DEFENCE LAWYERS’ TOOLKIT
“FALSE NEWS”
CASES IN MYANMAR
Introduction

Hundreds of innocent journalists, human rights defenders, activists, Facebook users, protesters, and politicians have been arrested, charged, and sentenced under Myanmar’s “false news” laws for exercising their right to freedom of expression and opposing the coup.

The “False News” Toolkit empowers defendants, lawyers, and their civil society supporters to defend themselves against allegations of “false news” as part of an incremental resistance against Myanmar’s deeply unjust legal system.

The “False News” Toolkit includes guidance on: 1) relevant international standards; 2) the situation and laws in Myanmar; 3) your rights and options when detained, arrested, or charged; 4) potential legal defence strategies. Each page is written in Myanmar but repeated in English to enable you to research further and communicate with different audiences too.
International law on false news

The military has included the term “false news” in its illegitimate amendment of the Penal Code, article 505A. International law and international standards however avoid using “false news” because it is a vague term and is therefore easily abused by authoritarians like the military.

Definition

Broadly speaking, “false news” can be defined as “content purporting to be news that is intentionally and verifiably false and that seeks to mislead an audience”. There are different types of “false news”.

- Accurate information used to create a false meaning, including: Manipulated content (Accurate information distorted to mislead); False connection (Accurate information with misleading titles, visuals, or captions); False context (Accurate information placed out of context to mislead).
- Accurate or inaccurate information, including: Imposter content (Accurate or inaccurate information pretending to be someone else’s); Propaganda (Accurate or inaccurate information used to promote a political interest); Satire (Accurate or inaccurate information used to mock, parody, or otherwise joke).
- Inaccurate information: Fabricated content (Inaccurate information designed to deceive).
Benefits of “false news”

The philosopher, John Stuart Mill, believed that society needed false statements to progress. Mill said that false statements were a symbol of disagreement, and that only disagreement motivated people to inquire further, argue together, and create new knowledge.

International alternatives to “false news”

International law avoids the term “false news” because it is vague. There is often no clear line between true and false. Truths can later become false. Some false information is just inaccurate and some is a blatant lie. Who should be judge of what is true? “False news” is also an oxymoron because “news” is defined as information verified by the media. The term does not indicate what harm is caused, if any, or what the causal link between news and harm is. There is no indication of whether liability depends on a person’s intention.

International standards use the two terms “misinformation” and “disinformation” because they are more precise than “false news”. Misinformation is false or misleading information created or disseminated without manipulative or malicious intent. Misinformation is accidental. Most incorrect information in independent news content is misinformation.

Disinformation is false or misleading information deliberately created or disseminated with manipulative or malicious intent. Disinformation may be intended to confuse an audience, deceive, or even to incite a crime. It may be called “a blatant lie”. Just a small minority of incorrect information in news content produced by independent media is disinformation.
Freedom of opinion

The right to freedom of opinion is absolute, as protected under international law (ICCPR Article 19, UDHR Article 19). Coercive, involuntary, or non-consensual manipulation of the thinking process to develop an opinion, are violations of the right to opinion. This includes indoctrination, brainwashing, and could include manipulative social media content curation and micro-targeting with incorrect information.
Freedom of expression

The right to freedom of expression is protected under international law (ICCPR Article 19, UDHR Article 19). International law requires all States and their institutions, including Myanmar's military, to respect, protect, and fulfill the right to freedom of expression.

Almost all expressions are protected under international law. Any restriction on freedom of expression, such as a "false news" law, can only be legitimate if it passes the "three-part test" (ICCPR Article 19(3)). The restriction must: 1) be provided by law, 2) achieve a legitimate aim, and 3) be necessary to achieve that aim.

The only legitimate aims are listed in Article 19(3) and include respect for the rights of others and the protection of public order. They also include advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence (ICCPR Article 20). Preventing criticism, stopping non-violent protests, suppressing the CDM, or banning the NUG are not legitimate aims.

The test of necessity means that any "false news" law must be necessary to prevent real harm. If a "false news" law restricts expression that would not create real harm, then the law is not necessary. A necessary restriction must also be proportionate and narrowly focused only on harm and not undermining the broader right to freedom of expression.
Derogation under a State of Emergency

International law allows States to derogate from certain rights, including freedom of expression, during an emergency that, "threatens the life of the nation" (ICCPR Article 4). Any derogation on the right to freedom of expression must however be time-limited, proportionate, non-discriminatory, and only "to the extent strictly required by the exigencies of the situation". Derogation does not allow "destruction" of the right itself (ICCPR Article 5.1).

International law still expects the military to abide by international law on derogation even though the State of Emergency was unlawful.

“False news” laws

The list of legitimate restrictions to freedom of expression does not include preventing “false news”. The right to freedom of expression is not limited to seeking, receiving, or imparting only correct information. It also includes information and ideas that may shock, offend, and disturb, including because they are incorrect. Laws prohibiting the dissemination of information based on vague and ambiguous ideas, including “false news”, are incompatible with international human rights standards and should be abolished.

This standard is very important not because disseminating “false news” is justifiable, but because any person or institution given the authority to decide what is true would be extremely powerful. Totalitarian regimes always try to control what is true and what is false.

The negative impact of disseminating incorrect information may be addressed by a range of policy measures, including laws, but these should not be vague and easily-abused “false news” laws.
Preventing incitement and war propaganda

International standards developed from international law on incitement against minority groups (ICCPR Article 20(1)), incitement to atrocity crimes (Genocide Convention Article 3(c)), and the prohibition of war propaganda (ICCPR Article 20.1) allow States to restrict incitement and war propaganda. However, it is unlikely that “false news” would reach the threshold of incitement or war propaganda.

The UN’s Rabat Plan of Action includes a six-part test to identify whether an expression has reached the threshold of restrictable incitement. The six parts of the test are:

1. Incitement is likely to work given the social and political context
2. Speaker has authority over the listener
3. Speaker intends to incite
4. Content and form of the expression are provocative
5. Expression is disseminated
6. Expression is likely to result in imminent harm.
Protecting reputations, public order, public health

International standards require States to protect well-deserved reputations, as well as public order and public health. Dissemination of incorrect information may harm these and international standards provide guidance on what States may do.

Incorrect information may threaten a person’s well-deserved reputation. States may adopt civil defamation laws to stop people from intentionally trying to spread incorrect information that damages reputations, provided defendants are able to properly defend themselves (see FEM explanation). However, criminal defamation laws are incompatible with international human rights standards.

