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Submission by CIVICUS: World Alliance for Citizen Participation

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And

Free Expression Myanmar

And

Asia Democracy Network

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1. Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in 180 countries throughout the world.
- 1.2** Free Expression Myanmar (FEM) defends the freedom of expression and information in Myanmar. FEM produces high quality research and promotes smart recommendations through advocacy to the highest levels of the Myanmar government and influential stakeholders.
- 1.3** The Asia Democracy Network (ADN) is a civil society-led multi-stakeholder platform dedicated to defending and promoting democracy in Asia. ADN aims to strengthen solidarity and a collective voice among Asian civil society engaged in democracy, human rights and development at the global, regional, national and local levels.
- 1.4** In this submission, the three organisations examine the Government of Myanmar's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Myanmar's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination. To this end, we assess Myanmar's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of follow-up recommendations.
- 1.5** During the 2nd UPR cycle, the Government of Myanmar received 22 recommendations relating to the space for civil society (civic space). Of these recommendations, seven were accepted and 15 were noted. An evaluation of a range of legal sources and human rights documentation addressed in this submission demonstrates that the Government of Myanmar has partially implemented 13 recommendations relating to civic space and failed to implement nine. While the government has taken some steps to review unduly restrictive laws since its last UPR examination, acute implementation gaps were found with regard to the rights to the freedom of expression, along with issues relating to peaceful assembly. Further, Myanmar has yet to ratify the International Covenant on Civil and Political Rights (ICCPR), which imposes obligations on states to respect and protect the freedoms of association, peaceful assembly and expression.
- 1.6** We are deeply concerned by the use of an array of unwarrantedly restrictive laws to arrest and prosecute HRDs, activists, journalists and government critics for the peaceful exercise of their freedoms of association and expression.

1.7 We are further alarmed by burdensome restrictions on peaceful protests in law and practice, the arbitrary arrest and prosecution of protesters and the use of excessive force and firearms to disperse protests against government policies and land disputes with businesses.

1.8 As a result of these issues, civic space in Myanmar is currently classified as ‘repressed’ by the CIVICUS Monitor.¹

- Section 2 examines Myanmar’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines Myanmar’s implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines Myanmar’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, independence of the media and access to information.
- Section 5 examines Myanmar’s implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 contains a number of recommendations to address the concerns raised and to advance implementation of recommendations under the 2nd cycle.
- An annex of the implementation of 2nd cycle UPR recommendations related to civic space is in Section 7.

2. Freedom of association

2.1 During Myanmar’s examination under the 2nd UPR cycle, the government received one recommendation on the right to the freedom of association, which it supported. The government committed to “continue to create a safe and enabling environment for civil society in order to help the country’s ongoing transition to democracy.” However, as evidenced below, the government has failed to take adequate measures to realise this recommendation, which has only been partially implemented.

2.2 Article 354(c) of the 2008 Constitution guarantees the right to the freedom of association with some restrictions.² However, despite these commitments, CSOs operating in Myanmar continue to face unwarranted restrictions in law and practice.

¹ CIVICUS Monitor: Myanmar, <https://monitor.civicus.org/country/myanmar>.

² Among the restrictions are that these rights must not be in contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquillity, or public order and morality. See Constitution of the Republic of the Union of Myanmar, https://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf.

- 2.3** The 2014 Associations Registration Law governs the registration of CSOs.³ Many organisations find the registration process confusing, cumbersome and time-consuming, requiring recommendations from multiple line departments. Chapter 4 of the law permits the Union Registration committee – the government entity mandated to facilitate the registration of organisations – to decline the application of a CSO 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 of CSOs.
- 2.4** Chapter 4 article 7 of the law states that it is a voluntary decision for a local organisation to register. In reality, unregistered organisations are often regarded as illegal and face various arbitrary restrictions on opening a bank account or holding activities and are not invited to events by the authorities. The waiting period for a temporary or final registration certificate for both local and international organisations often takes far longer than what is prescribed in the law.⁴ Added to this, registration certificates are valid for only five years and must be renewed (article 20). Further, there are instances where the Registration Committee has denied registration because former political prisoners were included as board members or as staff.
- 2.5** Those working on human rights issues have often been told to change their focus away from a rights-based approach when registering and face various restrictions in undertaking their work.⁵ Official permission for their activities is often delayed, forcing CSOs to cancel their events.
- 2.6** Under the Association Registration Law, organisations are subjected to arbitrary limitations on the geographical orientation of their operations. Under chapter 8 of the law, organisations that register in specific localities are prohibited from working outside their officially designated jurisdictions. Organisations seeking to change their status from township level to region or state level “must apply to the relevant registration committee.”⁶
- 2.7** Another law that has been used to restrict the freedom of association and imprison activists, journalists and ethnic minorities in conflict areas is the 1908 Unlawful

³ Registration of Organization Law (2014 Pyidaungsu Hluttaw Law No. 31), https://www.burmalibrary.org/docs21/Registration_of_Organizations_Law-en.pdf.

⁴ Chapter 4 of the law specifies that a temporary registration certificate will be issued within seven days and a permanent certificate between 30 to 60 days, depending on the geographical locale of the CSO’s work.

⁵ Issues includes land rights, labour rights, anti-corruption, LGBTQI+ issues, peace and good governance.

⁶ Civic Freedom Monitor: Myanmar (Burma), ICNL, <https://www.icnl.org/resources/civic-freedom-monitor/myanmar#analysis>.

