



## Myanmar: Release Arbitrarily Detained Student Protesters and Cease Further Prosecutions

23 November 2020

We, the undersigned 10 human rights organizations, call on the Myanmar authorities to immediately end criminal proceedings against student activists and other individuals charged in relation to recent peaceful protest activities. We call on the Myanmar authorities to immediately and unconditionally release those detained for simply exercising their human rights. Authorities have taken legal actions against individuals involved in campaigns in at least seven locations across the country that have called attention to human rights violations in Rakhine and Chin States. Many of those facing criminal charges are members of the All Burma Federation of Student Unions (ABFSU).

On 9 September, students in Sittwe in Rakhine State organised a protest against government directives restricting internet access in Rakhine and Chin States since June 2019. Authorities responded immediately, arresting Toe Toe Aung, Kyaw Naing Htay, and Oo Than Naing. All three faced penalties under Section 25 of the Natural Disaster Management Law and later Section 19 of the Peaceful Assembly and Peaceful Procession Law. Charges under the Natural Disaster Management Law were later dropped.

On 10 September, Yangon students organised a 'sticker campaign' to call attention to ongoing human rights abuses in Rakhine State. The protest included the posting of stickers in various public places with messages such as: 'Restore 4G Internet Access', 'No Bloody Government', 'No Murder Army', 'No Trust in Rakhine State Government', 'Oppose Fascism', and 'Stand With People in Rakhine'. On the same day in Mandalay, students Kyaw Thiha Ye Kyaw and Soe Hla Naing organised a protest against the internet shutdown. 'Sticker campaigns' were also organised in Meikhtila, Monywa, Pyay, Loikaw, and Mandalay in the following days.

As a result of these campaigns, dozens of students and others are facing charges under sections 505(a) and (b) of Myanmar's Penal Code. These sections purport to address 'incitement' and carry up to two years' imprisonment each and/or a fine. Dubiously, authorities have charged students with creating 'natural disasters' as defined by the Natural Disaster Management Law—a reference to the

classification of COVID-19 as a 'natural disaster'. Authorities have also arrested and charged students under the Peaceful Assembly and Peaceful Procession Law, even where students engaged only in 'sticker campaigns' in which they disseminated flyers and attached signs to various public places.

Several students have already been convicted and sentenced. Kyaw Thiha Ye Kyaw and Soe Hla Naing, jointly responsible for organizing the Mandalay campaigns, have been convicted by four different courts in Mandalay Region and cumulatively sentenced to more than seven years' imprisonment each. They face additional charges before these courts.

The ABFSU has reported that some students that were detained have been placed in isolation and denied visits from family.

### **Internet shutdown**

The protests have largely focused on mobile internet restrictions in Rakhine and Chin States that have been ongoing for more than a year. In June 2019, Myanmar authorities ordered telecommunications providers to block mobile internet access in nine townships in Rakhine and Chin States. The shutdown was lifted in five townships in late August 2019, but reinstated in February 2020. In May 2020, authorities lifted the restrictions in Maungdaw. In August 2020, the government restored 2G access to the eight remaining townships affected by the order. However, communities have reported that connection speeds remain too slow to load webpages or use apps.

Human rights organizations have repeatedly [raised concerns](#) that the restrictions violate Myanmar's human rights obligations; aid workers in Rakhine State have [highlighted](#) that 2G service is unreliable and insufficient to effectively disseminate information about COVID-19.

Authorities arrested several individuals for criticising the internet shutdown prior to the September campaigns. In August 2020, human rights activist Maung Saungkha was convicted under the Peaceful Assembly and Peaceful Procession Law for protesting against the internet restrictions. [Information collected by Athan](#), an organisation promoting the right to freedom of expression in Myanmar, indicates that a total of 61 activists have been prosecuted for their opposition to the internet shutdown.

The prosecution of those involved in the campaigns violates the rights to freedom of expression and peaceful assembly. Any restrictions on these rights must be provided by law, in pursuit of a legitimate aim, and necessary and proportionate to that aim.