Incorrect information may threaten public order or public health. States may adopt laws that criminalise incitement to a crime, provided it requires the prosecution to show the causal link between the incorrect information and the crime (see FEM incitement toolkit). States may adopt laws on presenting incorrect information to courts, financial institutions, or elections, provided that there is clear intention to mislead and the misleading creates measurable harm.
Policies to address incorrect information

International standards only allow for criminal laws to address the very most harmful of incorrect information. However, for everything else, international standards encourage States to take positive policy steps to address problems caused by the dissemination of incorrect information.

International standards recognise that everybody wants information to help them make informed decisions, and if there is an information vacuum, people will not just stop desiring information, but will look to less reliable sources. Some actors, including governments and the Myanmar military, have also intentionally tried to discredit reliable sources of information, calling them “fake”, and encouraging people to trust less reliable sources.

The best way to address incorrect information is to ensure that people can access high-quality, diverse, and reliable information.

Media policies

A free and independent media is the best way to address incorrect information. Media outlets rely on audience trust and most do their best to verify information because their audience will go elsewhere if their information is incorrect. Media outlets controlled by the government do not need audiences, because the government pays their costs and censors competing outlets, and they are often full of incorrect information and propaganda that promote government interests.
International standards require governments to promote independent media and remove any barriers such as licencing or surveillance. Independent print and online media will create their own self-regulatory mechanisms to promote media standards, accurate information, and rights of reply. Broadcasters, including strong public service broadcasters, should be regulated by independent regulators. Independent media can then themselves highlight the dissemination of incorrect information.

Social media policies

Social media content is not professional media articles but rather a reflection of individual people’s interests. Therefore, social media is often full of incorrect information just like in offline public spaces.

International standards require that governments do not hold intermediaries like Facebook liable for specific examples of incorrect information unless there has been an independent, impartial, and authoritative court decision. Similarly, individuals should usually not be held liable for merely distributing someone else’s incorrect information online. There is very rarely if ever a justifiable reason for disproportionately blocking entire websites or platforms simply because of incorrect information.
Education policies

People are not born with the inherent ability to judge whether information is correct or incorrect. It is a skill that must be learned in schools and in public. Some states are heavily involved in spreading propaganda intended to promote the government’s agenda or to counter-critical information being published in the independent media. Some incorrect information is disseminated in secret, especially online. Some state actors also intentionally discredit reliable sources of information in order to undermine public trust. The most problematic incorrect information is often found in those countries where the State controls the media and/or attacks the independent media.

Addressing propaganda

State and state actors are often the most prolific creators of incorrect information, including in Myanmar. Some of their incorrect information is disseminated in schools and in schools, and other stakeholders should also be encouraged to raise awareness about information literacy.

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“False news” in Myanmar

Is “false news” a problem in Myanmar?

Yes. The military has systematically attacked the independent media, cancelling their licences, raiding their offices, beating and imprisoning their journalists, and threatening their audiences. It is likely that the number of stories published by the media has therefore declined, with the exception of stories about the coup. Such a decline in the availability of accurate information may have led to an increase in the spread of unintentional misinformation.

The military has also increased propaganda published by its print media as well as its domination over all television and radio channels. Most propaganda is intentional disinformation. The military has also set up formal and informal “cyber armies” that spread disinformation online.

Should Myanmar have “false news” laws?

No. “False news” laws are incompatible with international human rights standards on the right to freedom of expression and should be abolished. Misinformation and disinformation should be addressed by policy changes promoting independent media and education. Disinformation that reaches the threshold of incitement should be addressed by incitement laws.
Myanmar has civilian “false news” laws and illegitimate martial “law” too. The vague scope of the definition of “false news” includes “misrepresentation”, “abetment”, and “concealment”, many of which are in the civilian Penal Code, which was adopted by the British colonial regime. The Penal Code includes a mixture of British criminal law and provisions specifically intended to oppress anti-colonial movements.

<table>
<thead>
<tr>
<th>Penal Code</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Article 107-117</td>
<td>A person may commit abetment if their intentional misrepresentation or concealment causes the crime (107). Abetment is an inchoate crime (108), that could take place abroad (108A). All crimes can be abetted. Some crimes include specific abetting provisions. Where there is no specific provision, the abettor should be punished as if they committed the abetted crime (109), up to 7 years imprisonment (115), or 3 years if they abetted a group (117), with less punishment if the abetted crime did not happen (116).</td>
</tr>
<tr>
<td>107-117</td>
<td>3 to 7 years (2) +fine (7) +fine</td>
</tr>
<tr>
<td>Article 118</td>
<td>Misrepresentation or concealment that causes a crime punishable by death.</td>
</tr>
<tr>
<td>118</td>
<td>Up to 7 years (+fine)</td>
</tr>
<tr>
<td>Code</td>
<td>Offence Description</td>
</tr>
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<td>------------------------------------------------------------------------------------</td>
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<tr>
<td>119</td>
<td>Half the sentence of caused crime</td>
</tr>
<tr>
<td>120</td>
<td>Quarter the sentence of planned crime (+fine)</td>
</tr>
<tr>
<td>171G</td>
<td>Unspecified fine</td>
</tr>
<tr>
<td>176</td>
<td>Up to 6 months (+fine)</td>
</tr>
<tr>
<td>177</td>
<td>Up to 2 years (+fine)</td>
</tr>
<tr>
<td>181</td>
<td>Up to 3 years (+fine)</td>
</tr>
<tr>
<td>182</td>
<td>Up to 6 months (+fine)</td>
</tr>
<tr>
<td>191-211</td>
<td>3 to 20 years (လောဘိုင်း)</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
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<td>---------</td>
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</tr>
<tr>
<td>505(a)</td>
<td>Spreading rumours that cause military or officials to “deprive, affect, hinder, disturb, damage the motivation, discipline” or create “hatred, disobedience, disloyalty” towards them.</td>
</tr>
<tr>
<td>505(b)</td>
<td>Spreading rumours that cause military to “mutiny” or “disregard or fail in their duty”.</td>
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<tr>
<td>505(c)</td>
<td>Spreading rumours that cause through fear or alarm the public to commit an offence “against the State” or against public “tranquility”.</td>
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<tr>
<td>505(d)</td>
<td>Spreading rumours Inciting one “class or community” to commit an offence against another.</td>
</tr>
<tr>
<td>505A(b)</td>
<td>Causes or intends to spread false news, knowing or believing that it is untrue.</td>
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The Counter Terrorism Law, adopted by the quasi-civilian USDP government in 2014, includes “false news” provisions. International law allows restricting freedom of expression to protect public security provided that restrictions are legitimate and necessary. However, the Counter Terrorism Law is vague and can be easily abused. For example, the act of communicating false information to endanger a flight is very vague and could be abused to punish environmental protesters.

