

The Invisible Boundary – Criminal prosecutions of journalism in Myanmar

Report by the Office of the United Nations High Commissioner for Human Rights (OHCHR)

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Introduction

The present report is produced by the Office of the United Nations High Commissioner for Human Rights pursuant to the universal mandate of the High Commissioner for Human Rights under General Assembly resolution 48/141. The report examines the freedom of the press in Myanmar and the impact that high profile prosecutions of journalists have had in creating a culture of self-censorship among journalists during the country's transition to democracy.

Through an analysis of five individual cases, the report examines the use of a range of legal provisions to target independent journalism, including vague and overbroad laws that are inconsistent with the right to freedom of expression and are applied in a manner that falls short of the relevant standards set out in international human rights law. The report examines the instrumentalization of the law and of the courts by the Government and military in what constitutes a political campaign against independent journalism. The report also demonstrates the failure of the judiciary to uphold the fair trial rights of those targeted.

The report concludes with recommendations to the Myanmar authorities to ensure the freedom of the press and uphold the right to freedom of expression of journalists.

Methodology

Without access to the country, the report was prepared based on extensive research of five cases which are considered as illustrating wider trends where the freedom of the press in Myanmar is concerned and interviews with journalists targeted in those cases.

Background

During the five decades of military rule it experienced, Myanmar had one of the world's most restrictive media regimes. Press Scrutiny Boards, established under the 1962 *Printers and Publishers Registration Act*, inspected material prior to publication and Myanmar was considered one of the world's "least free" countries where press freedom was concerned.¹ A new *Media Law*, passed in 2014, while far from perfect, indicated that freedom of the press in Myanmar was on a positive trajectory by guaranteeing journalists "freedom from censorship to express, publish or distribute freely" and expressly designating the media as the "Fourth Estate" of the nation.²

While the country has made some advances in the field of freedom of the press, the optimism of the early years of the democratic transition has latterly begun to fade. In her March 2018 report to the United Nations Human Rights Council, the United Nations Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, stated that the era of openness, transparency and the expansion of democratic space that was promised by the democratic transition was yet to be realized.³ She concluded that the civilian National League for Democracy (NLD) Government had fallen back on the repressive practices of previous military governments, with human rights

¹ *Index on Censorship*, Burma: Freedom of expression in transition, July 2013, <https://www.indexoncensorship.org/wp-content/uploads/2013/07/Burma-Freedom-of-Expression-in-Transition.pdf>.

² *Media Law* 2014, available at http://www.burmalibrary.org/docs17/2014-Media_Law-en.pdf.

³ Report of the United Nations Special Rapporteur on the situation of human rights in Myanmar, A/HRC/37/70, 9 March 2018, para. 12.

defenders, civil society members and journalists again finding themselves in a perilous position. As noted by the Special Rapporteur, the arrests of 12 journalists in 2017 contributed to a culture of fear, silence and self-censorship among journalists and media personnel in Myanmar.⁴

This report examines the freedom of the press in Myanmar since the NLD came into government and, specifically, how the arrests of independent journalists has made it impossible for journalists to do their job without fear or favour. These arrests, and the prosecutions that have followed in several cases, have signalled to the media in Myanmar the existence of what one targeted journalist described to OHCHR as “an invisible boundary”: a line separating what is viewed as acceptable or problematic journalism in Myanmar. This line is not demarcated by international human rights standards, such as the right to freedom of expression, but by the political exigencies of the day, as determined by the NLD Government and the military, which continues to retain pre-eminence in Myanmar despite the democratic transition.

The Right to Freedom of Expression and the Freedom of the Press in international law and Myanmar legislation

The right to freedom of expression is enshrined in Article 19 of the Universal Declaration of Human Rights. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) elaborates on this right, including by setting out the circumstances in which it may be legitimately restricted. While Myanmar is not a State party to the ICCPR, it accepted recommendations to accede to it during its review under the second cycle of Universal Periodic Review.⁵ Furthermore, Myanmar is a State party to the Convention on the Rights of the Child⁶ and the Convention on the Rights of Persons with Disabilities⁷, both of which include provisions on the right to freedom of expression.

As the authoritative formulation of the right in international law, Article 19 of the ICCPR is referred to throughout this report as the basis for assessing levels of enjoyment and curtailment of freedom of expression in Myanmar.

Article 19(3) of the ICCPR sets out specific conditions that must be satisfied in order for any restriction on the right to freedom of expression to be lawful under international human rights law, namely to respect the rights and reputation of others, or for the protection of national security, public order, public health or morals. Moreover, restrictions must be “be provided by law” and must conform to strict tests of “necessity” and “proportionality”. Restrictions on the right to freedom of expression must therefore be “necessary” to achieve a legitimate purpose and must be “proportionate to the interest protected”.⁸

The right to information is an inherent component of the right to freedom of expression which, as outlined in Article 19 of the Universal Declaration for Human Rights and Article 19 of the ICCPR, includes the freedom “to seek, receive and impart information and ideas through any media and regardless of frontiers”.⁹ The freedom of the press is rooted in the right to information.

The right to information extends to information held by all public bodies, whether legislative, executive or judicial, and applies to other entities carrying out public functions.¹⁰ It is grounded in

⁴ Report of the United Nations Special Rapporteur on the situation of human rights in Myanmar, A/HRC/37/70, 9 March 2018, para. 16.

⁵ Report of the Working Group on the Universal Periodic Review – Myanmar, A/HRC/31/13, 23 December 2015, para. 143.

⁶ Article 13.

⁷ Article 21.

⁸ Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para. 34.

⁹ Universal Declaration of Human Rights, Article 19. See also the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, on the right to access to information (A/68/362).

¹⁰ General Comment No. 34, paras. 7 and 19.

the public's right to know "information of public interest".¹¹ To give effect to the right to access information, the United Nations Human Rights Committee has called on governments to proactively put in the public domain, government information of public interest and to take measures to ensure "a free, uncensored and unhindered press or other media".¹² The Human Rights Committee notes in its General Comment 34 that freedom of the press is "essential in any society" and is "one of the cornerstones of a democratic society".¹³ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that "the right to be informed and to receive information from various media ... supports the construction of more democratic societies peopled by active citizens who hold informed opinions about the situation in their country and have the capacity and opportunity to propose and contribute to public policies and to demand transparency".¹⁴ The freedom of the press is of particular importance in the context of a democratic transition such as the one underway in Myanmar.