### **Sections 505(a) and 505(b) of the Penal Code**

Section 505(a) of the Penal Code makes it a crime to publish or circulate any 'statement, rumour or report', 'with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such'. While the protection of national security is a legitimate aim that can be invoked in order to justify limitations on the right to freedom of expression, the broad restrictions on expression imposed by Section 505(a) fail the test of necessity and proportionality. Moreover, courts routinely convict individuals under this section without evidence establishing the requisite intent or a likelihood that military personnel would abandon their duty as a result of the expression. In practice, the section has often been used to prosecute criticism of the military—expression protected by international human rights law.

Section 505(b) of the Penal Code punishes the publication or circulation of any ‘statement, rumour or report’, ‘with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility’. Like Section 505(a), Section 505(b) has been repeatedly used to target protected expression rather than addressing incitement to hatred, violence, or discrimination that can be legitimately prohibited under international human rights law.

### **Peaceful Assembly and Peaceful Procession Law**

The Peaceful Assembly and Peaceful Procession Law requires those assembling to provide 48 hours prior notice to authorities in advance of an assembly. Vague provisions in the law also allow local officials to set requirements for protests, leaving the law open to abuse by local authorities. Furthermore, the law restricts content by requiring that those assembling ‘not say things or behave in a way that could affect the country or the Union, race, or religion, human dignity and moral principles’.

Convictions under Section 19 of the law carry a penalty of up to three months’ imprisonment and/or a 30,000 kyat fine for first time offenders, and up to one year’s imprisonment and/or a 100,000 kyat fine for repeat offenders. In recent years, the law has been used [repeatedly](#) against students protesting military violations as well as those criticizing the military or the government.

In its recently-released [General Comment 37](#), the Human Rights Committee has emphasized that content-based restrictions on assemblies—for example, those that limit protests based on the message intended to be shared at the protest—are illegitimate. It has further stated that restrictions on expression meant to protect symbols of the state—such as the military—are never permissible under international human rights law.

### **Natural Disaster Management Law**

Section 25 of the Natural Disaster Management Law punishes the negligent or wilful causation of a natural disaster. Conviction carries a maximum penalty of three years’ imprisonment and a fine. Students’ prosecution under this law is presumably linked to the ongoing COVID-19 pandemic, which has been deemed a ‘natural disaster’ under the law.

[General Comment 37](#), released during the COVID-19 pandemic, emphasizes that while ‘the protection of “public health” ground may exceptionally permit restrictions, for example where there is an outbreak of an infectious disease and gatherings are dangerous’, the restrictions must themselves comply with international human rights law. The existence of other, less restrictive, methods of controlling the virus that have not been considered by the authorities suggests that the National Disaster Management Law has been applied in a manner that is neither necessary nor proportionate. Further, the authorities’ allowance of [much larger](#) pro-National League for Democracy (NLD) celebratory political gatherings indicates that the Myanmar authorities have arbitrarily applied the law to target those expressing dissent.

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The Myanmar authorities’ arbitrary targeting of student activists calling for peace and the end of human rights violations contravenes the rights to freedom of expression and peaceful assembly. We call on authorities to:

- Immediately and unconditionally release all of those arrested in relation to the recent student protests as well other individuals imprisoned solely for the peaceful exercise of their rights;
- End criminal proceedings against all students targeted merely for exercising their rights to freedom of expression and peaceful assembly;
- Immediately lift internet restrictions in Rakhine and Chin States; and
- Repeal or amend all laws that violate the rights to freedom of expression and peaceful assembly, including the Peaceful Assembly and Peaceful Procession Law, the Natural Disaster Management Law, and Sections 505(a) and 505(b) of the Penal Code, to comply with international human rights law and standards.

**Signed:**

Access Now

Amnesty International

ARTICLE 19

Assistance Association For Political Prisoners

Athan - Freedom of Expression Activist Organization

Burma Human Rights Network

Civil Rights Defenders

Fortify Rights

FORUM-Asia

Human Rights Watch