<table>
<thead>
<tr>
<th>Article</th>
<th>Sanction</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>9(d) + 49(d)</td>
<td>10 years to Death sentence (20)</td>
<td>Intentionally communicating false information to endanger a flight.</td>
</tr>
<tr>
<td>27(f) + 50(g)</td>
<td>10 years to life</td>
<td>Intentionally communicating false information to endanger a ship.</td>
</tr>
</tbody>
</table>

Myanmar has several special laws that criminalise “false news” relating to special groups such as the media, digital, and members of the military. Many of these “false news” provisions are unnecessary because the Penal Code already covers everyone.
<table>
<thead>
<tr>
<th>Section</th>
<th>Offence Description</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>9(d) + 25(b)</td>
<td>Fine of 3-10 lakhs or imprisonment up to 2 years</td>
<td>Journalist using technology to improperly modify photos, pictures, or sounds.</td>
</tr>
<tr>
<td>32(g)</td>
<td>Death sentence</td>
<td>Member of military intentionally raises a false alarm or spreads false reports causing panic.</td>
</tr>
<tr>
<td>36(d)</td>
<td>Death sentence</td>
<td>Member of military conceals a mutiny.</td>
</tr>
<tr>
<td>34(d)</td>
<td>Up to 5 years (fine)</td>
<td>Creating, modifying or altering information that harms an organisation or person.</td>
</tr>
<tr>
<td>38C</td>
<td>Up to 3 years (fine)</td>
<td>Creating false news or misinformation that causes public panic, loss of trust, or defaming an organisation.</td>
</tr>
<tr>
<td>68(a)</td>
<td>Up to 1 year (fine)</td>
<td>Receiving or communicating incorrect information.</td>
</tr>
</tbody>
</table>

**Broadcasting Law**

- 84(a) + 88
  - License revocation (+fine)
  - Secretly distributing photos/pictures (+fine)
- 9(d) + 25(b)
  - Up to 1 year (+fine)

**Electronic Transactions Law**

- Up to 3 years (fine)

**Telecommunications Law**

- 68(a)
  - Up to 1 year (fine)
  - Misinformed about a disaster causing public panic.

**Natural Disaster Management Law**

- 27
  - Up to 1 year (fine)

**Myanmar Military Act**

- 32(g)
  - Death sentence
- 36(d)
  - Death sentence
The military illegitimately imposed martial law in six Yangon townships in March 2021, later adding five more in Mandalay and one in Chin State. In February 2023, the military extended martial law area by adding 14 townships in Sagaing Region, seven more townships in Chin State, five townships in Magway Region, five townships in Bago Region, one township in Mon State, two townships in Karen State, two townships in Tanintharyi State, and four townships in Kayah State.

Martial law is the imposition of direct military control of normal civilian functions, including the police and courts. The military's 15 March martial law order said that many of Myanmar’s “false news” provisions would fall under martial law. Any allegation of “false news” in any of the townships under martial law would be dealt with under military jurisdiction and be prosecuted in extrajudicial military tribunals.

### Martial Law Order 3/2021 + 5/2021

<table>
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<tr>
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<tr>
<td>4(b)(3) + App. A(5)</td>
<td>Up to 2 years (+fine)</td>
<td>Spreading rumours that cause military or officials to “deprive, affect, hinder, disturb, damage the motivation, discipline” or create “hatred, disobedience, disloyalty” towards them.</td>
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<td>4(b)(3) + Appendix A(6)</td>
<td>Up to 3 years (+fine)</td>
<td>Causes or intends to spread false news, knowing or believing that it is untrue.</td>
</tr>
<tr>
<td>4(b)(3) + Appendix A(18)</td>
<td>Unspecified</td>
<td>Journalist failing to publish precise, correct, and complete information.</td>
</tr>
<tr>
<td>4(b)(3) + Appendix A(19)</td>
<td>License revocation (+fine)</td>
<td>Broadcasting false information.</td>
</tr>
<tr>
<td>4(b)(3) + Appendix A(21)</td>
<td>Up to 5 years (+fine)</td>
<td>Creating, modifying or altering information that harms an organisation or person.</td>
</tr>
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<td>4(b)(3) + Appendix A(23)</td>
<td>10 years to Death sentence</td>
<td>Intentionally communicating false information to endanger a flight.</td>
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Are Myanmar’s “false news” laws legitimate?

Some of the above laws are legitimate, such as misrepresenting or concealing information to abet a crime (Penal Code article 107), and are found in all countries. However, most of Myanmar’s “false news” laws are illegitimate as they fail all parts of the “three-part test” in international law. They are not clearly written, do not have a legitimate aim, and are unnecessary. The military’s new “false news” Penal Code provision (505A(b)) is completely illegitimate. The military uses these illegitimate laws to punish criticism from journalists, human rights defenders, Facebook users, and others.

Why does Myanmar have so many “false news” laws?

Myanmar has a history of creating many similar crimes in order to oppress the people. Having many “false news” laws ensures that people are unsure which expression is lawful and which is not. This creates an environment of fear and self-censorship. Some “false news” laws were adopted to increase punitive sentences. For example, “false news” provisions in the old Penal Code include a maximum term of two years imprisonment but the newer Counter Terrorism Law includes the death sentence.
Who are Myanmar’s “false news” laws used against?

Myanmar’s “false news” laws are mainly used to censor those opposing the military coup including journalists, human rights defenders, political activists, NLD politicians, students, Facebook users, student union leaders, and participants in the Civil Disobedience Movement (CDM), many of whom are public officials. “False news” laws are also used against lawyers and family members of political prisoners.

Why does the military use “false news” laws?

The military wants to continue to control and show only a positive image of their regime and uses “false news” provisions to silence their critics. The public may initially think that a “false news” law is positive until they realise that it gives the military the authority to decide what is true and what is false.

How many “false news” cases are there in Myanmar?

There is no data on the number of “false news” cases in Myanmar, although FEM’s analysis has found many. Civil society groups and media monitoring politically-motivated criminal cases only provide basic information on the charges brought against individuals. This basic information often only includes a sentencing provision and not the actual crime.
What impact has the State of Emergency had on “false news” cases?

The 2008 constitution says that undefined fundamental human rights can be restricted or suspended during a state of emergency. International law requires that any suspensions are clearly defined. After unlawfully declaring a state of emergency the military has not clarified which human rights have been suspended or for how long. The only suspension that the military made public was to surveillance rights in the Law Protecting the Privacy and Security of Citizens. We do not know whether the military has or has not suspended the constitution’s right to freedom of expression provision (Article354(a)) or fair trial rights. Therefore, the impact of the state of emergency on “false news” cases is unclear.