Associations Act.⁷ This colonial-era law is overly broad and has been used to punish those suspected of having any contact with an armed ethnic group. Section 17(1) of the Act authorises a sentence of up to two years in prison for anyone who “is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association.”⁸

2.8 In 2016, Two Kachin⁹ pastors, Dumdaw Nawng Lat and Langjaw Gam Seng, were charged under Article 17(1) of the Act in connection with their role in organising a visit by journalists to Monekoe town, northern Shan State, to show the destruction allegedly caused by Myanmar army airstrikes.¹⁰ On 6 April 2018, authorities in northern Myanmar’s Kachin State arrested Min Sign, an ethnic Kachin activist, under Section 17(1) of the Act for allegedly having links to a soldier from the Kachin Independence Army (KIA).¹¹ Min Sign is a member of the Putao District World Heritage Site committee as well as a civil society worker.

2.9 The Rohingya people have faced decades of repression and the denial of their human rights. They are not regarded as an official ethnic group under Myanmar’s discriminatory 1982 Citizenship Law, the enactment and application of which has effectively rendered them stateless. As a result their rights to study, work, travel, marry, practise their religion and access health services are severely restricted.¹² More than 740,000 Rohingya people have fled¹³ to neighbouring Bangladesh since August 2017 when the Myanmar security forces allegedly launched a widespread and systematic assault on hundreds of Rohingya villages,¹⁴ which the UN has determined is tantamount to ‘ethnic cleansing’.¹⁵ Conditions remain dire for the

⁷ An unlawful association is defined as one that “encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts” that the president has declared to be unlawful.

⁸ ‘Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar’, Human Rights Watch, 31 January 2019, <https://www.hrw.org/report/2019/01/31/dashed-hopes/criminalization-peaceful-expression-myanmar>.

⁹ The peoples of Kachin are a confederation of ethnic groups who inhabit the Kachin Hills in northern Myanmar’s Kachin State.

¹⁰ ‘Urgent Action, Kachin Pastor Released in Prisoner Amnesty’, Amnesty International, 20 April 2018, <https://www.amnesty.org/download/Documents/ASA1682472018ENGLISH.pdf>.

¹¹ ‘Scores of Anti-War Protesters Prosecuted Across Myanmar’, CIVICUS Monitor, 18 July 2018, <https://monitor.civicus.org/updates/2018/07/18/scores-anti-war-protesters-prosecuted-across-myanmar>.

¹² ‘Myanmar: “Caged without a roof”: Apartheid in Myanmar’s Rakhine State’, Amnesty International, 21 November 2017, <https://www.amnesty.org/en/documents/asa16/7484/2017/en>.

¹³ Bangladesh: 2019 Joint Response Plan for Rohingya Humanitarian Crisis Snapshot (January-December 2019), Humanitarian Response, <https://www.humanitarianresponse.info/en/operations/bangladesh/infographic/2019-joint-response-plan-rohingya-humanitarian-crisis-snapshot>.

¹⁴ The onslaught came in the wake of a series of attacks on security posts by a Rohingya armed group, the Arakan Rohingya Salvation Army.

¹⁵ ‘No other conclusion: ethnic cleansing of Rohingyas in Myanmar continues-senior UN rights official’, UN News, 6 March 2018, <https://news.un.org/en/story/2018/03/1004232>.

estimated 600,000 Rohingya people still in Rakhine State.¹⁶

2.10 Since 2016, the authorities – both military and civilian – have denied access or imposed restrictions on access for humanitarian CSOs providing aid to Rakhine State, including shelter, food and protection, predominantly to Rohingya people.¹⁷ These restrictions to humanitarian access have also been imposed on other minority groups in Kachin and Shan States.¹⁸ In January 2020, the International Rescue Committee ended its food programme in Rakhine State due to government restrictions on staff movements.¹⁹

3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

3.1 Under Myanmar’s previous UPR examination, the government received ten recommendations on the protection of HRDs, journalists and civil society representatives. The government committed to several relevant recommendations including to “ensure the protection of human rights defenders” and to “create and maintain a safe and enabling environment for civil society, human rights defenders and journalists”. Of the recommendations received, two were accepted and eight were noted. However, as examined in this section, the government has failed to operationalise these recommendations effectively, partially implementing seven recommendations and not implementing three.

3.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. However, in spite of this, HRDs, civil society activists and journalists have been criminalised for undertaking their legitimate work. In March 2018, The UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, reported to the UN Human Rights Council that “while the historic election of a civilian government for Myanmar promised a new era of openness, transparency and the expansion of democratic space, the rapporteur has only seen that space shrink, with journalists, members of civil

¹⁶ ‘Myanmar: Events of 2018’, Human Rights Watch, 10 January 2018, <https://www.hrw.org/world-report/2019/country-chapters/burma>.

¹⁷ ‘Myanmar: Restrictions on international aid putting thousands at risk’, Amnesty International, 4 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/myanmar-restrictions-on-international-aid-putting-thousands-at-risk>.

¹⁸ ‘They Block Everything : Avoidable Deprivations in Humanitarian Aid to Ethnic Civilians Displaced by War in Kachin State, Myanmar’, Fortify Rights, August 2018, https://www.fortifyrights.org/downloads/They_Block_Everything_EN_Fortify_Rights_August_2018.pdf; ‘Myanmar: “Caught in the Middle”: Abuses Against Civilians Amid Conflict in Myanmar’s Northern Shan State’, Amnesty International, 24 October 2019, <https://www.amnesty.org/en/documents/asa16/1142/2019/en>.

