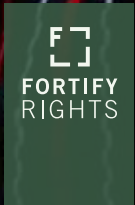


"OUR DEMANDS  
ARE  
FOR **ALL**  
**STUDENTS**"

Violations of Students' Rights  
in Mandalay, Myanmar

APRIL 2020





# “OUR DEMANDS ARE FOR ALL STUDENTS”

## Violations of Students' Rights in Mandalay, Myanmar

### Cover:

Students arrested for their involvement in protests at Yadanabon University in Mandalay handcuffed while awaiting a hearing at Amarapura Township Court.  
©Myanmar Pressphoto Agency, February 2019



ATHAN is a research-based activist organization promoting the right to freedom of expression via its three main channels – research, advocacy, and education. Meaning “voice” in English, Athan was founded in January 2018 by youth from Myanmar who value and respect the right to freedom of expression.



Fortify Rights works to ensure human rights for all. We **investigate** human rights violations, **engage** people with power on solutions, and **strengthen** the work of human rights defenders, affected communities, and civil society. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working closely with individuals, communities, and movements pushing for change. We are an independent, nonprofit organization registered in the United States and Switzerland.



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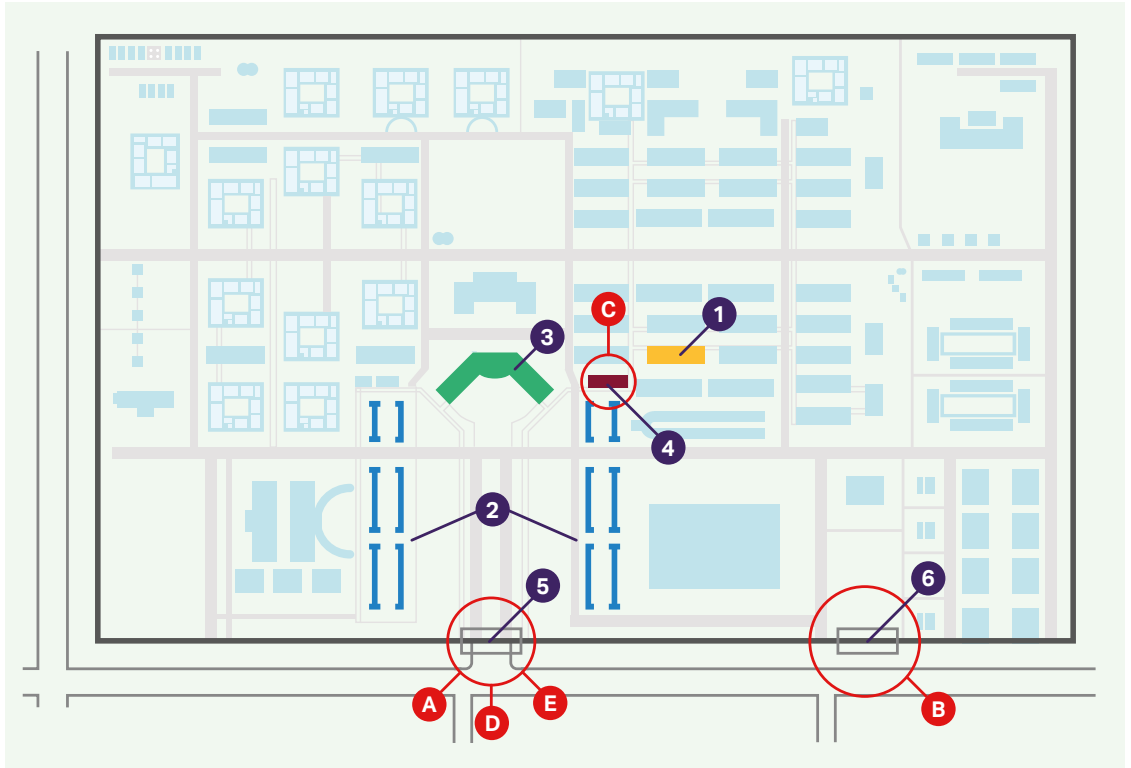
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# MYANMAR