What are the conditions like for those detained or arrested for “false news”?

A person accused of “false news” can be detained by either the police or the military. A majority of those detained are taken to military interrogation centres. Those detained have reported facing the very least cruel, inhuman, or degrading treatment and punishment while being held and interrogated. Many have reported facing torture. Prisons are overcrowded and have inadequate food and medical care. Women and girls have faced gender-based violence and discrimination. Defendants are kept in prisons without bail and are not allowed access to their family.
How do “false news” trials proceed in Myanmar?

Defendants have proceeded down one of two tracks, both of which are secretive with decisions dictated by the military. The first track is trial by “special court” set up inside prisons. Special courts are closed courts and therefore journalists, civil society, and families are not allowed to attend. Special courts apply civilian criminal laws and judgments are made by ostensibly civilian judges. Fair trial rights are violated. Trials take about a year or 1-3 months if the defendant confesses. In 2023, some defendants who are not facing Penal Code cases are reportedly proceeding down a third track of civilian district courts.

The second track is trial by military tribunal. Military tribunals are not courts martial, which are referred to in the constitution (Articles 293b and 319), are regulated in the Myanmar Military Act (Articles 110-193), apply only to military personnel, and include some fair trial principles, such as evidential standards, right to appeal, and legal advice (Myanmar Military Act Articles 136, 213(1), 220). Military tribunals apply to civilians and were last seen when the military previously imposed martial law in 1989. They have no constitutional basis and are therefore extrajudicial. Little is known about their procedures and practices or whether they include any fair trial principles.
Do defendants have access to a lawyer?

Defendants detained by the police, charged, and bought before "special courts" may have access to a lawyer. Some defendants cannot find a lawyer because lawyers are afraid to take "false news" cases that are regarded as "political". Other defendants cannot hire a lawyer because the defendant lacks resources or access to legal aid. Some defendants choose not to have a lawyer because they want to confess quickly in order to complete their sentence sooner. Some defendants do not believe that having a lawyer will be useful because judges have no discretionary powers as sentences are decided by the military. Those who have access to a lawyer primarily use the lawyer to pass messages to their friends and families rather than for defence.

Defendants brought before extrajudicial military tribunals are not granted access to a lawyer at any stage before, during, or after trial.

What sentences are given?

The special courts and military tribunals are punitive. They hand down the maximum sentence available.

What are the conditions of imprisonment?

Defendants awaiting trial or sentenced for "false news" are regarded by prisons as "political" prisoners. They face worse conditions than criminal prisoners. Political prisoners are subject to at the very least cruel, inhuman, or degrading treatment and punishment. Many have reported facing torture. Women and girls have faced gender-based violence and discrimination. Some have been disappeared and
Dozens have reportedly been killed. Political prisoners also have less access to medical care.

**Are appeals worthwhile?**

Defendants can appeal against “false news” sentences handed down by “special courts”. In a minority of “false news” cases, the appellant court refuses to accept the appeal, and in all others the court accepts the appeal but dismisses it later. Lawyers know that appeals fail but defendants may choose to appeal as a matter of principle or as an act of protest against military rule.

Defendants cannot appeal against decisions made by extrajudicial military tribunals. In the case of a death sentence, defendants can petition the military leader, Min Aung Hlaing for a lesser sentence.

**Can international courts help?**

International courts are mainly concerned with cases between States, such as the Gambia versus Myanmar in the International Court of Justice. Some international treaty bodies, such as the Human Rights Committee, accept individuals’ cases, but Myanmar has not ratified these treaties. The UN Working Group on Arbitrary Detention is the only mechanism available to Myanmar people that can consider individuals’ cases. However, their decisions are not binding on UN Member States. Decisions are primarily used by individuals to highlight injustice. Submitting a case to the UN Working Group may also attract risk because the UN will ask the military-controlled Foreign Ministry about the case.
Your rights when detained and arrested

Defendants, lawyers, and civil society supporters should exercise caution when using these legal rights given the military’s failure to recognise the rule of law.

Right against unlawful police detention

You have a right not to be unlawfully detained (Constitution, Arts. 21(b) and 376; 339-342, and 348; Code of Criminal Procedure, Arts. 61, 100, 167, and 491).

You have the right to claim damages from the police for unlawful detention, and to petition the Supreme Court to challenge the lawfulness of detention (Constitution, Art. 378; Penal Code, Art. 330; Code of Criminal Procedure, Arts. 80 and 491).

You have a right to go before a court if detained over 24 hours (Constitution, Art. 376; Code of Criminal Procedure, Arts. 81 and 167).

You have a right to be detained separately from prisoners (Prison Manual, Art. 415(3)).

You have the right to be released if insufficient evidence is found during the investigation (Code of Criminal Procedure, Art. 169, Police Manual, para. 1742).
Right against unlawful arrests and searches

You have the right not to be treated with excessive force or undue restraint when being arrested (Code of Criminal Procedure, Art. 50, 51, 52).

You have a right to be treated respectfully and with equal protection by the police (Constitution, Art. 347; Police Manual, paras. 1056 and 1086).

Police searches require a search warrant issued by a court. Police must give you a receipt for seized items, although this is sometimes used to show you consented to a search (Code of Criminal Procedure, Arts. 96-103; Police Manual, para. 1064; Courts Manual, para. 401; the military “suspended” Law Protecting the Privacy and Security of Citizens, Art. 8).

Police searches must be conducted before two witnesses who are independent of the police, in public view, and recorded in a form (Code of Criminal Procedure, Arts. 103 and 165; Police Manual, paras 1363, 1364, and 1706).

You have the right not to be physically and mentally sexually harassed (Penal Code Arts. 354 and 509; Union of Myanmar Vs. Thin Thein (and 3), 2002, M.L.R 36).

Right not to be tortured

You have the right not to be tortured or mistreated (Constitution, Arts. 44 and 353; Penal Code Arts. 330-331; Myanmar Police Force Maintenance of Discipline Law, Art. 17(g); UDHR, Art. 5; Child Rights Law, Art. 80(c)).

You have the right not to be hurt during an interrogation (Penal Code, Arts. 330-331).
You have the right not to be induced by threat or promise (Code of Criminal Procedure, Art. 343).

You have a right to report accusations of torture or misconduct to the investigating police officer, who must investigate them (Police Manual, para. 1693).

You must report police torture to the courts – not to the police – and should ask judges to record injuries during hearings (Code of Criminal Procedure, Art. 200).