¹⁹ ‘Aid Group Ends Food Program in Myanmar’s Rakhine, Citing Government Restrictions’, Radio Free Asia, 8 January 2020, <https://www.rfa.org/english/news/myanmar/aid-group-ends-food-program-01082020170019.html>.

society and human rights defenders placed in an increasingly perilous position.”²⁰

- 3.3** A number of criminal defamation laws have been used against HRDs, civil society activists and journalists. According to human rights group Athan, as of January 2020 Myanmar’s military has filed nearly 47 lawsuits against critical journalists, activists and other people it has accused of defamation during the nearly four years that the ruling National League for Democracy (NLD) party has been in power.²¹
- 3.4** Section 66(d) of the 2013 Telecommunication Law criminalises ‘online defamation’ and carries a maximum two-year prison sentence. The authorities have repeatedly used section 66(d) against those criticising the government or military online.²² The high volume of cases brought under section 66(d) has also been facilitated by the fact that it allowed anyone to file a complaint, even individuals other than the person who has allegedly been defamed.²³ In 2017, the law was amended to reduce the maximum penalty from three to two years, to require defamation complaints to be filed by the person allegedly defamed or by a “legal representative” of that person, and to make offences under the law bailable.²⁴
- 3.5** In March 2017, Ko Swe Win, editor of online newspaper Myanmar Now, was charged under section 66(d) for sharing a story by Myanmar Now on Facebook.²⁵ In May 2017, Ma Sandi Myint Aung was sentenced to six months in prison under section

²⁰ ‘UN Special Rapporteur on Myanmar Concerned Over Shrinking Civic Space’, CIVICUS Monitor, 29 March 2018, <https://monitor.civicus.org/updates/2018/03/29/un-special-rapporteur-myanmar-concerned-over-shrinking-civic-space>.

²¹ The lawsuits included 18 cases filed under the Telecommunications Law, 11 under section 505(a) of Myanmar’s Penal Code, seven under section 505(b), four under section 500, two under the Unlawful Associations Act, two under the National Security Act, two under the Media Law, and one under section 200. Among the 96 people accused, 51 were activists, 19 were civilians, 14 were journalists, five were religious leaders, four were artists and three were members of political parties. See ‘Military has filed nearly 50 lawsuits against journalist-Athan’, Mizzima, 8 January 2020, <http://mizzima.com/article/military-has-filed-nearly-50-lawsuits-against-journalists-athan>.

²² In June 2019, human rights group Athan issued a report stating that 200 ‘online defamation’ cases had been filed under article 66(d) of the Telecommunications Law since it was enacted in October 2013. See ‘Total Number of Defamation Cases Under Telecommunications Law Hits 200’, The Irrawaddy, 24 June 2019, <https://www.irrawaddy.com/news/burma/total-number-defamation-cases-telecommunications-law-hits-200.html>.

²³ ‘Burma: Repeal Section 66(d) of the 2013 Telecommunication Law’, Human Rights Watch, 29 June 2017, <https://www.hrw.org/news/2017/06/29/burma-repeal-section-66d-2013-telecommunications-law>.

²⁴ ‘Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar’, Human Rights Watch, op. cit.

²⁵ The story quoted a senior monk who said that well-known ultranationalist monk U Wirathu’s actions could be cause for him to be expelled from the monkhood as they violated the tenets of Buddhism. U Wirathu, notorious for using Facebook to agitate against Muslims, had previously expressed support for and thanked U Kyi Lin, who had recently been convicted for killing prominent lawyer U Ko Ni in January 2017. U Ko Ni was an expert on constitutional law and was working to change the military-drafted 2008 Constitution. The plaintiff, a follower of U Wirathu, brought the charges in March 2017 and the court proceedings started in July 2017. See ‘Joint statement: Myanmar authorities must drop the case against Ko Swe Win and decriminalise defamation’, International Commission of Jurists, 7 March 2019, <https://www.icj.org/joint-statement-myanmar-authorities-must-drop-the-case-against-ko-swe-win-and-decriminalise-defamation>.

66(d) after sharing a post on Facebook critical of President Aung San Suu Kyi.²⁶ In May 2018, activist U Htun Htun Oo was convicted under the law for broadcasting a satirical comedy performance deemed to defame the military on Facebook.²⁷

- 3.6** Criminal defamation under section 500 of the Penal Code has also been used against activists. In September 2018, three Kachin activists were charged under this law for defaming the military. The charges related to statements they made at a peaceful rally in April 2018 and a press conference the next day about the conflict in Kachin State.²⁸
- 3.7** Section 505(a) of the Penal Code prohibits the circulation of statements or reports that could cause a soldier or other member of the Myanmar military to “mutiny or otherwise disregard or fail in his duty.” In August 2019, filmmaker Min Htin Ko Ko Gyi was sentenced to a year in prison for a series of Facebook posts critical of the military-drafted 2008 Constitution and the military’s role in politics.
- 3.8** Section 505(b) of the Penal Code, which criminalises speech that “is likely to cause fear or alarm in the public,” has also been used to prosecute a former child soldier for talking about his experiences²⁹ and journalists for an article criticising the financial management of the Yangon Regional Government.³⁰
- 3.9** Penal Code section 124A, Myanmar’s sedition law, is another broadly worded law used to suppress critical speech. The law imposes a sentence of up to life in prison for any statement that “brings or attempts to bring into contempt or excites or attempts to excite disaffection toward the Government.” In September 2018, Ngar Min Swe, a former newspaper columnist, was sentenced to seven years in prison and a 100,000 kyat (approx. US\$70) fine for social media posts critical of Aung San Suu Kyi.³¹

²⁶ ‘Burmese civil society fights back against restrictions on freedom of expression, CIVICUS Monitor, 22 June 2017, <https://monitor.civicus.org/updates/2017/06/22/burmese-civil-society-fights-back-against-freedom-expression-restrictions>.

²⁷ ‘Burma: Activist jailed for streaming anti-conflict drama on Facebook’, The Irrawaddy, 8 May 2018, <https://www.irrawaddy.com/news/burma/activist-jailed-streaming-anti-conflict-drama-facebook.html>.