The 2008 Myanmar Constitution provides for the right of every citizen to "express and publish freely their convictions and opinions", albeit subject to the caveat that this is done in a way that is "not contrary to the laws, enacted for Union [of Myanmar] security, prevalence of law and order, community peace and tranquillity or public order and morality".¹⁵ While these grounds to a certain extent echo those set out in Article 19 of the ICCPR for legitimately restricting the right to freedom of expression, unlike the latter, the Constitution does not state that restrictions must be narrowly and proportionately applied.

In targeting journalists and other media personnel for their work, the authorities of Myanmar rely on a set of laws which are inconsistent with the right to freedom of expression and/or are applied in a manner that falls short of the standards contained in Article 19 of the ICCPR. These include old and new laws that specifically limit expression, such as the colonial-era *Penal Code* of 1860, and the *Telecommunications Law* 2013, as amended in 2017, as well as laws that do not specifically pertain to freedom of expression but have been used to punish journalists for their work, such as the *Import-Export Law* 2012 and the *Immigration Act* 1947 and a number of other laws referred to further in the report.

The following sections of this report examine the application of such laws in high profile and emblematic cases. These cases involve violations of the rights of the individual journalists involved. Together, the cases outline to journalists a clear choice between self-censorship and the risk of prosecution.

The "Reuters case" - Kyaw Soe Oo, Wa Lone and the Official Secrets Act

The most high profile case against journalists in Myanmar in recent years is that of two Reuters journalists, Kyaw Soe Oo, also known as Moe Aung, and Thet Oo Maung, also known as Wa Lone. The two men were arrested on 12 December 2017 after leaving a restaurant in Yangon, where they had been invited to meet police officers for dinner.¹⁶ They were accused by police of "news gathering with an intention to damage the safety and interest of the State", and detained under the *Official Secrets Act* (OSA) 1923, Section 3(1)(c) of which concerns situations where "any person for any purpose prejudicial to the safety or interests of the State" obtains or publishes

¹¹ Report by the Special Rapporteur on freedom of expression, 4 September 2013, A/68/362, para. 19; Report by the Special Rapporteur on freedom of expression, 8 September 2015, A/70/61, para. 7.

¹² General Comment No. 34, para. 13.

¹³ General Comment No. 34, para. 13.

¹⁴ Report by the Special Rapporteur on freedom of expression, 20 April 2010, A/HRC/14/23, para. 88.

¹⁵ Article 354.

¹⁶ *The Irrawaddy*, 'Reuters Reports Arrested in Yangon Under Official Secrets Act', 13 December 2017, <https://www.irrawaddy.com/news/burma/breaking-reuters-reporters-arrested-yangon-official-secrets-act.html>.

any document or information “which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy”.¹⁷

According to news reports, the two journalists were arrested in possession of documents concerning security operations in Rakhine State following the post-25 August 2017 violence against the Rohingya Muslim minority.¹⁸ In February 2018, while they were in pre-trial detention, Reuters published an article under their by-line which outlined in detail an alleged massacre by security forces in Inn Din village, Maungdaw township.¹⁹ As the case was proceeding before the courts, the two journalists were denied bail.²⁰

On 3 September 2018, the two men were convicted and sentenced to seven years in prison. The judge found that “confidential documents” discovered on the journalists would have been useful “to enemies of the state and terrorist organizations”.²¹

The case of Kyaw Soe Oo and Wa Lone is illustrative of how the arrests and prosecutions of journalists in Myanmar do not satisfy the conditions of Article 19 of the ICCPR, and are carried out in violation of the right to freedom of expression. It remains unclear what information they are accused of possessing; they testified in court that they were handed materials “without asking” by police on the evening of their arrest.²² The documents in question may have concerned security operations in Rakhine State but the journalists stated that they did not have the opportunity to peruse them before their arrest.²³

For the purposes of Article 19(3) of the ICCPR, for any norm to be characterized as “law”, it must be formulated with sufficient precision to enable an individual to regulate his/her conduct accordingly.²⁴ OSA Section 3(1)(c) is concerned with behaviour carried out for “any purpose prejudicial to the safety or interests of the State”. While that objective falls under the permissible objectives for restrictions to freedom of expression under Article 19(3) of the ICCPR (protection of national security), the formulation of the provision is too vague to satisfy the requirement under the ICCPR.

¹⁷ *The Irrawaddy*, ‘Reuters Reports Arrested in Yangon Under Official Secrets Act’, 13 December 2017, <https://www.irrawaddy.com/news/burma/breaking-reuters-reporters-arrested-yangon-official-secrets-act.html>; *Official Secrets Act* (India Act XIX), 1923, available at <http://www.icnl.org/research/library/files/Myanmar/secrets.pdf>.

¹⁸ *The Irrawaddy*, ‘Lawyers for Reuters Reporters Argue for Myanmar Court to Dismiss Case’, 5 April 2018, <https://www.irrawaddy.com/news/burma/lawyers-reuters-reporters-argue-myanmar-court-dismiss-case.html>; See also, Statement by the United Nations High Commissioner for Human Rights Zeid Ra’ad Al Hussein, Special Session of the Human Rights Council on the human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar, 5 December 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22487&LangID=E>.

¹⁹ *Reuters*, ‘Massacre in Myanmar – A Reuters Special Report’, 8 February 2018, <https://www.reuters.com/investigates/special-report/myanmar-rakhine-events/>.

²⁰ *The New York Times*, ‘They Documented a Massacre. Their Prize Is a Prison Cell in Myanmar’, Richard C. Paddock, 10 April 2018, <https://www.nytimes.com/2018/04/10/world/asia/myanmar-reuters-journalists-massacre.html>; *Reuters*, ‘Myanmar court files secrets act charges against Reuters reporters’ Antoni Slodkowski and Shoon Naing, 9 July 2018, <https://www.reuters.com/article/us-myanmar-journalists-ruling/myanmar-court-files-secrets-act-charges-against-reuters-reporters-idUSKBN1JZ095>.