Right to remain silent

You must be informed that you are not obliged to confess (Code of Criminal Procedure, Art. 164).

You have a right not to be forced to confess (Evidence Act Art. 24; Myanmar Police Force Maintenance of Discipline Law, Art. 13; ICCPR, Art. 14(3); Code of Criminal Procedure, Arts. 330-331).

Confessions given to the military are invalid (Supreme Court, BLR, 1960, 125).

Your confession can only be used as evidence if it is made voluntarily (Code of Criminal Procedure, Art. 164). You should avoid making coerced, false, or unwise confessions.

You have the right to not self-incriminate (Code of Criminal Procedure, Art. 342(1)(a); ICCPR Art. 14(3)(g)).

You have a right not to answer a judge’s questions (Code of Criminal Procedure, Art. 342(2)(iii)).
Prosecutors have a duty to withdraw cases if the case does not reach the charging standard (Attorney General of the Union Law 2010, Art 36(i); United Nations Convention against Corruption, Article 11 implementation guide and evaluative framework).

Step 1: Is success likely:
- Is there evidence to prove every element of the crime beyond a reasonable doubt? Is the evidence accessible, admissible, and reliable?
- Are the witnesses credible?
- Are there strong defences available to the accused?

Step 2: Is prosecution in the public interest?
- What is the nature and seriousness of the crime?
- What are the interests of the victim and the broader community?
- Has there been a delay between the date of the crime and the beginning of the prosecution?
- Are there alternatives to prosecution that would better serve the public interest?
Your rights when charged and in trial

Right of defence

You have the right of defence (Constitution, Arts. 19 and 375; Union Judiciary Law, Art. 3).

You have the right to know what charges are against you (Code of Criminal Procedure, Art. 210; ICCPR, Art. 9(2)).

You have a right to be heard, or for your lawyer to be heard, before any decisions are made to your detriment (Code of Criminal Procedure, Art 439(2)).

You have the right to be heard equally with the complainant. You have the right to call your own witnesses (Maung Ant Bwe & One v. Union of Burma, 1948 BLR (HC) 863. Union of Burma v. Ah Shin & 2 Others, 1955 BLR (HC) 317.)

You have the right to cross-examine witnesses (Code of Criminal Procedure, Art. 208(2)).

You have the right to be treated with respect by the court (Court Manual, para. 13).

The law officer must check and verify all documents if the police ask for defendants to be placed in remand. If the defendant is a child, the law officer must protect their rights (Attorney General's Rules, Rule. 70).
Right to a lawyer

You have a right to a lawyer (Code of Criminal Procedure, Art. 340; Courts Manual, Vol. II, para. 455; Legal Aid Law, Arts. 25-26, 31, and 43; ICCPR, Art. 14(3)(d)).

You have a right to legal aid from the government if the accused crime is punishable by the death sentence or if you are poor (Attorney General’s Rules, Rule 110; Court Manual, Art. 457(1)). You have a right to legal aid if you are poor, a child, a woman, are in need of special care, are elderly, disabled, or suffer from an infectious disease (Legal Aid Law, Art. 2(b)).

You have a right to access your lawyer (Constitution, Art. 375; Courts Manual, para. 455; High Court Notification No.2 (General), 16th February 1927; Prisons Act, Art. 40; Police Manual, para. 74).

You have a right to a lawyer who loyally respects your interests and not negligent (Legal Practitioners Act, Art. 44; 1968, BLR (High Court) Page 264; UN Declaration on the Basic Principles on the Role of Lawyers, 12).

You have the right to confidential communications with your lawyer, including during prison visits (Evidence Act, Art. 126; Prison Act, Art. 40).

Right to use the Constitution

You have a right to ask for your Constitutional rights to be enforced (Nga Pein v The Union of Burma, 1953 BLR (SC) 116a).

You have a right to ask a court to test the constitutionality of any law or policy (U Htwe (a) A. E. Madari v. U Tun Ohn & One. 1948 BLR (SC) 541, at 560-61).
Right to use international law and standards

You have a right for your defence to refer beyond Myanmar's Constitution to the statements, principles, and doctrine in other countries (Daw Si Si v. Union of Myanmar, (1964) BLR 876).

You have a right that your defence and appeal complies with international law and standards (Legal Aid Law 2017 Amendment, Art. 3(b)).

Right to be presumed innocent

You have the right to be presumed innocent until proven guilty (Union of Burma v. U Aye Kyi, 1964 BLR 396; UDHR, Art. 11(1)).

The burden of proof is on the prosecution, not on you (Evidence Act, Arts. 101-104).

The benefit of doubt is on you (Daw Tin Oo and U Aye Phe (3) v Union, 1966 BLR 129).

The standard of “proof” is defined (Evidence Act, Art. 3).

If you give an explanation which may reasonably be true, even though it is not believed by the Court, you are entitled to an acquittal (M. Muthiah Servai v. Union, 1955 BLR (HC) 175).

Right to due process

You have the right to due process and a fair trial (Constitution, Arts. 19, 38, 353, and 381; ICCPR, Art. 9(1)).
You have the right to a public trial (Union Judiciary Law 2010, Art. 3(b); Code of Criminal Procedure, Art. 352; UDHR, Art. 10).

You have a right to hear the evidence (Code of Criminal Procedure, Art. 353).

You have a right to only pay fees consistent with the law (Union Judiciary Law, Art. 73; Courts Manual 1999, para. 76 and Art. 103(44)).

You have a right to report corruption (Anti-Corruption Law; Penal Code, Arts. 161-171).

You have the right to request bail (Constitution, Arts. 376-378; UDHR, Art. 9; ICCPR, Art. 9).

Police must get permission from a judge to extend detention beyond 24 hours. You must be present in the court for any extension. Police must show the judge why further investigation is necessary and why further detention is necessary (Code of Criminal Procedure, Art. 167).

You have a right to oppose further detention (Court Manual, para. 403).

The police or the court shall allow bail for bailable offences. (Code of Criminal Procedure, Art. 496).

When any person accused of any non-bailable offence is arrested or detained without warrant by an officer
Right to equal protection of the law

You have the right to equal protection of the law regardless of your gender, ethnicity, religion, or citizenship (Constitution, Art. 347; UDHR Art 2 and 7).

Right to interpretation

You have the right to interpretation in court (Code of Criminal Procedure, Art 361; ICCPR Art 14(3)(a)).

You have the right to interpretation when in custody, including by braille or sign language (Legal Aid Law 2017, Art 27; ICCPR Art 14(3)(a)).