²⁸ Lawyer Lum Zawng was one of the organisers of the rally where protesters called for the military to stop aerial attacks on civilians. The other two activists, Nang Pu, Director of the Htoi Gender and Development Foundation, and Zau Jet, Chairman of the Kachin National Social Development Foundation, had spoken about the situation of displaced civilians in the Hpakant area and about reports of threats against and ill-treatment of civilians by Myanmar soldiers. See ‘Myanmar: Drop Charges Against Three Kachin Activists’, CIVICUS, 15 October 2019, <https://www.amnesty.org/en/documents/asa16/9244/2018/en/>

²⁹ ‘Court sends former child soldier to jail’, Myanmar Times, 9 February 2020, <https://www.mmmtimes.com/news/court-sends-former-child-soldier-jail.html>.

³⁰ ‘Myanmar: Three journalists arrested in latest assault on press freedom’, Amnesty International, 10 October 2018, <https://www.amnesty.org/en/latest/news/2018/10/myanmar-three-journalists-arrested-latest-assault-press-freedom>.

³¹ ‘Ngar Min Swe given 7 years for Facebook post, Myanmar Times, 9 February 2020, <https://www.mmmtimes.com/news/ngar-min-swe-given-7-years-facebook-post.html>.

- 3.10** HRDs and journalists have also become the target of online hate campaigns. According to the UN Fact-Finding Mission on Myanmar, an HRD was targeted online for his alleged cooperation with the Mission. The post described the individual as a “national traitor,” consistently adding the adjective “Muslim.” It was shared and reposted over 1,000 times.³²
- 3.11** Human rights activists have also been killed, in some cases with impunity. Human rights lawyer U Ko Ni, a vocal advocate for human rights and democratic reform in Myanmar and an NLD member, was gunned down outside Yangon airport on 29 January 2017.³³ Although four people have been convicted for his killing, some believe there has been a failure to bring to justice the masterminds behind the attack.³⁴ At the time of his death, Ko Ni was working on amendments that would further challenge the role of the military, which retains a quarter of parliamentary seats and controls the security ministries.
- 3.12** In November 2017, Htay Aung, a land rights activist who challenged illegal land grabs in northern Shan State, was beaten to death by a mob of some 20 people.³⁵ In April 2018, Indigenous activist Saw O Moo was killed by the military, who accused him of being a rebel.³⁶
- 3.13** During the review period the government has released political prisoners ahead of time, either by dropping charges or using presidential pardons. Those released include student leader Phyo Phyo Aung and scores of student activists,³⁷ activist monk U Gambira,³⁸ Reuters journalists Wa Lone and Kyaw Soe Oo (see below), the

³² ‘Facebook Brushed Off the U.N. Over Calls for Murder of Human Rights Workers’, The Intercept, 22 September 2018, <https://theintercept.com/2018/09/22/facebook-brushed-off-the-un-five-separate-times-over-calls-for-murder-of-human-rights-worker/>

³³ Kyi Lin, who shot the gun, and Aung Win Zaw, who recruited him to carry out the murder, were sentenced to death. A third person, Zeyar Phyo, received a five-year sentence for his role in the conspiracy. The prosecution accused him of providing roughly US\$80,000 for the plot. Aung Win Tun, a fourth defendant, received three years for harbouring Aung Win Zaw, his brother. See ‘Remembering Ko Ni, Myanmar’s slain lawyer’, Al Jazeera, 15 February 2019, <https://www.aljazeera.com/news/2019/02/ko-ni-killers-face-death-penalty-myanmar-court-decides-fate-190215011406975.html>.

³⁴ Myanmar: Ko Ni murder verdict leaves questions unanswered’, Amnesty International, 15 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/myanmar-ko-ni-murder-verdict-leaves-questions-unanswered>.

³⁵ ‘Myanmar Land Rights Activist Beaten to Death by Mob in Shan State’, Radio Free Asia, 2 November 2017, <https://www.rfa.org/english/news/myanmar/land-murder-11022017170742.html>.

³⁶ ‘Indigenous environmental campaigner killed by Myanmar government’, The Guardian, 13 April 2018, <https://www.theguardian.com/environment/2018/apr/13/indigenous-environmental-campaigner-saw-o-moo-killed-by-myanmar-government-karen-state>.

³⁷ ‘Myanmar: Student leader is finally free!’, Amnesty International, 11 April 2016, <https://www.amnesty.org/en/latest/campaigns/2016/04/myanmar-phyoe-phyoe-aung-student-leader-free>.

³⁸ ‘Gambira: Burmese monk freed after new charges dropped’, BBC, 1 July 2016, <https://www.bbc.com/news/world-asia-36680830>.

two Kachin pastors Dumdaw Nawng Lat and Langjaw Gam Seng and others.³⁹ Such amnesties however have recently become less common.