²¹ *Reuters*, ‘Special Report: How Myanmar punished two reporters for uncovering an atrocity’, John Chalmers, 3 September 2018, <https://www.reuters.com/article/us-myanmar-journalists-trial-specialrepo/special-report-how-myanmar-punished-two-reporters-for-uncovering-an-atrocity-idUSKCN1LJ167>.

²² *Reuters*, ‘Reuters reporter says Myanmar police planted ‘secret’ papers’, Shoon Naing and Simon Lewis, 23 July 2018, <https://www.reuters.com/article/us-myanmar-journalists/reuters-reporter-says-myanmar-police-planted-secret-papers-idUSKBN1KD1O3>.

²³ *Reuters*, ‘Myanmar police insisted on meeting, gave documents: Reuters reporter’ Shoon Naing and Kanupriya Kapoor, 16 July 2018, <https://www.reuters.com/article/us-myanmar-journalists/myanmar-police-insisted-on-meeting-gave-documents-reuters-reporter-idUSKBN1K50XQ>.

²⁴ General Comment No. 34, para. 25.

The Human Rights Committee has held that States must proceed with extreme care when drafting restrictions in the name of national security, including where they are referred to as official secrets. It also emphasized that restrictions must not confer excessive discretion to those charged with executing such laws. OSA Section 3(1)(c) is ambiguous to the point that it is unclear what behaviour is proscribed.²⁵ Sub-section (1)(c) states that an individual commits an offence where he/she obtains a document or information “which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy”. Nowhere in the OSA is the term “enemy” defined and there is no guidance as to how information would be deemed useful to an enemy whether directly or indirectly. At any rate, a document or information that is directly or indirectly useful to “an enemy” does not necessarily pose a threat to national security.²⁶ As such, sub-section 3(1)(c) appears to lack the specificity required to comply with the “provided by law” criteria for the protection of national security.

When considering whether a specific restriction is “necessary” for a legitimate purpose, the test is whether the same objective could be achieved through other means without restricting the right to freedom of expression.²⁷ The State must establish a direct and immediate connection between the expression and the threat claimed to exist.²⁸ Whereas in a broad sense, OSA Section 3(1)(c) may be viewed as pursuing the legitimate objective of protecting national security, it does so in an extremely restrictive manner, through arrest, detention without bail, and imprisonment for up to 14 years.²⁹

In the Reuters case, the journalists were convicted for receiving information from police officials that the authorities deemed to pose a threat to national security. Even if one was to accept that the objective of protecting national security in this case may be legitimate, a range of less radical measures would have achieved the commensurate levels of protection without the same impact on the right to freedom of expression and liberty of the person, including injunctive measures precluding publication of the information, the confiscation of the documents in question, or the imposition of fines.

The “necessity” test additionally requires proportionality between the restriction and the protective function it seeks to achieve. In the situation at hand, in receiving the documents in question the journalists must be shown to pose a specific risk of harm to a legitimate State interest that outweighs the public interest in the disclosure of the information contained in those documents.³⁰ If disclosure would not harm a legitimate State interest, there is no basis for withholding the information. In the current case, the information the journalists received reportedly related to the massacre of ten men in Inn Din village – a massacre which the authorities subsequently admitted responsibility for.³¹ The Special Rapporteur on freedom of expression has outlined that certain information should be considered presumptively in the public interest, including information concerning criminal offences and human rights or international humanitarian law violations.³²

²⁵ General Comment No. 34, para. 30.

²⁶ For elaboration on ‘national security’, see, Report by the Special Rapporteur on freedom of expression, 6 September 2016, A/71/373, para. 18. See also, *Human Rights Watch*, ‘Burma: Journalists Feared “Disappeared”’, 20 December 2017, <https://www.hrw.org/news/2017/12/20/burma-journalists-feared-disappeared>.

²⁷ General Comment No. 34, para. 33. See also, United Nations Commission on Human Rights, ‘The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’, 28 September 1984, E/CN.4/1985/4, para. 10.

²⁸ General Comment No. 34, para. 35.

²⁹ Section 12 of OSA provides that an offence under Section 3 that is punishable for a period of imprisonment up to 14 years is a non-bailable offence.

³⁰ Report by the Special Rapporteur on freedom of expression, 8 September 2015, A/70/361, para. 10.

³¹ See, *BBC*, ‘Rohingya crisis: Myanmar army admits killings’, 10 January 2018, <https://www.bbc.com/news/world-asia-42639418>; *Reuters*, ‘Seven Myanmar soldiers sentenced to 10 years for Rohingya massacre’, Shoon Naing, and Thu Thu Aung, 11 April 2018, <https://www.reuters.com/article/us-myanmar-rohingya-military/seven-myanmar-soldiers-sentenced-to-10-years-for-rohingya-massacre-idUSKBN1HH2ZS>.

³² Report by the Special Rapporteur on freedom of expression, 8 September 2015, A/70/361, para. 10.

While the contents of the documents given to the two journalists remains unknown, it is difficult to accept any argument that receiving or publishing information concerning the massacre at Inn Din would have caused a threat to national security that outweighed the very obvious public interest in the publication of the information.³³

Given the above considerations, the arrest, prosecution and conviction of Kyaw Soe Oo and Wa Lone is in clear violation of international standards on the right to freedom of expression. Moreover, if their allegation that they were arrested for possessing documents they were given by police is proven to be true - an allegation supported by one of the arresting police officers in his testimony for the prosecution - the case is one of entrapment of the journalists by the authorities rather than an act in defence of national security.³⁴

In an interview with OHCHR, Swe Win, the editor of *Myanmar Now* who is being prosecuted on a charge of defamation (see below), expressed the view that the arrest and prosecution of Kyaw Soe Oo and Wa Lone aimed at deterring journalists from reporting on events in Rakhine State, specifically the violence that occurred in the post-25 August 2017 period. It should be noted that since an earlier episode of violence in October 2016, international journalists have been unable to freely access Rakhine State. Although access has also been restricted for local journalists, some, including Kyaw Soe Oo (who is Rakhine Buddhist) and Wa Lone, have managed to gain entry and carry out investigations. The broader impact of their conviction may be to deter others from seeking to do the same, with the result that media access to northern Rakhine State will be limited to the controlled and chaperoned tours the government periodically organizes to the region.