You have the right to translate confessions (Code of Criminal Procedure, Art 364; ICCPR Art 14(3)(a)).
Your lawyer’s rights


Right to provide you with representation (Courts Manual, Vol. II, para. 455)

Right to hear the evidence and the witnesses (Code of Criminal Procedure, Art. 353 and 360).


Right to sufficient time to receive instructions and study documents (Courts Manual, Vol. II, Art. 457; ICCPR, Art. 14(3)(b)).

Right not to be identified with you or your cause (Constitution, Art. 375; UN Declaration on the Basic Principles on the Role of the Lawyer, Principle 18).
Creating a defence strategy

All defendants face Myanmar’s deeply undemocratic judicial system. While some defendants choose to fight the legitimacy of their case, knowing that they may get a worse sentence as a result, many others are forced to make demeaning choices in order to escape unjust punishment. Some confess in the hope of speeding up their case so that they are freed from prison more quickly. Others try to get their charges changed to reduce the length of imprisonment. These are all legitimate defence strategies.

Only you should decide your own defence strategy. You should try to seek legal advice from a lawyer as soon as possible before deciding. A lawyer can provide guidance, defend in court, and ensure information reaches families and friends. They will prepare documents and information on the case. If possible, choose a lawyer that has previous experience fighting similar charges, because they will know what works and what does not.

Your lawyer will develop a defence strategy. They will:

1. Review all available information
2. Check the law to determine the essential elements of the crime
3. Investigate the facts of your case
4. Predict what the plaintiff will say.

Based on this, your lawyer will decide the weaknesses in your case and the weaknesses in the prosecution’s case. They will do this by looking at the evidence that supports you and the evidence that supports the prosecution. There are a number of general defence strategies which can be used separately or in combination.
Withdrawal

Your defence strategy may be to try to get the plaintiff to withdraw the case. This is a private discussion between the defendant and the plaintiff. This may mean apologising and paying for any of the plaintiff’s loses. If a plaintiff agrees, they must apply to the court through the law office to withdraw the case (Criminal Procedure Code Article 494). A defendant will be discharged or acquitted depending on the prosecution stage.

Denial: Insufficient proof

You are innocent until proven guilty. It is the prosecutor’s job to prove you guilty. The prosecutor must show sufficient proof that:

1. You acted according to your own free will
2. You had criminal intent (mens rea). You were criminally negligent. You had the specific skill/knowledge necessary to commit the crime
3. Your act resulted in the ultimate harm. You directly caused it
4. You failed a legal obligation.

Your defence strategy may be to create reasonable doubt in the evidence for these. If there is insufficient proof then you can request that the court either judges you innocent or dismisses the charges. All evidence must conform to the Evidence Act.
Denial: Proving innocence

Your defence strategy may be to argue that you are innocent. Proving your innocence may include:

1. Using a witness alibi
2. Proving that the crime did not happen
3. Demonstrating that material evidence is weak
4. Showing that others had the same opportunity to commit the crime and may be guilty instead of you.

Denial: Mistake of fact

Your defence strategy may be to argue that although you committed the act you did so on the basis of a mistaken understanding of the facts. You would argue that you honestly believed in certain facts that later turned out to be mistaken. If the facts were mistaken, then you would argue that you did not have the required level of intention (mens rea) to do the act. A person who did not intend an act should not be held liable for it.
Confession

Your defence strategy may be to confess. According to the law you can do this by admitting guilt to the police or confessing to a judge. You should not admit guilt to the police. If you decide to confess to a judge, you should still consider getting a lawyer because they can advise you on how to confess in a way that may reduce any sentence. Also, be careful not to over-confess to a greater crime or to implicate others in a crime.

A judge must explain the facts and the law to you before you confess (AIR 1923 Rangoon p132 Maung Sen; AIR 1931 Bombay p195 (196)). You must know the nature of the charges against you and the consequences of admitting guilt (Sri Sawarmal v. Union of Burma (U Thein Maung), 1954 BLR (HC) 331).

Exculpatory defence: Self-defence

Your defence strategy may be to use an “exculpatory defence” if you cannot deny the act because there is overwhelming evidence. An exculpatory defence admits wrongdoing but argues that you should be freed from culpability for the crime. The act was justified and you bear no legal responsibility for it. “I did it, but...”. You must show that your act was socially accepted or morally principled.

One example of an exculpatory defence is the justification of self-defence. Your defence strategy may be to claim you acted in self-defence when you used defensive force because of a threat of harm from someone else, or when you reasonably perceived such harm. You can also claim self-defence if you used defensive force to protect others from harm.
Example: Protester Min Min called on police officers to physically restrain their colleagues who were arbitrarily beating the people Min Min was protesting with. Min Min’s defence lawyer argued that Min Min acted because of concern about the threat of harm to the protesters.

Exculpatory defence: Acting to prevent a crime

Your defence strategy may be to claim that you acted in order to prevent a specific and more serious crime from happening. This strategy is similar to self-defence except you will need to show evidence of a specific crime, and that the specific crime was more harmful than your act, and evidence of how your act helped to stop it.

Example: Activist Min Min urged other activists to destroy a road. Min Min’s defence lawyer claimed that Min Min acted in order to stop soldiers who were using the road to commit the far more serious crime of beating unarmed civilians in a village.

Exculpatory defence: Necessity

Your defence strategy may be to claim that your act was necessary to prevent a greater harm. It is similar to self-defence and acting to prevent a crime. You must show evidence of the greater harm and show that it was greater than any harm that your act caused. You must also show that there was no reasonable alternative to your act and that you stopped your act as soon as possible. You must show that you did not create the greater harm too.
Exculpatory defence: Provocation

Your defence strategy may be to claim that you were provoked by preceding events that would have caused any reasonable person to lose control. A provoked person has an irresistible urge to act and is not governed by reason. It is a sudden and temporary loss of control. Provocation reduces intention (mens rea) as it questions the extent to which you intended to commit the crime. The defence of provocation requires that you show that any reasonable person would respond in a similar way. You should claim that you were less morally culpable for the act because it was not premeditated and not done out of malice.

Example: Parent Nan May witnessed their child being seriously hurt and immediately urged neighbours to punish the perpetrators. Nan May’s defence lawyer claimed that it was reasonable for Nan May to become so angry that he lost control and he should not be held culpable.
Exculpatory defence: Mitigating circumstances

Your defence strategy may be to show mitigating circumstances in order to reduce any sentence, including:

- No criminal record
- Remorse and self-examination
- Defence of infancy: Defendant is aged under 18 (10 is the age of criminal responsibility)
- Defence of diminished responsibility: Being affected by or treated for physical or mental ill-health, including defence of “insanity”
- Compensation given to a “victim”
- Care responsibilities for elderly or children
- Difficult childhood or great hardships
- Good work experience
- Good educational background
- Significant contributions to society
- Attending the full trial without fail.