# YADANABON UNIVERSITY CAMPUS



## Locations

- 1**  All Burma Federation of Student Unions (ABFSU) Yadanabon University Chapter Headquarters
- 2**  Motorbike stands
- 3**  Main building
- 4**  Student Affairs Department
- 5**  Main gate
- 6**  Back entrance

## Protests

- A** November 13 protest
- B** December 7 protest
- C** December 13 protest
- D** December 28 protest
- E** January 2 protest



*A library at Yadanabon University in Mandalay City, where a series of student protests took place in 2018 and 2019. The university hosts more than 61,000 students and more than 1,000 administrators and teaching staff. ©Hkun Lat, January 2020*





တက္ကသိုလ်  
UNIVERSITY





*A mock coffin burning after Yadanabon University students set fire to it as part of their peaceful protest.  
©Myanmar Pressphoto Agency, December 2018*

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## SUMMARY

There are more than 180 political prisoners in Myanmar today. Since 2015, Myanmar authorities released more than 740 political prisoners—more than half of whom served out their sentences in full, and the authorities freed the remainder through mass amnesties that failed to acknowledge the arbitrary nature of their detention. The Government of Myanmar has failed to provide remedies or justice for former political prisoners.

Activists, students, journalists, and others in Myanmar continue to face imprisonment or threats of detention for exercising their rights, and the government continues to use vague or flawed laws to crack down on basic freedoms, including the rights to freedom of expression and peaceful assembly.

This report highlights one case that is representative of many.

At 1 p.m. on December 28, 2018, a small group of university student activists set fire to a makeshift cardboard coffin containing photos of government and university officials before a crowd of more than 100 students, university officials, and others gathered outside the main gate of Yadanabon University in Mandalay, Myanmar. The mock funeral was part of a planned protest for improved security measures for students following a series of student murders in Mandalay and to bring attention to the students' concerns regarding the administration of the university. It was a peaceful demonstration.





Ye Myo Swe, 22, speaking at a peaceful assembly outside of Yadanabon University.  
©Myanmar Pressphoto Agency, December 28, 2018



A Yadanabon University security official kicking apart the students' mock coffin.  
©Myanmar Pressphoto Agency, December 28, 2018



A Yadanabon University security official pouring water on the students' mock coffin.  
©Myanmar Pressphoto Agency, December 28, 2018

Plainclothes police officers quickly dispersed the crowd and arrested three students who led the demonstration—Myo Chit Zaw, 18, Ye Min Htun, 23, and Kyaw Thiha Ye Kyaw, 23. Five days later, Myanmar authorities arrested four more students—Ye Myo Swe, 23, Phone Myint Kyaw, 20, Ye Lin Aung, 20, and Nay Win Kyaw, 22—for organizing a protest to demand the release of the three student leaders detained on December 28. On February 13, 2019, the Amarapura Township Court sentenced all seven students to three months in prison for arson and failing to provide advanced notice of the demonstration to the authorities.

The students spent more than 80 days in Mandalay's Obo Prison before being released. Four of the students reported that prison guards beat them in detention.

The December 28 protest and subsequent events were months in the making, culminating at a time of increased restrictions on protest activities by government and university officials. Before the students' demonstration in Mandalay, between November 13 and December 28, 2018, students at Yadanabon University involved with the All Burma Federation of Student Unions (ABFSU)—one of the main nationwide student organizations in Myanmar with a long history of political activism in the country—organized three peaceful protests. In each of these protests, Yadanabon University officials prevented the students from protesting on campus by either closing the gates of the university or stationing professors at the gate to stop protesters from entering the campus.

Nevertheless, the students continued to organize protests. "Our demands are not for us," student activist Kyaw Thiha Ye Kyaw told reporters in January 2018. "Our demands are for all students."