Unlawful Associations - the “Drug Burning” and “Kachin Baptists” cases

In conflict-affected areas of the country, a similar deterrent effect is being achieved through arrests and prosecutions of journalists under the *Unlawful Associations Act* (UAA) 1908. UAA Section 17(1) prohibits membership of and assistance to unlawful associations. With over 100,000 people displaced by conflict in Kachin and Shan states, and where the Myanmar military is alleged to

³³ See, *Reuters*, ‘Massacre in Myanmar: A Reuters Special Report’, Wa Lone, Kyaw Soe Oo, Simon Lewis, and Antoni Slodkowski, 8 February 2018, <https://www.reuters.com/investigates/special-report/myanmar-rakhine-events/>. The Global Principles on National Security and the Rights to Information (Tshwane Principles) provide a further means for analysing the case of the two Reuters journalists. These non-binding principles were developed to provide guidance to those engaged in drafting, revising, or implementing laws relating to the state’s authority to withhold information on national security grounds or to punish the disclosure of such information. Principle 10A states that there is “an overriding public interest in disclosure of information regarding gross violations of human rights or serious violations of international humanitarian” and that “[s]uch information may not be withheld on national security grounds in any circumstances”. Of particular relevance to the Reuters case is the principle that information should not be withheld on national security grounds in a manner that would prevent accountability for the human rights violations. It is highly likely that the soldiers who were convicted for the massacre at Inn Din would not have been held accountable were it not for the work of Wa Lone and Kyaw Soe Oo. The case is the only instance in which any level of accountability has been achieved through the domestic system, albeit in proceedings that did not meet the required threshold of independence and impartiality given that they were conducted by a military court that is under the same chain of command that is accused of responsibility for the crimes against the Rohingya. That the two journalists should be convicted for this work is clearly contrary to the Tshwane Principles which also state, in Principle 47, that journalists who do not work for the government should not be prosecuted, even where they receive or disclose classified information. See, <https://www.icj.org/wp-content/uploads/2013/06/Global-Principles-on-National-Security-and-the-Right-to-Information-Tshwane-Principles-June-2013.pdf>.

³⁴ According to Police Captain Moe Yan Naing, the arresting officers were instructed by their commanding officer to “trap” the two journalists by giving them secret documents. Days after his testimony appeared to derail the prosecution case against the journalists, Moe Yan Naing was given a year prison sentence for violating Myanmar’s Police Disciplinary Act, a move he said would deter other police officers from telling the public the truth. See, *Frontier Myanmar*, ‘Putting me in prison stops other police officers from saying the truth’, Oliver Slow, 9 May 2018, <https://frontiermyanmar.net/en/putting-me-in-prison-stops-other-police-officers-from-saying-the-truth>.

have committed war crimes, the authorities are severely restricting access to conflict-affected areas and taking measures to prevent independent reporting on hostilities by media and human rights organizations.³⁵ In her report to the Human Rights Council presented in March 2018, the Special Rapporteur on Myanmar noted that humanitarian access by international agencies is the worst it has been for four years.³⁶

International journalists have been barred from these areas and while local journalists have gained access, this has resulted in arrests and prosecutions, primarily under UAA Section 17(1). Under the UAA, the authorities maintain a list of unlawful associations, mostly ethnic armed groups that are engaged in hostilities with the military. The list is not public. As part of the peace process, ethnic armed organizations that sign bilateral ceasefire agreements with the Government or the National Ceasefire Agreement are usually removed from the list.

According to the Special Rapporteur on Myanmar, over 100 people in Kachin State alone have been charged under UAA Section 17(1) since the beginning of 2016, most cases having been brought by the Myanmar military.³⁷ The authorities' use of Section 17(1) against journalists in particular appears to aim at controlling and preventing independent reporting on the conflicts and to deter journalists from traveling to conflict-affected areas. Senior General Min Aung Hlaing has publicly sought to direct the work of journalists by urging the media "to serve the national interest as a tool through constructive reports on peace and stability and unity of the nation" and to "help promote patriotism and nationalism".³⁸

Two recent cases highlight how UAA Section 17(1) has been used to restrict independent journalism in conflict areas. In one case – widely referred to as the Drug Burning case – seven men, including three journalists, were arrested on 26 June 2017 by Myanmar soldiers at a checkpoint in northern Shan State while returning from an area under the control of the Ta'ang National Liberation Army (TNLA) – an ethnic armed group engaged in hostilities with the military.³⁹ The three journalists were Aye Nai and Pyae Phone Aung from *The Democratic Voice of Burma*, and Thein Zaw, also known as Lawi Weng, from *The Irrawaddy*. They were arrested with four others, three of whom, their drivers, were also charged. They are Mai Tun Aye, Sai Aung Kham and Mai Sai Nyunt. The seven men had travelled to an area under TNLA control to report on a drug burning ceremony organized to mark the International Day Against Drug Abuse and Illicit Trafficking. The six were charged under UAA Section 17(1) following a complaint by the military while the seventh man was released without charge shortly after the arrest. The Section 17(1) charges were dropped after the men had spent 67 days in detention.⁴⁰

UAA Section 17 prohibits membership in unlawful associations; taking part in meetings of such associations; contributing, receiving or soliciting contributions for them; or in any way assisting

³⁵ Statement by United Nations High Commissioner for Human Rights, 'Zeid urges action to address serious rights violations against Rohingya and other minorities in Myanmar', 20 June 2016,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20137&LangID=E>.

³⁶ Report of the United Nations Special Rapporteur on the situation of human rights in Myanmar, A/HRC/37/70, 9 March 2018, para. 35.

³⁷ Ibid, para. 16.

³⁸ Website of Senior General Ming Aung Hlaing, 'Role of media which is Fourth Estate is important; media urged to serve national interest as a tool through constructive reports on national peace, stability and unity', 28 June 2018, <https://www.seniorgeneralminaugnhlaing.com.mm/en/7627/role-media-fourth-estate-important-media-urged-serve-national-interest-tool-constructive-reports-national-peace-stability-unity/>.