- Circumstances in order to reduce any sentence, including:
  - Admission of guilt: Defendant pleads guilty
  - Good character or reputation
  - Good educational background
  - Demonstrating the defendant’s remorse and self-examination
  - Affirmative steps to avoid committing the crime
  - Contributing to the economic welfare of the community
  - Compensating (financial or otherwise) for any harm caused
  - “Insanity” (mental illness or defect)
  - Age of the defendant under 18 (in some jurisdictions)
  - Demonstrating the defendant’s capacity to understand the nature and consequences of the act
  - Evidence of a mental disorder or disease at the time of the crime
  - Evidence of a mental disorder or disease at the time of the trial
  - Evidence of a mental disorder or disease at the time of the sentencing
  - Evidence of a mental disorder or disease at the time of the appeal

- Exculpatory defence:
  - Attending the full trial without fail.

- Good educational background

- Difficult childhood or great hardships

- Good work experience

- Significant contributions to society

- Attending the full trial without fail.
Legal defence strategies specific to “false news”

Strategy 1: Not you, not news

Wrong person

Your first defence strategy may be to cast doubt on the allegation that it was you who created, published, distributed, shared, or otherwise made available the information. You may deny that you did so and ask that the prosecution proves it was you. You may claim that you were not the only person who had access to the information or the means of publication. If the information was online, you may claim that it was not your account, that it was a common name, that it was impersonation, or that your account was hacked.

Example: Min Aung was prosecuted for “false news” for a TikTok video about the military. Min Aung’s lawyer argued in court that Min Aung is a very common name and the prosecution has not proved that the TikTok account was his and not a different Min Aung.

Information was not “news”

Your defence strategy may be to deny that the information was “news”. The term “news” can be defined as information purporting to be correct, verified, and professionally presented, usually by a media outlet, and disseminated to an audience. You would argue that your information was more similar to a personal comment, in an informal style, without branding, and was seen by a small audience. You
ဗားကြေးသက်သကူပေပးရန်တာင်းဆိုင်သည်။ ရားစွဲဆိုရာတွင်စွဲဆိုထားသည့် သတင်းအချက်အလက်များမြင့်တင်သည်။ သတင်းအချက်လက်များမြင့်တင်သည် တာဝန်ကိုအြခားပစ်မှုများအတွက် တရားများတွင် မြန်ကန်တာင်းသက်သကူပေပးရန်တာဝန်သည် (တရားများတွင်မြန်ကန်တာင်းသက်သကူပေရန် တာဝန်သည်တရားခံအေပြေရဖျက်သည်။) ဆိုက်ခဏကျေရာက်သည်။ (တရားများတွင်မြန်ကန်တာင်းသက်သကူပေရန် တာဝန်သည်တရားခံအေပြေရဖျက်မှုကို ဆိုက်ခဏကျေရာက်သည်ဟုလည်းမြင့်တင်ဆိုင်သည်။ သင်၏ ခံချပေရးနှစ်ဟာသည် အချက်အလက်များမြင့်တင်သည်ဟုလည်း မြင့်တင်ဆိုင်သည်။ သင်သည် ပေရာဖက်မင်နယ်မီဒီယာမဟုတ်တာဝန်ကိုအေပြေရဖျက်သည်။) အဆိုပါ တရားစွဲဆိုချက်သည် မင်မင်း၏သတင်းအချက်များအေသကာင်း ေရးသားပီးေနာက် 例 မည်သူမဆိုင်ကျိုးတင်မဟုတ်ဘဲကိုယ်ပိုင်အတင်းပူးပေါင်းပီးေနာက် 例 င်ရားကြေးသက်သကူဟာသည်မင်းမင်း၏ ေဆာက်မှန်ကန်သည်။ တရားအချက်အလက်များအေသကာင်း ေရးသားပီးေနာက် 例 မည်သူမဆိုင်ကျိုးတင်မဟုတ်ဘဲကိုယ်ပိုင်အတင်းပူးပေါင်းပီးေနာက်

Strategy 2: Deny falsity

Information was not false

Your defence strategy may be to deny that the information was false and ask that the prosecution proves the falsity. The burden of proof in defamation cases is often on the defendant to prove accuracy (reversing due process which is that you are innocent until proven guilty). But “false news” is not defamation and you may encourage the court to place the burden of proof with the prosecution in accordance with due process for other crimes. You may still be asked to prove that the information was true but this does not stop you from also asking that the prosecution proves the information was false.

Example: Min Min was tried for “false news” after writing about people fleeing from Sagaing Region. Min Min’s lawyer argued that the prosecution has not proved that the allegations were false, and therefore no crime had been committed.
Information was not false in a material respect

Your defence strategy may be to deny that the information was false in a “material respect”. In democracies, laws and case law relating to perjury, for example, require that the prosecution shows that an error was significant and not merely trivial or inconsequential. A significant error is called “false in a material respect”. A significant error is an error that is substantive and undermines the whole information. You would argue that the information was true in a material respect, and any errors were trivial or inconsequential.

Example: Nan May was arrested for “false news” after saying that companies were transporting illegally cut trees through Kalaw Township on Friday. Nan May’s lawyer argued that although the date was incorrect, cut trees were being transported and therefore the information was not materially false.

Information was accurate

Your defence strategy may be to prove that the information was accurate or “true”. You should argue that accurate information, however uncomfortable, cannot be regarded as “false news”. Information is accurate if and only if it corresponds to some facts. Identifying facts may be difficult but advice can be found in journalist training manuals for example. Facts can be found in books, independent media, reliable online sources, in witnesses, or in testimonies by experts.

Example: Salai was prosecuted for “false news” after posting on Facebook about local corruption. Salai’s lawyer brought witnesses to the court who testified that they had paid bribes to different public officials.
Strategy 3: Deny liability

Information was reasonably believed to be accurate

Your defence strategy may be to show that you had reasonable grounds to believe that the information was accurate, even if it later turned out to be false (Penal Code, article 505 exception). “Reasonable grounds” is a set of facts or circumstances that would cause an ordinary person to form the same opinion. It is more than suspicion but less than evidence. You would show that any reasonable person would reach the same conclusion as you if they were presented with the same information from the same source. In this case, you intended to share accurate information, even if it later turned out to be false, and your actions were reasonable so you cannot be regarded as acting in a negligent way.