Between August and December 2018, three Yadanabon University students—Ko Nay Min Htet, 19, Htet Lin Thant, 18, and Soe Moe Hein, 20—were murdered in Mandalay. In response, the ABFSU students organized the aforementioned protests. University officials largely ignored the students' demands for increased security and other improvements on campus. After the murder of Soe Moe Hein on December 25, the rector of the university told the protesting students: "We are all human. Humans can die." In response, the students organized the mock funeral for the rector and other officials on December 28.



Athan and Fortify Rights conducted a joint investigation into the students' case. As part of the investigation, Athan and Fortify Rights interviewed the seven students, eyewitnesses to the protests, Yadanabon University officials—including professors and administrators—members of ABFSU, and others.

The arrest, detention, and conviction of the student protesters took place amid continued restrictions on the rights to freedom of expression and peaceful assembly in Myanmar. The government continues to use the Peaceful Assembly and Peaceful Procession Law (hereafter “the Peaceful Assembly Law”)—the law that the Myanmar authorities charged the Yadanabon University student leaders with violating—to impose reprisals on and attempt to silence human rights defenders and activists. The overly broad provisions and criminal penalties of the Peaceful Assembly Law violate international human rights law.

The students' protests, one of which involved setting fire to a mock coffin containing the photos of government and university officials, are protected forms of expression under international law. In a similar case, the European Court of Human Rights found that the act of burning photos should be interpreted as “the symbolic expression of dissatisfaction and protest” and that “freedom of expression extended to ‘information’ and ‘ideas’ that offended, shocked or disturbed.” Several jurisdictions have similarly found such symbolic acts to constitute protected expression.

The subjects of the students' protests were also issues of public affairs—safety and sanitation on campus and the management of university funds. Moreover, they expressed their opinion through protected verbal and non-verbal communication, including images and symbols, such as the burning of the coffin and the script they recited. While some may have found the students' choice to burn photos in a mock

*The student protesters being led to court to face trial for their peaceful protest. ©Myanmar Pressphoto Agency, February, 2019*



*Kyaw Thiha Ye Kyaw, 22, was a student leader of the protests at Yadanabon University in 2018. ©Hkun Lat, January 2020*

funeral offensive, human rights law protects such forms of expression. As such, the restrictions placed on the students' protests amount to a violation of the right to freedom of expression.

The Myanmar government and Yadanabon University officials also violated the rights of the seven students by failing to facilitate their right to peacefully assemble and instead taking action to block and disperse the protesters. Moreover, the beatings inflicted against four of the detained students by prison guards may constitute torture or cruel, inhuman, or degrading treatment or punishment under international law.

While all seven Mandalay students are now released, their case demonstrates a larger problem in Myanmar with regard to the Peaceful Assembly Law and how the authorities use the law to restrict rights to freedom of expression and peaceful assembly. In recent years, the Peaceful Assembly Law has undergone a series of amendments, as described in this report. Some amendments remain incompatible with human rights law, while the proposed 2018 amendments would further violate human rights in the country. Recognizing the significance and importance of the law, on March 5, 2018, 255 civil society organizations and individuals in Myanmar joined a statement decrying the proposed amendments, and 500 people marched in Yangon to oppose the amendments.



*Phone Myint Kyaw, 19, Nay Win Kyaw, 22, Myo Chit Zaw, 19, and Ye Lin Aung, 20, are members of the All Burma Federation of Student Unions. ©Hkun Lat, January 2020.*





Kyaw Thiha Ye Kyaw standing beside the  
burning mock coffin at the peaceful protest.  
©Myanmar Pressphoto Agency,  
December 28, 2018





Motorbike stands at Yadanabon University. The protection of motorbikes on campus was a subject of the students' protests. ©Hkun Lat, January 2020



Yadanabon University students parking their motorbikes on campus using a new security system. ©Hkun Lat, January 2020



Numbered cards given to motorbike drivers at Yadanabon University to improve the motorbike security on campus. ©Hkun Lat, January 2020

One of the students' bathrooms. The students protested over the lack of cleanliness in the Yadanabon University bathrooms.  
©Hkun Lat, January 2020



At the time of writing, the latest iteration of the bill to amend the Peaceful Assembly Law remains pending before the lower house of parliament, the *Pyithu Hluttaw*.