4. Freedom of expression, independence of the media and access to information

- 4.1 Under the 2nd UPR cycle, the government received six recommendations relating to the freedom of expression and access to information. For example, the government pledged to “ensure that freedom of opinion and expression are protected” and “review the News Media Law and the Printing and Publication Enterprise Law of 2014.” Of the recommendations received, four were accepted and two were noted. However, as discussed below, the government did not take effective measures to implement these recommendations and failed to implement any of them.
- 4.2 The Constitution of Myanmar contains two provisions relating to the right to the freedom of expression. Article 354(a) states that every citizen shall be at liberty to express and publish their convictions and opinions freely, and article 365 provides for freedom of artistic expression. However, article 354 restricts such liberty for the purposes of protecting national security, public order, public morality, “community peace” and “tranquillity.”⁴⁰ Further, the Constitution contains no safeguards for media freedom and also does not guarantee the right of access to public information. In policy and practice these rights have been restricted by the authorities
- 4.3 The government has yet to review the 2014 News Media Law, as recommended during the last UPR review. While the current law introduces some guarantees for media freedom, such as the prohibition of censorship and the recognition of specific rights of media workers, the safeguards for media freedom are heavily qualified and insufficient to meet international standards. The Myanmar Press Council, a regulatory body for the print media, lacks independence and complaints continue to be directed to the police.⁴¹ The government has also yet to review the Printing and Publication Enterprise Law.⁴² The law contains broadly worded content and restrictions that forbid publication of “matters that can tarnish the ethnicity, religion or culture of an ethnic group or a citizen” and “matters that can undermine national security, the rule of law, community peace and tranquillity or the equality, freedom,

³⁹ ‘Burma: 8500 released in presidential pardon including, 36 political prisoners’, The Irrawaddy, 18 April 2018, <https://www.irrawaddy.com/news/burma/8500-released-presidential-pardon-including-36-political-prisoners.html>; ‘Burma: Latest Presidential Amnesty Includes Dozens of EAO Members, Accused Associates’, The Irrawaddy, 7 May 2019, <https://www.irrawaddy.com/news/burma/latest-presidential-amnesty-includes-dozens-eao-members-accused-associates.html>; ‘Myanmar: Drops Charges against Three Kachin Activists’, CIVICUS, 15 October 2018, <https://www.civicus.org/index.php/media-resources/news/3556-myanmar-drop-charges-against-three-kachin-activists>.

⁴⁰ ‘Constitution of the Republic of the Union of Myanmar’, op. cit.

⁴¹ ‘Myanmar’s paper tiger press council’, Frontier Myanmar, 20 July 2017, <https://frontiermyanmar.net/en/myanmars-paper-tiger-press-council>.

⁴² ‘Printing and Publishing Law (2014, Pyidaungsu Hluttaw Law No. 13), FEM, 14 March 2014, <http://freexpressionmyanmar.org/wp-content/uploads/2017/02/Printing-and-Publishing-Law-EN.pdf>.

justice and rights of every citizen.”⁴³

- 4.4** After the NLD, which was long the opposition party, assumed power in 2016, many hoped that the media environment would improve. However, media freedom in Myanmar remains under threat and journalists who undertake critical reporting face arrest, lawsuits and censorship. Due to the threat of defamation charges or harassment, journalists are often hesitant to report on military and nationalist groups as well as the conflict in Rakhine State.⁴⁴ According to the findings of a survey by FEM in May 2018, journalists in Myanmar believe that their freedom has declined and that “legal, physical and psychological violence towards the media is increasing.”⁴⁵
- 4.5** One of the most high-profile cases related to media freedom since the last review is the conviction of Reuters journalists Wa Lone, and Kyaw Soe Oo in September 2018. They were sentenced to seven years in prison under the Official Secrets Act⁴⁶ for “illegal possession of official documents.”⁴⁷ The two journalists were arrested on 12 December 2017 after being handed documents by police officers during a dinner meeting. These turned out to be secret government documents relating to Rakhine State and security forces. The two were then charged under the country’s colonial-era Official Secrets Act. At the time of their arrest, they had been investigating the killing of 10 people in Inn Din village in Rakhine State during the brutal military crackdown against Rohingya people that began in August 2017. During the trial, a police captain admitted in court that a senior officer had ordered his subordinates to “trap” the journalists by handing them the classified documents. The whistleblowing police captain was subsequently sentenced to a one-year prison term.⁴⁸

⁴³ “‘They Can Arrest You at Any Time’: The Criminalization of Peaceful Expression in Burma”, Human Rights Watch, June 2016, https://www.hrw.org/sites/default/files/report_pdf/burma0616web.pdf.

⁴⁴ ‘From conflict zones to courtrooms, Myanmar’s journalists are under fire’, Committee to Protect Journalists, 31 July 2019, <https://cpj.org/blog/2019/07/myanmar-press-freedom-restricted-laws-conflict.php>.

⁴⁵ ‘Myanmar’s media freedom at risk’, FEM, 2 May 2018, <http://freeexpressionmyanmar.org/myanmars-media-freedom-at-risk>; ‘Myanmar journalists believe media freedom has declined: Survey’, Frontier Myanmar, 3 May 2018, <https://frontiermyanmar.net/en/myanmar-journalists-believe-media-freedom-has-declined-survey>.

⁴⁶ In imposing the sentence, the judge quoted Article 3 (2) of the law, which states that an individual can be found guilty of the crime if the individual possesses classified documents, even if the prosecutor fails to provide evidence that the individual used the information to commit an act that jeopardised the interests or safety of the state, as long as the individual action and intention “appear to harm the state.”

⁴⁷ On 7 May 2019, Wa Lone and Kyaw Soe Oo were released from prison after being granted a presidential pardon. They had served more than 500 days in prison. See ‘Sustained attack on civic freedoms in Myanmar with ongoing prosecutions and internet blackout’, CIVICUS Monitor, 16 August 2019, <https://monitor.civicus.org/updates/2019/08/16/sustained-attack-civic-freedoms-myanmar-ongoing-prosecutions-and-internet-blackout>.

⁴⁸ ‘UN fact-finding mission finds serious crimes fuelled by the silencing of critical voices’, CIVICUS Monitor, 19 September 2018, <https://monitor.civicus.org/updates/2018/09/19/un-fact-finding-mission-finds-serious-crimes-fuelled-silencing-critical-voices>.