Example: May Thu was tried for “false news” after recording local police and alleging that they were taking bribes in the video. May Thu’s lawyer brought witnesses to the court who testified that if they saw the same video, they would also believe that the police were taking bribes.
ပိုင်ဆိုင်ရာရေးရာမှုများ

အသစ်အား သင်၏ ခံချပေရးသောဟာဦးဖစ်သည်။

d) ထိုးရှင်းစွဲဆိုမှုတွင် သင်သည်သိရသည်။

c) ယူယူသောကာင်းပြားရန်မည်ဖစ်သည်။

d) သတင်းအချက်အလက်များနှင့် သိထားမည်။ သိထားသည်ကိုနှင့် ပျက်ခစားမည်ဖစ်သည်။

လည်းအများပေါင်းသော သေချာက်ကောင်းသည်။

ကိုးရက်များကို စိုက်ပျူများကို ကောင်းကုန်မည်ဖစ်သည်။

Information was in good faith

Your defence strategy may be to show that you acted in good faith. Any communication made in good faith is protected under the Penal Code (article 93). You should show that you communicated honestly, fairly, and sincerely.

Example: Dr Kaung was arrested for “false news” after warning a journalist about the increasing number of Covid cases. Dr Kaung’s lawyer argued that the doctor communicated in good faith intending to keep the general public safe, even if the number was incorrect.

Information was fair comment

Your defence strategy may be to claim that the information was a matter of “fair comment”. Fair or honest comment refers to information that is of public interest. It may include false information provided that the information has not been shared with malice or with intent to harm the plaintiff. Fair comment is commonly found in defences against allegations of defamation.

Example: Yatanar was tried for “false news” after posting on Facebook that she was concerned about corruption in the building of a new school. Yatanar’s lawyer argued that Yatanar was only interested in getting the best school possible and not trying to make allegations against school officials.

Information was unintentionally false

Your defence strategy may be to deny that you acted intentionally. The prosecution must prove that you both shared false information (actus reas) and intended to share false information (mens rea). Proving intention (mens rea) requires proving that you both intended to share false information and
intended any consequences of sharing the false information. If the prosecution cannot prove intention, they should have to prove that you were negligent. You may also use a similar defence to defend against any allegations that you omitted information.

Example: Swar Win was arrested for “false news” after referring to a toxic chemical in an article about factories in Yangon. Swar Win’s lawyer argued that Swar Win accidentally wrote the wrong chemical name and did not intend for the public consequences.


Information was words of others

Your defence strategy may be to show that the information was the words of others, and you were merely repeating it. This is commonly found in defences against allegations of defamation and is often used by the media. You would argue that you cannot be held primarily responsible for a statement that was first made by someone else. You may have repeated the information, but you did not create it.

Example: Sai was tried for “false news” after posting a political leader’s comments on Facebook. Sai’s lawyer argued in court that if the comments included false information, then any liability is with the political leader because Sai was only repeating the leader’s words.
**Information was intended to be insincere**

Your defence strategy may be to claim that the information was intentionally insincere. Insincere information includes jokes, mockery, satire, and parody. Insincere information should not be labelled true or false because it is not intended to be regarded as a statement of fact.

Example: Mohammed was arrested after publishing a poem about Covid-19 vaccinations. Mohammed’s lawyer argued that the poem was a parody of vaccine deniers and repeating their claims was intended to be interpreted as mocking them.

**Strategy 4: Damage limitation**

**Information did not cause harm**

Your defence strategy may be to deny that the information caused harm. You would ask the prosecution to prove that the information caused harm. Harm means any injury, loss, or damage. Any claim of harm should be clear, measurable, and supported by evidence. See FEM’s publication on defamation law if the harm is to a reputation.

Example: Ohmar was tried for “false news” for claiming that the military was committing war crimes in Kachin State. Ohmar’s lawyer argued that the military could not show clear, measurable harm attributable to only Ohmar’s statement, because everybody was saying that the military was committing such crimes.
Complain to Press Council

If you are or were a journalist, your defence strategy may be to ask the plaintiff to complain to the Myanmar Press Council rather than to the criminal court, in accordance with the News Media Law (article 21). The Press Council is not independent from the Ministry of Information, but it may seek a negotiated resolution between you and the plaintiff, which, although unlikely to be in your favour, would mean that you avoid a criminal punishment.

Example: Aye San was arrested for “false news” following claims that a media photo was faked. Aye San’s lawyer argued that as Aye San was a journalist, the plaintiff should first complain to the Press Council before making a police complaint.

Corrections

Your defence strategy may be to accept that the information was false, offer to delete the information from wherever it was published, and instead replace it with accurate information. This is commonly found in cases against the media and is known as a “correction”. A correction is a form of confession and may reduce or eliminate any punishment. A correction may sometimes include an apology for any harm caused by the information.

Example: Eaindra was prosecuted for “false news” for posting about medicine in hospital maternity wards. Eaindra’s lawyer read out Eaindra’s apology in court which also promised to delete the original post and publish a new one with accurate information in it.
Prior approval for prosecution of officials

If you are or were an official, your defence strategy may be to claim that any prosecution of an official for “false news” must be approved by a head of the department (Criminal Procedure Code, Article 197(1)). This would include officials participating in the Civil Disobedience Movement.
Acknowledgements

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About FEM

Free Expression Myanmar (FEM) is a national human rights organisation that is expert in free expression and information, engaging in legal reform, defending victims of violations, and promoting best international standards.

This report forms part of FEM’s objective to promote appropriate and needed reforms. See:

- [www.FreeExpressionMyanmar.org](http://www.FreeExpressionMyanmar.org)
- [www.facebook.com/FreeExpressionMyanmar](http://www.facebook.com/FreeExpressionMyanmar)
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FEM would also like to thank International Bridges to Justice and the British Council for their useful manuals on criminal defence.
Defence lawyers’ toolkit for “false news” cases in Myanmar

Hundreds of innocent journalists, human rights defenders, activists, Facebook users, protesters, and politicians have been arrested, charged, and sentenced under Myanmar’s “false news” laws for exercising their right to freedom of expression and opposing the coup.

The “False News” Toolkit empowers defendants, lawyers, and their civil society supporters to defend themselves against allegations of “false news” as part of an incremental resistance against Myanmar’s deeply unjust legal system.

The “False News” Toolkit includes guidance on: 1) relevant international standards; 2) the situation and laws in Myanmar; 3) your rights and options when detained, arrested, or charged; 4) potential legal defence strategies. Each page is written in Myanmar but repeated in English to enable you to research further and communicate with different audiences too.