Moreover, the Myanmar authorities' failure to provide remedies and compensation to the Yadanabon University students and acknowledge the unlawful prosecution are likewise representative of larger, ongoing, and unaddressed issues in Myanmar with regard to former political prisoners and the promotion and protection of human rights.

According to the investigation conducted by Athan and Fortify Rights, the Myanmar and Yadanabon University authorities interfered with the students' rights to freedom of expression and peaceful assembly, and the Myanmar authorities subjected the students to arbitrary arrest and detention as well as torture or ill-treatment while in prison. As such, the students are entitled to an effective remedy under international law.

The same right to an effective remedy would extend to all former political prisoners in Myanmar. Effective remedies under international law include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.



“Restitution” seeks to put persons whose rights have been violated in the position they enjoyed before the violation took place. For example, according to the United Nations’ Right to Remedy Principles, restitution may include a “restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.”

“Compensation” may include financial compensation for any economically assessable damage resulting from the violation, such as material damages, loss of employment, and costs required for legal or medical expertise, or psychological and social services. An effective remedy may also include rehabilitation, such as medical and psychological care or legal and social services.

“Satisfaction,” in this context, aims to recognize the harm done and provides measures to prevent violations from continuing. Under the Right to Remedy Principles, satisfaction may include provisions to verify the facts and, where appropriate, provide a full public disclosure of the truth, repair any harm done to the reputation or dignity of the victims, and a public apology that includes acceptance of responsibility.





*Two Yadanabon University students sitting in a classroom. The students' protests argued that the university should invest more resources into classroom needs, such as chairs and study materials.  
©Hkun Lat, January 2020*







*One of the students' bathrooms. The students protested over the lack of cleanliness in the Yadanabon University bathrooms. ©Hkun Lat, January 2020*

Lastly, “guarantees of non-repetition” may include: ensuring effective civilian control of military and security forces; strengthening the independence of the judiciary; protecting persons in the legal, medical, and health-care professions, the media, and human rights defenders; providing human rights trainings; implementing codes of conduct; promoting mechanisms for preventing social conflicts; and reforming laws that contribute to or allow gross violations of international law.

Additionally, the Myanmar government should hold accountable all officials involved in the violation of the students’ rights and provide full remedies for the harms suffered, including the students’ ill-treatment while imprisoned.

To ensure such violations do not occur again, the Parliament of Myanmar should amend the Peaceful Assembly Law to remove provisions that restrict peaceful assemblies, both spontaneous and planned, and its criminal penalties for exercising the right to peaceful assembly. The government should ratify the Convention Against Torture, implement policies and procedures that end the use of torture throughout Myanmar prisons, and guarantee accountability for perpetrators of torture.





# METHODOLOGY

Athan and Fortify Rights jointly researched this report. The research team included two researchers from Athan and a legal fellow from Fortify Rights.

The research team conducted 28 interviews, including with the seven students, eyewitnesses to the protests, university officials, including professors and administrators, members of the Yadanabon University chapter of ABFSU, and others. Obo Prison authorities allowed the research team to interview the imprisoned students in Obo Prison in an isolated environment away from prison guards and other detainees.

The research team conducted most of the interviews in the Burmese language with English interpretation, transcription, and/or translation. Some interviews were conducted only in English. No one interviewed for this report received compensation for participating in the interviews, and all were informed of the purpose of the interview, its voluntary nature, and the ways that the information might be used. All those interviewed provided informed consent prior to the interview. Four individuals requested to only be interviewed on background information. The names of some individuals interviewed are not included in this report upon their request.