- 4.6** The Unlawful Associations Act has also been used by Myanmar authorities to stifle news coverage of armed conflicts. In June 2017, three journalists were arrested and charged under Section 17(1) of the Act for being in contact with the Ta'ang National Liberation Army (TNLA), an ethnic armed group operating in northern Myanmar. They had been to an area controlled by the TNLA to report on a drug burning ceremony to mark the International Day against Drug Abuse and Illicit Trafficking.⁴⁹
- 4.7** Journalist Aung Marm Oo, Editor-in-Chief of the Rakhine State-based Development Media Group news agency, went into hiding after the authorities filed a complaint on 1 May 2019 seeking his arrest under Section 17(2) of the Act.⁵⁰ Human rights groups believe the case against him is politically motivated and unfounded, and stems from his organisation's role in reporting on military abuses against civilians during conflict with the Arakan Army⁵¹ in Rakhine State.⁵²
- 4.8** Foreign media has been largely barred from visiting northern Rakhine State to report on the conflict while local journalists who have gained independent access face various restrictions and risks. The prosecution of the Reuters journalists sent a particularly chilling message to others covering Rakhine State, and contributed to increasingly prevalent self-censorship.⁵³
- 4.9** Since 20 June 2019, the government has imposed an internet blackout, invoked under Section 77 of the 2013 Telecommunications Law,⁵⁴ in parts of Rakhine and Chin States where there has been fighting between the military and rebels battling for greater autonomy. In August 2019, the Transport and Communications Ministry lifted the internet ban in some townships. Yet as of February 2020, residents in Rakhine's four townships – Kyauktaw, Minbya, Mrauk U and Ponnagyun – continue to be affected by internet restrictions. Reports show that internet blocking in Rakhine has undermined business operations, delivery of e-government services

⁴⁹ 'URGENT ACTION: Three Journalists Released after Charges Dropped', Amnesty International, 20 September 2017, <https://www.amnesty.org/download/Documents/ASA1671282017ENGLISH.pdf>.

⁵⁰ 'Myanmar journalist Aung Marm Oo in hiding as police seek his arrest', Committee to Protect Journalists, 13 May 2019, <https://cpj.org/2019/05/myanmar-journalist-aung-marm-oo-in-hiding-as-polic.php>.

⁵¹ The Arakan Army (AA), an ethnic Rakhine armed group, was established in Kachin State in 2009. The AA is led by a younger generation of ethnic Rakhine nationalists who initially trained under the KIA and fought alongside an alliance of ethnic armed groups in northern Myanmar against the Myanmar military.

⁵² 'URGENT ACTION: Rakhine journalists in hiding, facing charges', Amnesty International, 24 June 2019, <https://www.amnesty.org/download/Documents/ASA1605802019ENGLISH.pdf>.

⁵³ 'Inside Myanmar's Dangerous Media Repression Campaign', Pacific Standard, 19 January 2018, <https://psmag.com/social-justice/myanmar-is-cracking-down-on-the-media>.

⁵⁴ According to section 77 of the Telecommunications Law, the Ministry of Transport and Communications "may, when an emergency situation arises to operate for public interest, direct the licensee to suspend a Telecommunications Service, to intercept, not to operate any specific form of communication, to obtain necessary information and communications, and to temporarily control the Telecommunications Service and Telecommunications Equipment."

and tourism activities.⁵⁵ Residents have reported encountering difficulties in processing mobile money services and communicating with their relatives who are working in other provinces and countries.⁵⁶

4.10 Artists have also been targeted. In April and May 2019, police arrested seven members of the Peacock Generation ‘Thangyat’ poetry troupe for allegedly criticising the military in a satirical performance that was livestreamed on Facebook. They have been prosecuted under different legal provisions in different courts in Yangon and six members are currently serving varying sentences in prison.⁵⁷

4.11 Concerns have also been raised over the increasing use of the Law Protecting the Privacy and Security of Citizens (known as the Privacy Law) to punish criticism of public officials.⁵⁸ Section 8(f) of the Privacy Law states that “no one shall unlawfully interfere with a citizen’s personal or family matters or act in any way to slander or harm their reputation.”⁵⁹ U Aung Ko Ko Lwin from Mon State was sued by a member of the Mon State Ethnic Affairs Committee in January 2018 for Facebook posts criticising the Mon State Chief Minister Aye Zaw.⁶⁰ In May 2019, six Karenni ethnic rights activists were charged and sentenced to six months in prison under article 10 of the Privacy Law in a case brought by the Kayah State chief minister in relation to criticism of the installation of a statue of General Aung San in Loikaw, the state capital.⁶¹

⁵⁵ ‘Joint statement condemning one of the world’s longest internet shutdowns in Rakhine State’, FEM, 21 December 2019, <http://freeexpressionmyanmar.org/joint-statement-condemning-one-of-the-worlds-longest-internet-shutdowns-in-rakhine-state>.

⁵⁶ ‘Despite serious crimes probe, Myanmar continues to silence critics and block the internet’, CIVICUS Monitor, 17 January 2020, <https://monitor.civicus.org/updates/2020/01/17/despite-serious-crimes-probe-myanmar-continues-silence-critics-and-block-internet>; ‘Sustained attack on civic freedoms in Myanmar with ongoing prosecutions and internet blackout’, CIVICUS Monitor, op. cit.