³⁹ DVB, 'DVB reporters among seven detained after TNLA drug-burning event', Ye Mon, 26 June 2017, <http://www.dvb.no/news/dvb-journalists-among-seven-detained-tnla-drug-burning-event/76219>.

⁴⁰ *The Irrawaddy*, 'Court Drops Charges Against Three Journalists', San Yamin Aung, 15 September 2017, <https://www.irrawaddy.com/news/burma/court-drops-charges-three-journalists.html>.

their operations.⁴¹ While Section 17(1) appears to be worded with sufficient precision that it targets actual membership of or work on behalf of unlawful associations, it is routinely used to allege that any contact with an ethnic armed group is tantamount to a criminal offence. The fact that the three journalists were covering activities by TNLA that were unconnected to the conflict highlights the military's sensitivity towards any independent reporting on ethnic armed groups or from non-government controlled territory, and illustrates how promptly the authorities consider that journalists have overstepped the boundary between what they consider as acceptable and impermissible reporting.

Another case under UAA 17(1) is that of two Kachin Baptists, Dumdaw Nawng Lat and Kangjaw Gam Sen. They are not journalists but were arrested under Section 17(1) for assisting journalists who had travelled to northern Shan State to report on the conflict there between the military and the Northern Alliance – an alliance of four ethnic armed groups.⁴² They were arrested on 24 December 2016 after several news outlets in Yangon printed photographs of a Catholic Church that was allegedly damaged by military airstrikes. They were held incommunicado for several weeks, accused of assisting the journalists who took these photographs.⁴³ On 27 October 2017, they received prison sentences of two years and three months under UAA Article 17(1) and Article 8 of the *Import-Export Law* 2012; the latter charge being related to their alleged use of unlicensed motorbikes.⁴⁴ Dumdaw Nawng Lat received an additional two-year sentence for defamation under Section 500 of the *Penal Code* for alleging in an interview with the *Voice of America* that the military had bombed civilians during fighting with ethnic armed groups.⁴⁵ As part of a general presidential amnesty on 17 April 2018, the two men were released after having spent over 15 months in detention.⁴⁶

One of the six journalists from the Drug Burning case, Lawi Weng, explained in a media interview how journalists rely on local people like Dumdaw Nawng Lat and Langjaw Gam Seng, to cover conflict-related issues in places like Kachin and northern Shan states: “Planning our reporting trips begins with making phone calls to our local sources [...] We decide to make trips often only with their agreement to help us in conflict zones. Our local contacts are so crucial to us. Without their help, no one would know what happened in war zones”.⁴⁷

⁴¹ The English translation of Section 17(1) reads as follows: “Whoever 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, shall be punished with imprisonment for a term [which shall not be less than two years and more than three years and shall also be liable to fine]”. See, *Unlawful Associations Act* [India Act XIV] 1908,

<http://www.icnl.org/research/library/files/Myanmar/UNLAWFUL.pdf>.

⁴² *The Irrawaddy*, ‘Two Kachin Pastors Sentenced for Unlawful Association’, Nyein Nyein, 27 October 2017, <https://www.irrawaddy.com/news/burma/two-kachin-pastors-sentenced-unlawful-association.html>.

⁴³ *Human Rights Watch*, ‘Myanmar: Free Wrongfully Detained Kachin Christian Leaders’, 25 July 2017, <https://www.hrw.org/news/2017/07/25/myanmar-free-wrongfully-detained-kachin-christian-leaders>; *Human Rights Watch*, ‘Burma: Release or Charge Kachin Christians’, 24 January 2017, <https://www.hrw.org/news/2017/01/24/burma-release-or-charge-kachin-christians>.

⁴⁴ *The Irrawaddy*, ‘Two Kachin Pastors Sentenced for Unlawful Association’, Nyein Nyein, 27 October 2017, <https://www.irrawaddy.com/news/burma/two-kachin-pastors-sentenced-unlawful-association.html>.

⁴⁵ *Human Rights Watch*, ‘Myanmar: Free Wrongfully Detained Kachin Christian Leaders’, 25 July 2017, <https://www.hrw.org/news/2017/07/25/myanmar-free-wrongfully-detained-kachin-christian-leaders>; *The Irrawaddy*, ‘Two Kachin Pastors Sentenced for Unlawful Association’, Nyein Nyein, 27 October 2017, <https://www.irrawaddy.com/news/burma/two-kachin-pastors-sentenced-unlawful-association.html>.

⁴⁶ *The Irrawaddy*, ‘8,500 Released in Presidential Pardon, Including 36 Political Prisoners’, Nyein Nyein, 18 April 2018, <https://www.irrawaddy.com/news/burma/8500-released-presidential-pardon-including-36-political-prisoners.html>.

⁴⁷ *Frontier Myanmar*, ‘Reuters journalists’ arrests a reminder of the danger faced by local sources’, Stella Naw, 2 February 2018, <https://frontiermyanmar.net/en/reuters-journalists-arrests-a-reminder-of-the-dangers-faced-by-local-sources>.

The Special Rapporteur on freedom of expression has stressed that under no circumstances should journalists and members of the media, including community-based individuals who have access to and distribute information on alleged human rights violations, be subjected to subsequent punishment.⁴⁸ In the case of the Kachin Baptists, no evidence was presented to support the allegation that they supported the Kachin Independence Army (KIA) – one of the four members of the Northern Alliance – except confessions they signed while being held incommunicado by the military for over three weeks. Lawyers for the two men stated that the confessions were coerced.⁴⁹

The case against the two men highlights how easily an allegation under UAA Section 17(1) can be made while the severity of their punishments was a clear signal to the public about the possible consequences of assisting media reporting on conflict in the country.

Swe Win and Section 66(d) of the *Telecommunications Law*

Myanmar's statute books are replete with provisions that limit and sanction expression, including a range of articles that criminalize defamation. These include *Penal Code* Section 500, Section 34(d) of the *Electronic Transaction Law 2004*, and Section 66(d) of the *Telecommunications Law 2013*.⁵⁰ These provisions have been instrumental in restricting the legitimate exercise of freedom of expression and the freedom of the press. As they permit any offended party to initiate criminal proceedings, these provisions extend the capacity to stifle expression to private individuals.