The research team also monitored the legal proceedings in Amarapura Township Court and reviewed 14 pages of documents from the court. The original and translated documents are on file with Fortify Rights.

All hyperlinks cited in this report refer to content accessible as of February 24, 2020.



# BACKGROUND

In March 1962, the *Tatmadaw*, or Myanmar military, led by General Ne Win, overthrew a democratically elected civilian government in a *coup d'état*, ushering in decades of military rule in which the government severely curtailed the rights to freedom of expression and peaceful assembly.<sup>1</sup> On July 7, students organized a demonstration at Rangoon University against the military government. In response, the military killed scores of student protesters, bombed the Rangoon University Student Union, and arrested student leaders.<sup>2</sup> During this era of repression, the military-led government violently crushed protests and assemblies and jailed or disappeared political activists for expressing opposition to the government.<sup>3</sup>

In the years that followed, growing resentment towards the military fostered by economic mismanagement, single-party rule, and violent repression came to a head in 1988 when students organized a series of nationwide protests that culminated in the single-largest protest in the country's modern history.<sup>4</sup> Nationwide protests peaked on August 8, 1988 in what became known as the “8888 Uprising.”<sup>5</sup> The protest attracted more than 500,000 participants in present-day Yangon alone, while others marched throughout the country, demanding democracy.<sup>6</sup> The military responded with extreme force, killing more than 3,000 protesters and arresting thousands more during a six-week period.<sup>7</sup>

- 1 The Republic of the Union of Myanmar was formerly known as Burma when it achieved independence from British colonial rule in 1948. See, for example, Christina Fink, *Living Silence in Burma: Surviving under Military Rule* (London: Zed Books, Second Edition, August 15, 2009) (providing a brief history of the independence movement).
- 2 The government estimated that 16 students were killed. However, other sources put the number over 100. David Steinberg, *Burma's Road Toward Development: Growth and Ideology Under Military Rule* (Boulder: Westview Press, 1981), p. 111; Thar Nyunt Oo and Ingjin Naing, “A Brief History of Students' Movement in Burma/Myanmar,” *Maukka*, November 5, 2012, <http://www.eng.maukka.org/index.php/unions/universities-teachers-unions/456-a-brief-history-of-students-movement-in-burma-myanmar>.
- 3 Fink, *Living Silence in Burma*, pp. 51–54.
- 4 Philippa Fogarty, “Was Burma's 1988 Uprising Worth It?,” *BBC News*, August 6, 2008, <http://news.bbc.co.uk/2/hi/asia-pacific/7543347.stm>.
- 5 Fink, *Living Silence in Burma*, p. 50.
- 6 Fogarty, “Was Burma's 1988 Uprising Worth It?,” *BBC News*. See also, Fink, *Living Silence in Burma*, pp. 46–60 (offering an overview of the events leading up to and following the “8888 Uprising.”)
- 7 Fink, *Living Silence in Burma*, p. 52. Christina Fink notes that “this figure has been widely cited but never verified.” fn. 7. See also, for example, Fogarty, “Was Burma's 1988 Uprising Worth It?,” *BBC News*.

in the fall of 2007, the military again crushed a series of protests initiated by activists and eventually led by a group of Buddhist monks, which was highly significant given the moral standing of monks in the predominantly Buddhist country.<sup>8</sup> Known as the Saffron Revolution due to the color of the monks' robes, the protests began over a steep rise in fuel prices but grew into a call for the military to release political prisoners and engage in dialogue with the democratic movement for national reconciliation.<sup>9</sup> The protests continued for 45 days, during which time the military killed scores of people and arrested thousands more.<sup>10</sup>

