by government officials under the pretence of protecting their safety. During the August 2007 Saffron Revolution, Kenji Nagai, a Japanese journalist covering the mass protests led by monks was shot and killed.
  13. There is severe punishment for any media house, journalist or media worker that works on politically sensitive issues. In May 2010, the government revoked the publishing licenses of two journals, *The Voice* and *The First Music* which have been pushing the boundaries in reporting politically sensitive news. In April 2010, the divisional court of Magway upheld a 27 year sentence of imprisonment for videographer Hla Hla Win for interviewing monks. In January 2010, the Rangoon Western district court sentenced journalist Ngwe Soe Lin to 13 years imprisonment for giving information to exile radio station, Democratic Voice of Burma. Also in January 2010, the Pakokku district court reportedly sentenced media worker Myint Naing to 25 years imprisonment for helping another journalist who interviewed local monks. There is also severe punishment for those who attempt to share information of public interest. Two government officials, Win Naing Kyaw and Thura Kyaw, were sentenced to death in January 2010 for leaking details to the exiled media of high level meetings between Myanmar and North Korea and discussions about procuring weapons and tunnel building.

#### **Detention of Aung San Suu Kyi and others exercising the right to freedom of expression**

14. The major concern of ARTICLE 19 is the ongoing detention of opposition leader and Nobel Peace Prize winner, Aung San Suu Kyi. Under house arrest for most of the past 21 years, Aung San Suu Kyi receives little news from the outside world and is denied access to information about what is happening in her country, or in the international community. Similarly, very little is heard from her, except on the few occasions when the government allows her to see her lawyer, and he, at great risk to his own limited freedom, then attempts to pass her messages on. Despite her detention, the government ignores the calls for her release from of the UN and other members of the international community.
15. In addition to Aung San Suu Kyi, according to available reports, at least 2,100 political prisoners are also incarcerated in order to punish and prevent them exercising their right to freedom of expression.. This number has doubled over the past few years in the run up to the countdown to the elections, and consists of political activists, artists and singers, students and academics, lawyers, teachers and monks. Many have spent significant time in detention, are regularly shifted around Myanmar's 100 known prisons and labour camps without access to their family, sufficient nutrition or water, or medical care, and suffering from abuse and torture.

### **Complete control and censorship of the internet**

16. The internet in Myanmar is severely restricted by the government. Websites such as Facebook, YouTube, Flickr, popular Myanmarese blogs, and most web-based email systems such as GMail are permanently blocked. The creation of content that may undermine “national interests” or government policies are also prohibited (Electronic Transactions Act 2004). Internet users are minimal, according to some reports as low as 40,000 or 0.001% of the population in 2007. Government permission is required in order to own a computer, and emails are often intercepted. The few internet cafes that are in the cities and large towns are continuously monitored and users must register to use them, and are prohibited from uploading or sending photos or documents. Internet cafes must be licensed by the Myanmar Information Communications Technology Development Corporation and are required to install software that takes screenshots every five minutes. During recent critical events, such as the Saffron Revolution, the government, who nationalised the only internet provider, Bagan Cybertech, simply shuts down the entire network across the country.

### **Recommendations**

17. Ratify the International Covenant of Civil and Political Rights and adopt a constitutional and legal framework that fully respects freedom of expression as guaranteed by the ICCPR and other international and regional standards and abolish any laws that restrict freedom of expression in breach of international law and standards
18. Repeal all regulations of the media that interfere with freedom of expression and bring them in compliance with international standards on freedom of expression
19. Stop the state monopoly on print and broadcast media and create and maintain an environment in which the media can work freely, independently and effectively from governmental control and influence
20. Guarantee the independence of judiciary in the Constitution and legal framework, provide against inappropriate or unwarranted interference with the judicial process in all cases, including those related to freedom of expression and adopt measures that will ensure judiciary’s effectiveness and impartiality
21. Pass legislation and adopt necessary measures to ensure that the election are free and fair and inform the public about matters relevant to the elections
22. Respect the freedom of media within election reporting, ensure equal access to public media for all political parties and grant parties and candidates air time for direct access programmes on a fair and non-discriminatory basis
23. Immediately release Aung San Suu Kyi and all other prisoners of conscience and provide them with remedies and compensations for violations of their rights
24. Repeal all internet censorship restrictions and base the online flow of information in the right to freedom of expression