⁵⁷ In October 2019, five members of the troupe were sentenced under article 505(a) of the Penal Code to one year each. On 18 November 2019, Kay Khine Tun, Zeyar Lwin, Paing Ye Thu, Paing Phyto Min and Zaw Lin Htut received an additional one-year sentence by the Botataung township court, also under 505(a) charges. Su Yadanar Myint will serve one year while Nyein Chan Soe was acquitted. In December 2019, four of the group, Zay Yar Lwin, Paing Phyto Min, Su Yadanar Myint, and Paing Ye Thu, were found guilty of “online defamation” under Section 66(d) of the 2013 Telecommunications Act and sentenced to six months in prison. In February 2020, three members of the group – Kay Khine Tun, Paing Phyto Min and Su Yadanar Myint – were convicted of “online defamation” at Botahtaung Township Court and sentenced to six months in prison under Section 66(d) of the 2013 Telecommunications Act See ‘Myanmar: More ‘outrageous’ convictions for satire performers’, Amnesty International, 17 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/myanmar-more-outrageous-convictions-for-satire-performers/>.

⁵⁸ ‘Leaders find new tool to silence critics after telecom law amendment’, Myanmar Now, 26 November 2019, <https://myanmar-now.org/en/news/leaders-find-new-tool-to-silence-critics-after-telecom-law-amendment>.

⁵⁹ ‘UN special rapporteur on Myanmar concerned over shrinking civic space’, CIVICUS Monitor, op. cit.

⁶⁰ ‘Burma: Netizen Sued After Criticizing Mon State Chief Minister on Facebook’, The Irrawaddy, 8 January 2018, <https://www.irrawaddy.com/news/burma/netizen-sued-criticizing-mon-state-chief-minister-facebook.html>.

⁶¹ ‘Burma: State Govt Seeks Harsher Sentence for Karenni Youth on Gen. Aug San Statue Issue’, The Irrawaddy, 29 November 2019, <https://www.irrawaddy.com/news/burma/state-govt-seeks-harsher-sentence-karenni-youth-gen-aung-san-statue-issue.html>.

5. Freedom of peaceful assembly

- 5.1** During Myanmar’s examination under the 2nd UPR cycle, the government received five recommendations on the right to the freedom of peaceful assembly. Among other recommendations, the government committed to taking “concrete steps to promote and protect the right of peaceful assembly” and to “review and amend the Peaceful Assembly and Peaceful Procession Act to bring it in line with international standards.” Of the recommendations received, one was accepted and four were noted. However, as evidenced below, the government has only partially implemented all five of these recommendations.
- 5.2** Article 354(b) of the Myanmar Constitution guarantees the limited right to “assemble peacefully without arms and holding procession.” However, in practice and policy this right has been restricted and the police have used excessive and disproportionate force to disperse peaceful protests.
- 5.3** The 2011 Peaceful Assembly and Peaceful Procession Law,⁶² which governs protests, continues to fall short of international law and standards. The law imposes criminal sanctions for failure to give notice or failure to comply with what can be said and done at an assembly.⁶³ The law also does not allow for spontaneous assemblies.
- 5.4** In October 2016, parliament amended the Peaceful Assembly and Peaceful Procession law to eliminate some of restrictive provisions of the law. As amended, the law no longer requires police permission for an assembly, but instead requires notification to the township police 48 hours in advance of an assembly. In practice, however, the notification requirement is frequently treated by local authorities as a de facto request for permission that can be arbitrarily denied. Even when police do not attempt to block a protest, they often require that the protest take place at a location other than the one selected by the organisers.⁶⁴
- 5.5** In February 2018, the government proposed further amendments to the Peaceful Assembly and Peaceful Procession Law. The amendments would require applicants seeking permission to hold a rally to inform local authorities about the amount of money used to support the gathering and the funders. In addition, the amendments authorise a sentence of up to three years in prison for anyone who “provokes, persuades or urges anyone to join a peaceful assembly and peaceful procession by using money or assets or other ways, with the intention of disrupting security, rule

⁶² ‘Peaceful Assembly and Peaceful Procession Law’, FEM, 20 October 2017, <http://freeexpressionmyanmar.org/peaceful-assembly-and-peaceful-procession-law>.

⁶³ A first offence carries a maximum sentence of three months in prison and a 30,000 kyat (approx. US\$22) fine, while a repeat offence carries a maximum sentence of one year in prison and a 100,000 kyat (approx. US\$73) fine.

⁶⁴ ‘Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar’, Human Rights Watch, op. cit.

of law, tranquillity or public morality.”⁶⁵ However, no progress has been reported regarding these amendments.

- 5.6** In November 2017, authorities issued a ban on assemblies and processions in central Yangon, Myanmar’s largest city. The ban, issued by a military-controlled ministry, instructs police in 11 townships in Yangon to deny all applications for processions or assemblies to avoid “public annoyance and anxiety” and “disturbance of traffic.” The directive sets aside one small area of Yangon for all protests.⁶⁶
- 5.7** In May 2018, scores of peaceful anti-war protesters who mobilised across major cities in Myanmar were arrested, charged, or convicted for violating the Peaceful Assembly and Peaceful Procession Law. Protesters had called for Myanmar’s military to ensure the protection and safe movement of civilians trapped by armed conflict in Kachin State, amid fighting between the military and the KIA. The conflict has displaced more than 100,000 civilians in Kachin State since fighting resumed in June 2011.⁶⁷
- 5.8** The authorities have also used other laws against protesters. On 12 September 2018, a court in Yangon Division’s Dagon Seikkan Township sentenced two human rights activists – Ko Naung Naung and Daw Lay Lay – to a year in prison for peacefully protesting on behalf of a jailed former child soldier. The two activists were charged under the Penal Code’s article 505 (b), which prohibits incitement against the state, and article 153, which proscribes provocation with intent to cause a riot.⁶⁸
- 5.9** There have also been reports of unnecessary and excessive use of force and firearms by the police during protests. On 16 January 2018, police opened fire on a crowd of Rakhine Buddhists protesting against a ban of an annual event in Mrauk-U Township, Rakhine State, killing at least seven people and injuring at least 12 others.⁶⁹ On 12 February 2019, police used excessive force against protesters opposing the installation of a statue in Loikaw. Police fired rubber bullets and used water cannons against young ethnic Karenni people who attempted to move beyond police barricades.⁷⁰ At least 20 people were injured on 15 May 2019 after police in

⁶⁵ Ibid.