With a huge upswing in Internet usage in Myanmar in recent years – with one-third of the population online as of 31 December 2017 compared to one per cent in 2014 – Section 66(d) of the *Telecommunications Law* has emerged as a cause of particular concern.⁵¹ Section 66(d) concerns defamation committed via a “telecommunications network”. Between November 2015 and November 2017, 106 complaints were made under this provision, including 13 against journalists.⁵²

⁴⁸ Report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/68/362, 4 September 2013, para. 69; Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, 20 April 2010, paras. 100 and 101.

⁴⁹ *Human Rights Watch*, ‘Myanmar: Free Wrongfully Detained Kachin Christian Leaders’, 25 July 2017, <https://www.hrw.org/news/2017/07/25/myanmar-free-wrongfully-detained-kachin-christian-leaders>.

⁵⁰ See, *International Commission of Jurists*, ‘Myanmar: Briefing Paper on Criminal Defamation Laws’, 26 November 2015, <http://www.burmalibrary.org/docs21/ICJ-2015-11-26-Myanmar-Criminal-Defamation-Laws-Advocacy-Position-paper-en-red.pdf>.

⁵¹ The English translation of Section 66(d) reads as follows: “Whosoever convicted ... of the following [offence] is liable to an imprisonment not exceeding three years or a fine or both: extorting, defaming, disturbing or threatening to any person by using any telecommunications network.” See, *Telecommunications Law 2013* available at <http://freexpressionmyanmar.org/telecommunications-law/>. See also, *Inter World States*, ‘Internet Usage Asia’, <https://www.internetworldstats.com/stats3.htm>; and *The Guardian*, ‘Revealed: Facebook hate speech exploded in Myanmar during Rohingya crisis’, Libby Hogan and Michael Safi, 3 April 2018, <https://www.theguardian.com/world/2018/apr/03/revealed-facebook-hate-speech-exploded-in-myanmar-during-rohingya-crisis>.

⁵² Of the 106 complaints, 23 were filed by public officials while another 21 were filed by members or supporters of political parties; 17 of whom are from the NLD with two from the military aligned Union Solidarity and Development Party. See, *Free Expression Myanmar*, ‘66(d): No real change’, December 2017, <http://freexpressionmyanmar.org/wp-content/uploads/2017/12/66d-no-real-change.pdf>. In the first year of the NLD government, 54 cases were initiated under 66(d) compared to seven under the Thein Sein government and although the military was the complainant in several of the cases initiated since the NLD took power, the government has failed to use the veto power over prosecutions that is vested in the Ministry of Transport and Communications under Section 80 of the law. See, *The Irrawaddy*, ‘Number Jailed Under Article 66(d) Rises to Eight Since NLD Govt’, Htun Htun, 8 April 2017, <https://www.irrawaddy.com/news/burma/number-jailed-under-article-66d-rises-to-eight-since-nld-govt.html>. Section 80 of the law states that “in prosecution under this Law, prior sanction of the Ministry shall be obtained”.

The case against the editor of online newspaper *Myanmar Now*, Swe Win, illustrates the use of Section 66(d) to curtail freedom of the press and foster a culture of self-censorship among journalists and the media more broadly.

The complaint against Swe Win arose from his posting, in March 2017, of an article – previously published in *Myanmar Now* – to his Facebook page which quoted a senior monk as saying that high profile nationalist monk Wirathu’s support for the alleged killers of Muslim lawyer Ko Ni violated the tenets of Buddhism. The complaint was not filed by Wirathu himself but by someone else, Ma Ba Tha member Kyaw Myo Shwe, as permitted under Section 66(d). The filing of the complaint coincided with a decision by the Buddhist authorities in Myanmar to impose a year-long ban against Wirathu on public sermons for previous sermons deemed to have constituted hate speech and for his praise on Facebook of the suspects in the Ko Ni killing – the subject of the article posted by Swe Win.

In a statement issued in April 2017, the Ministry of Religious Affairs outlined its opinion that Swe Win had not contravened the law but had in fact done his job as a journalist. The Ministry stated that the impugned comments had not insulted the Buddhist religion but were based on facts and did not therefore amount to defamation.⁵³

Since the initiation of the case, the complainant, Kyaw Myo Swe, has been arrested and detained.⁵⁴ His detention has given rise to severe delays in the prosecution of Swe Win. In an interview with OHCHR, the latter said that on a few occasions he has undertaken the 600-kilometre journey from his home in Yangon to Mandalay, where the proceedings are taking place, only to learn that Kyaw Myo Swe was not in attendance at the court. On these occasions, proceedings have been postponed and Swe Win has undertaken a 1,200-kilometre round trip only for the case against him to stand still. This may constitute a violation of Swe Win’s right to be tried without undue delay.

The Human Rights Committee has stated that international standards on the right to freedom of expression hold that “it is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously”.⁵⁵ The case has had a profound impact on Swe Win’s ability to perform his professional work as a journalist. He has been arrested and detained and, by his count, has appeared in court more than 30 times. In an interview with OHCHR, Swe Win considered that the case against him was a deliberate case of judicial harassment designed to disrupt his professional life and to send a chilling effect to media outlets and personnel throughout Myanmar, particularly for reporting on inflammatory speech and activities of Buddhist nationalists.

The Human Rights Committee has recommended that States decriminalize defamation, and has stated that defamation laws, in particular penal defamation laws (such as Section 66(d)), “should include such defences as the defence of truth”.⁵⁶

The United Nations Special Rapporteur on freedom of expression has stated that defamation should be dealt with as a matter of civil rather than criminal law. The Special Rapporteur has called on States to decriminalize defamation and ensure that defamation laws do not provide for prison

⁵³ *The Irrawaddy*, ‘Religious Affairs Ministry: Journalist Ko Swe Has Not Violated the Law’, Lawi Weng, 5 April 2017, <https://www.irrawaddy.com/news/burma/religious-affairs-ministry-journalist-ko-swe-win-has-not-violated-the-law.html>.