In October 2007, just a month after crushing the Saffron Revolution, the ruling military–government, the State Peace and Development Council (SPDC), announced a 54–member Commission for Drafting the State Constitution comprised only of military participants to develop a new constitution for the country.<sup>11</sup> The constitutional–drafting process continued for four months without any meaningful consultation with communities in Myanmar and limited external technical support.<sup>12</sup> On May 24, 2008, just three weeks after Cyclone Nargis devastated Myanmar's Irrawaddy delta region and displaced 800,000 residents, the SPDC held a referendum on the draft constitution in a national vote heavily criticized as being inconsistent with international law and basic democratic standards.<sup>13</sup> The government subsequently announced, implausibly, that 98 percent of the country voted in the referendum and the constitution received 92 percent approval from the voting population.<sup>14</sup>

Under the 2008 military–drafted constitution, every citizen has the right to peacefully assemble.<sup>15</sup> Set out in Article 354, the constitution guarantees that:

Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality: (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession.<sup>16</sup>

On December 2, 2011, the national–level bicameral legislature of Myanmar, the *Pyidaungsu Hluttaw*, passed the Peaceful Assembly Law “so that citizens can exercise [the rights enumerated in the constitution] legally.”<sup>17</sup> The law became operational when the Ministry of Home Affairs adopted

8 Human Rights Documentation Unit, *Bullets in the Alms Bowl: An Analysis of the Brutal SPDC Suppression of the September 2007 Saffron Revolution*, March 2008, pp. 9, 37, <https://burmacampaign.org.uk/media/BulletsInTheAlmsBowl.pdf>; Fink, *Living Silence in Burma*, pp. 101–106.

9 *Id.* at pp. 37–48; Fink, *Living Silence in Burma*, p. 101.

10 The exact number of people killed is unclear. The U.N. put the number at 31 while some human rights groups claimed it was over 100. See, Human Rights Documentation Unit, *Bullets in the Alms Bowl*, p. 173 (arguing that “Official statistics provided by the regime are at best conservative and at worst complete fabrications of the truth . . . there is little doubt that the real number of dead is far higher than that suggested by the SPDC.”); “Saffron Revolution in Burma,” *Burma Campaign UK*, <https://burmacampaign.org.uk/about-burma/2007-uprising-in-burma/> (holding that “The regime's official figures put the death toll at 10 people. However, up to 200 are believed to have been killed during the crackdown.”)

11 Human Rights Watch, *Chronology of Burma's Constitutional Process*, April 11, 2008, p. 15, <https://www.hrw.org/sites/default/files/reports/burma0508chronology.pdf>.

12 *Id.* at p. 16.

13 The Public International Law & Policy Group, *Burmese Constitutional Referendum: Neither Free Nor Fair*, May 11, 2008, p. 2, [http://www.burmalibrary.org/docs5/PILPG\\_Report\\_Burmese\\_Constitutional\\_Referendum\\_Neither\\_Free\\_Nor\\_Fair-11\\_May\\_2008.pdf](http://www.burmalibrary.org/docs5/PILPG_Report_Burmese_Constitutional_Referendum_Neither_Free_Nor_Fair-11_May_2008.pdf); Gregory Gottlieb, “10 Years After, Cyclone Nargis Still Holds Lessons for Myanmar,” *The Conversation*, May 2, 2018, <https://theconversation.com/10-years-after-cyclone-nargis-still-holds-lessons-for-myanmar-95039>.

14 Aung Hla Tun, “Myanmar's Charter Sails Through Referendum,” *Reuters*, May 26, 2008, <https://www.reuters.com/article/us-myanmar-referendum/myanmars-charter-sails-through-referendum-idUSSP33290120080526>.