⁶⁶ ‘Rights watchers slam Myanmar’s ban on protest in biggest city’, Reuters, 15 November 2017, <https://www.reuters.com/article/us-myanmar-protests/rights-watchers-slam-myanmars-ban-on-protests-in-biggest-city-idUSKBN1DF0MP>.

⁶⁷ ‘Scores of anti-war protesters prosecuted across Myanmar’, CIVICUS Monitor, op. cit.

⁶⁸ ‘UN fact-finding mission finds serious crimes fuelled by the silencing of critical voices’, CIVICUS Monitor, op. cit.

⁶⁹ ‘UN special rapporteur on Myanmar concerned over shrinking civic space’, CIVICUS Monitor, op. cit.

⁷⁰ ‘Protesters in Myanmar face arbitrary arrest, prosecution and excessive force’, CIVICUS Monitor, 1 April 2019, <https://monitor.civicus.org/updates/2019/04/01/protesters-face-prosecution-and-excessive-force-myanmar-tightens-assembly-restrictions>.

central Myanmar's Mandalay region fired rubber bullets and teargas into a crowd protesting against the construction of a coal-powered cement plant that is operated as part of a joint venture between a local firm and a Chinese partner. At least three people were arrested during the protest, including a journalist.⁷¹

- 5.10** A report by human rights group Progressive Voice in July 2018 found that women HRDs and activists who were the organisers of protests in Myitkyina and Yangon experienced discrimination and harassment, including from the police when they submitted the required notification, and when they were arrested and charged, as well as from ultra-nationalists, including on social media.⁷²

6. Recommendations to the Government of Myanmar

CIVICUS, FEM and ADN call on the Government of Myanmar to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and 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 the light of this, the following specific recommendations are made:

16.1 Freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association.
- Remove all undue restrictions on the ability of CSOs to receive international and domestic funding, in line with the best practices articulated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and relevant Human Rights Council resolutions (A/HRC/RES/32/31).

⁷¹ 'Sustained attack on civic freedoms in Myanmar with ongoing prosecutions and blackout', CIVICUS Monitor, op. cit.

⁷² 'Daring to defy Myanmar's patriarchy', FEM, 2018, <http://freeexpressionmyanmar.org/wp-content/uploads/2018/12/daring-to-defy-myanmars-patriarchy.pdf>; 'Scores of anti-war protesters prosecuted across Myanmar', CIVICUS Monitor, op. cit.

- Review and amend the Associations Registration Law to guarantee that undue restrictions on the freedom of association are removed, in compliance with article 21 and 22 of the ICCPR. Consult meaningfully with civil society in any review of these laws and regulations.
- Repeal the Unlawful Associations Act 2014 and unconditionally and immediately release all those detained under the law for exercising their fundamental rights to the freedoms of association and expression and drop all charges against them.
- Guarantee to the Rohingya people and other minorities the full enjoyment of their civil and political rights and take material measures to address the serious crimes they have suffered.

16.2 Protection of human rights defenders

- Provide HRDs, civil society members and journalists with a safe and secure environment in which they can carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Initiate a consolidated process of repeal or amendment of legislation that unwarrantedly restricts the legitimate work of HRDs, in line with the UN Declaration on Human Rights Defenders.
- Specifically, repeal or review section 66(d) of the 2013 Telecommunication Law and criminal defamation provisions in the Penal Code, particularly articles 500 505(a) and 505 (b), in line with the ICCPR and the UN Declaration on Human Rights Defenders.
- Unconditionally and immediately release all HRDs and activists, such as filmmaker Min Htin Ko Ko Gyi, detained for exercising their fundamental rights to the freedoms of association, peaceful assembly and expression.
- Establish a new, independent, and impartial investigation aimed at determining who was behind the killing of human rights lawyer U Ko Ni and bring all those involved to justice.

16.3 Freedom of expression and independence of the media

- Ratify all international human rights treaties not yet ratified, particularly the ICCPR.
- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Review and amend the News Media Law, the Printing and Publication Enterprise Law, the Official Secrets Act and the Law Protecting the Privacy and Security of Citizens to ensure that these laws are in line with best practices and international standards in the area of the freedom of expression.
- Reform all criminal defamation legislation in conformity with article 19 of the ICCPR.
- Ensure that journalists and human rights monitors are provided unfettered access to all areas, particularly conflict-affected regions such as Chin, Kachin and Rakhine States, and can work freely and without fear of reprisals for expressing critical opinions or covering topics that the government may deem sensitive.
- Take adequate steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Lift the internet shutdown in Rakhine State and refrain from measures to prevent or disrupt access to or dissemination of information online intentionally, in violation of international human rights law.
- Adopt a law on access to information in order to promote fully the exercise of the right to the freedom of expression and freedom of opinion.

6.4 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Amend the Peaceful Assembly and Peaceful Procession Law in order to guarantee fully the right to the freedom of peaceful assembly.

- Unconditionally and immediately release all protesters and HRDs detained for exercising their right to the freedom of peaceful assembly and drop all charges against them.
- Immediately and impartially investigate all instances of unlawful killings and excessive force committed by security forces while policing protests.
- Review and, if necessary, update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.

6.5 Regarding access to UN Special Procedures mandate holders

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights in Myanmar, 2) Special Rapporteur on the situation of human rights defenders; 3) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and 4) Special Rapporteur on the rights to freedom of peaceful assembly and of association.

6.6 Regarding state engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.