⁵⁴ Kyaw Myo Swe was charged under *Penal Code* Section 505(b) for taking part in a demonstration relating to the case in which the demonstrators called on the Government to step down for failing to take adequate measures to protect Buddhism. Having evaded arrest on the day of the demonstration, 5 August 2017, he presented himself to the courthouse two days later for proceedings in his case against Swe Win, notwithstanding the fact that there was a warrant for his arrest. At the request of Swe Win’s lawyer, the hearing was postponed. Kyaw Myo Swe was arrested on the same day and has since remained in detention.

⁵⁵ General Comment 34, para. 47.

⁵⁶ *Ibid.*

sentences. Myanmar law is particularly troubling as, in the case of Section 66(d), it extends the capacity to initiate criminal proceedings beyond the offended party to their “agents”.

Myanmar should heed the recommendation of the United Nations Special Rapporteur on freedom of expression and decriminalize Section 66(d), as well as *Penal Code* Section 500 and Section 34(d) of the *Electronic Transaction Law*. A code of conduct issued by the Interim Press Council in 2014 provides alternatives for prosecution in cases involving journalists. It is through such procedures that concerns relating to journalism should be addressed.

The “Drone Case” – Any Means to an End

In addition to the range of provisions that criminalize speech and association in Myanmar, the authorities have at times resorted to laws that do not directly pertain to expression to target journalists. Such cases have been equally influential in inhibiting independent journalism and freedom of expression.

The arrests and prosecutions, in 2017, of a documentary crew working for the Turkish State broadcaster, the Turkish Radio and Television Corporation, illustrate this pattern. On 27 October 2017, two foreign journalists, Malaysian reporter Mok Choy Lin, and Singaporean cameraman Lau Hon Meng, and two Myanmar nationals, journalist and interpreter Aung Naing Soe and driver Hla Tin, were arrested in Nay Pyi Taw while flying a drone near the parliament building.⁵⁷ They were initially detained on charges that they had imported into Myanmar “restricted or banned goods” in violation of the *Import-Export Law* 2012 but were later charged under the *Aircraft Act* 1934 for flying an aircraft over a prohibited area.⁵⁸ They were convicted under the latter charge and served a two-month prison sentence.⁵⁹ On 28 December 2017, additional charges against the four under the *Import-Export Law*, along with charges against Mok Choy Lin and Lau Hon Meng under the *Immigration Act* 1947, were dropped as the court considered that their actions did not constitute a threat to national security.⁶⁰

The charges against the four media workers arose from complaints by a police lieutenant and an immigration officer. In an interview with OHCHR, Aung Naing Soe stated that he was informed by his lawyer that the Ministry of Home Affairs, which controls the police, had approached the President’s Office with a request to charge the four under the OSA. Proceedings under the OSA require Presidential approval. The request was turned down and the four media workers were instead charged under the laws mentioned above.

This “any means to an end” approach highlights that the Myanmar authorities are less concerned with actual criminal actions by journalists than they are with journalism itself. It is noteworthy that the journalists were working for a Turkish State broadcaster and that their arrests followed shortly after a statement by the President of Turkey, Recep Erdoğan, accusing Myanmar of committing

⁵⁷ *Radio Free Asia*, ‘Myanmar Court Jails Foreign Journalists For Drone Flight Near Parliament’, 10 November 2017, <https://www.rfa.org/english/news/myanmar/journalists-11102017133557.html>.

⁵⁸ *The Irrawaddy*, ‘Lawyers Object to Charging Journalists Under Export, Import Law for Flying Drone Over Parliament’, Htet Naing Zaw, 16 November 2017, <https://www.irrawaddy.com/news/lawyers-object-charging-journalists-export-import-law-flying-drone-parliament.html>.

⁵⁹ *Reuters*, ‘Myanmar police to free journalists in drone case’, Shoon Naing, 26 December 2017, <https://www.reuters.com/article/myanmar-journalists/myanmar-police-to-free-journalists-in-drone-case-idUSL4N1OQ2KQ>.

⁶⁰ *Myanmar Times*, ‘Additional charges against two foreign journalists in drone case withdrawn’, Nyein Zaw Lin, 29 December 2017, <https://www.mmtimes.com/news/additional-charges-against-two-foreign-journalists-drone-case-withdrawn.html>. In an absurd turn of events, the two foreign journalists were charged under the Immigration Act for overstaying their visas which expired while they were serving their prison sentences under the Aircraft Act. *The Irrawaddy*, ‘Two Foreign Journalists Charged With Immigration Violation’, 27 November 2017, <https://www.irrawaddy.com/news/burma/two-foreign-journalists-charged-immigration-violation.html>.

genocide against the Rohingya.⁶¹ An NLD spokesperson, Monya Aung Shin, stated that the arrest of the four journalists occurred when Myanmar was “under threat from international media” and that the authorities took action “to protect the nation’s sovereignty”.⁶² The case is a clear illustration of the Myanmar authorities’ willingness to use a wide range of legal provisions to deter any independent reporting, particularly by foreign journalists, on critical issues in Myanmar, and is a flagrant violation of the right to freedom of expression.

The Chilling Effect of the Arrests and Prosecution of Journalists on Media, and Related Human Rights Violations

In the cases described in this report, the journalists were all targeted for carrying out their work through the peaceful exercise of the right to freedom of expression. Any arrest and detention of an individual for the peaceful and legitimate exercise of this right constitutes an arbitrary deprivation of liberty and a violation of that person’s right to be free from arbitrary arrest and detention.⁶³ Additionally, given the importance of journalism for the public’s right to information, the restrictions imposed on media personnel have a broader implication in society.

In each of the cases described, the initial violation was compounded by a catalogue of related human rights violations. In the Drone Case, the four journalists had no contact with their lawyer ahead of the trial proceedings against them and learned upon entering the courtroom that they were being tried under a different law to the one they were initially arrested under. This was in clear violation of their right to be informed of the nature and cause of the charges against them and of their right to have adequate time and facilities to prepare their defence. Conversely, the case against Swe Win has barely proceeded at all, in violation of his right to be tried without undue delay.

The trend of incommunicado detention in cases involving journalists is particularly disturbing. The United Nations Body of Principles for the Protection of All Persons Under Any form of Detention or Imprisonment states that “[p]romptly after arrest [...] a detained or imprisoned person shall be entitled to notify [...] members of his family”⁶⁴ and that communication with the outside world shall not be denied for more than a couple of days.⁶⁵ In general, all persons arrested or detained should be afforded access to family, legal counsel, and medical doctors from the outset of their detention.⁶⁶ With the exception of Swe Win, who was detained for one day, the arrests in all of the cases described above were followed by periods of detention of at least two days which may have amounted to incommunicado detention. The Human Rights Committee⁶⁷ and the Special Rapporteur on torture⁶⁸ have stated that incommunicado detention encourages torture and other

⁶¹ *The Guardian*, ‘Erdoğan accuses Myanmar of ‘genocide’ as thousands of Rohingya flee to Bangladesh’, 2 September 2017, <https://www.theguardian.com/world/2017/sep/02/erdogan-accuses-myanmar-of-genocide-against-rohingya>.

⁶² *Myanmar Times*, ‘Additional charges against two foreign journalists in drone case withdrawn’, Nyein Zaw Lin, 29 December 2017, <https://www.mmtimes.com/news/additional-charges-against-two-foreign-journalists-drone-case-withdrawn.html>.

⁶³ See UDHR Article 9 and ICCPR Article 9. See also, Factsheet No. 26 of the United Nations Working Group on Arbitrary Detention, Criteria Adopted by the Working Group to Determine Whether a Deprivation of Liberty is Arbitrary, <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

⁶⁴ United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly Resolution, A/RES/173, 9 December 1988, (United Nations Body of Principles), Principle 16, <http://www.un.org/documents/ga/res/43/a43r173.htm>.

⁶⁵ United Nations Body of Principles, Principle 15. The Constitution of the Union of Myanmar provides in Section 376 that no person is to be detained for more than 24 hours without charges except “on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquillity”.

⁶⁶ See, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘General Recommendations of the Special Rapporteur on torture’, available at <https://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf>.

⁶⁷ Human Rights Committee, General Comment 20, UN Doc. HRI/GEN/Rev.1 at 30, (1994); see also, Concluding Observations of the Human Rights Committee: Peru, UN Doc. CCPR/C/79/Add.67, (1996), para. 17.

⁶⁸ Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para. 39(f).

cruel, inhuman and degrading treatment and punishment, and that prolonged periods of incommunicado detention may constitute torture.

When a person is arrested, detained or abducted by a State or State agents, who then deny that the person is being held or conceal their whereabouts, placing them outside the protection of the law, it constitutes an enforced disappearance.⁶⁹ An enforced disappearance invariably constitutes an act of torture.⁷⁰ The journalists in the Reuters case were held incommunicado for two weeks following their arrest during which time the outside world was unaware of their whereabouts. The Kachin Baptists were held incommunicado for over three weeks. During this period, the Kachin Baptist Church for which they work made multiple requests to the authorities as to their whereabouts (including through a letter to State Counsellor Aung San Suu Kyi) but received no information. The psychological impact on the two men, both of whom are internally displaced persons (IDPs), and their families can only have been exacerbated by the knowledge that the military is known to have summarily killed IDPs in that area.⁷¹

Conclusions and Recommendations

The cases described in this report highlight the key aspects of the current state of press freedom in Myanmar and the urgent need for reform, including legislative reform.

Where trials are ongoing in courts against journalists and media personnel for peacefully and legitimately carrying out their professional duties, the cases should be discontinued in line with rule of law and fair trial principles. There must also be redress for the human rights violations that the journalists have been subjected to through the authorities' attempts at restricting the freedom of the press.

In addition to the harrowing experiences of those targeted, the cases have had an inhibiting impact on the media and the exercise of freedom of expression. Through such arrests, prosecutions and convictions, the authorities have set an invisible boundary that media personnel cross at their peril, generating a chilling effect on journalism throughout the country. Despite Myanmar's transition to democracy, media personnel remain in a precarious position with the right to freedom of expression and the freedom of the press remaining under attack.

OHCHR makes the following recommendations for the Government of Myanmar to uphold and protect the rights of journalists and ensure freedom of expression, in particular freedom of the press:

- **Initiate a review of all legal provisions impacting on freedom of expression with a view to repealing/amending those that do not comply with international human rights law;**
- **Consider revising the provisions concerning the right to information and national security to be consistent with the Global Principles on National Security and the Right to Information (the Tshwane Principles);**
- **Decriminalize defamation, including through the repeal of *Penal Code* Section 500; *Electronic Transaction Law* Section 34(d); and *Telecommunications Law* Section 66(d);**
- **Ensure that any legitimate concerns relating to defamation are dealt with in civil proceedings;**

⁶⁹ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by United Nations General Assembly resolution, 61/177 on 20 December 2006, entered into force 23 December 2010, Article 2, <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

⁷⁰ While Myanmar is neither a party to the International Convention for the Protection of All Persons from Enforced Disappearances nor the Convention Against Torture, it is bound by the customary international law prohibition against torture, which is binding on all States.

⁷¹ See for example, *Radio Free Asia*, 'Myanmar Soldiers Confess to Killing Three Kachin Refugees', 20 September 2017, <https://www.rfa.org/english/news/myanmar/myanmar-soldiers-confess-to-killing-three-kachin-refugees-09202017134700.html>.

- **Amend the *Media Law* in order that it fully complies with the right to freedom of expression and use this law as a means to permit more opportunities to the Myanmar Press Council to mediate and resolve complaints and disputes pertaining to media outlets and journalists;**
- **Immediately and unconditionally release Kyaw Soe Oo, Wa Lone, and all other journalists currently in detention for the legitimate and peaceful exercise of their freedom of expression;**
- **Discontinue all current cases against journalists that were initiated for their peaceful exercise of the right to freedom of expression, in line with rule of law and fair trial principles;**
- **Ensure journalists who have been subjected to arrests and prosecution have access to the right to a remedy, including through restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;**
- **Ratify the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and International Convention for the Protection of All Persons from Enforced Disappearance.**