15 Constitution of the Republic of the Union of Myanmar, 2008, Art. 354(a), (b).

16 *Ibid.*

17 The Right to Peaceful Assembly and Peaceful Procession Law, 2011, Introduction.

and the Myanmar government approved the "Decree on the Right to Peaceful Assembly and Peaceful Procession" on July 5, 2012.<sup>18</sup> A week following the law's approval, a group of 200 farmers held a protest in Yangon's Mingalardon Township with limited government interference—the first putatively legal protest in Myanmar since the military coup in 1962.<sup>19</sup>

Although the law provided for the right to peaceful assembly, it also imposed procedural hurdles and restrictions that were incompatible with human rights law and standards. For example, the Peaceful Assembly Law required organizers of an assembly to obtain permission from authorities at least five days in advance of the assembly. The application process for obtaining permission required the biographies of organizers and proposed speakers, the expected number of participants, the purpose and the location or route of the assembly, as well as the content of the "chants" and slogans to be used during the assembly.<sup>20</sup> Protesters who violated these provisions faced a maximum sentence of one-year imprisonment, a maximum fine of 30,000 Myanmar Kyat (US\$19.50), or both.<sup>21</sup> The law provided no exception for spontaneous assemblies and carried a sentence of up to six months' imprisonment for violations of its provisions.<sup>22</sup>

Following criticism and campaigning by rights groups and activists across Myanmar, the *Pyidaungsu Hluttaw* passed amendments to the Peaceful Assembly Law on June 24, 2014 that included several positive changes.<sup>23</sup> For example, the amended law removed the power of the police to deny permission for an assembly.<sup>24</sup> Additionally, the law reduced by half the length of the maximum possible prison sentence for violations committed under the Act.<sup>25</sup> Finally, the amendments removed the requirement that organizers submit the "biographies of the leader and the speaker," instead only requiring their name and address.<sup>26</sup>

Nonetheless, the amended law continued to require approval for "the topic at the assembly, and the chants that are allowed."<sup>27</sup> The amendments also granted the authorities the ability to disperse an assembly if any of ten specifically enumerated prohibitions occurred, such as spreading messages that "could affect the country or the Union, race, or religion, human dignity, and moral principles,"

18 ARTICLE 19, *Myanmar: The Decree on the Right to Peaceful Assembly and Peaceful Procession*, September 20, 2012, p. 2, <http://www.burmapartnership.org/wp-content/uploads/2013/11/Article-19-Analysis-on-Peaceful-Demonstration-Law.pdf>.

19 Aye Nai, "Farmers Hold First Official Protest in Rangoon," *Eurasia Review*, July 16, 2012, <https://www.eurasiareview.com/16072012-farmers-hold-first-official-protest-in-rangoon/>.

20 The Right to Peaceful Assembly and Peaceful Procession Law, Chs. 3, 4.

21 *Id.* at Ch. 7, Sec. 18.

22 *Id.* at Sec. 19. Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly*, 2010, paras. 97–98, <https://www.osce.org/odihr/73405?download=true>. Indeed, as U.N. Special Rapporteurs noted, "Spontaneous assemblies should be exempt from notification requirements, and law enforcement authorities should, as far as possible, protect and facilitate spontaneous assemblies as they would any other assembly." Human Rights Council, *Joint Report of the Special Rapporteur on the Rights of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, U.N. Doc. A/HRC/31/66, February 4, 2016, para. 23.

23 ARTICLE 19, *Myanmar: Amended Right to Peaceful Assembly and Peaceful Procession Law*, August 2014, <https://www.article19.org/wp-content/uploads/2018/02/14-08-01-LA-myanmar-assembly.pdf>. See also, "Henzada Protesters Say No More to Article 18," *Democratic Voice of Burma*, February 12, 2014, <http://english.dvb.no/dvb-video/henzada-says-no-to-article-18-burma-myanmar/37163>.

24 Related provisions are also removed, such as the requirement for authorities to communicate denials of permission to hold an assembly or the ability to appeal such a decision. The Law Amending the Law on the Right to Peaceful Assembly and Peaceful Procession, 2014, Ch. 4, secs. 6, 7(b), and 9.

25 *Id.* at secs. 6–8.

26 *Id.* at Sec. 3.

27 *Id.* at Sec. 4(e).

spreading “rumors or incorrect information,” or shouting “chants other than the ones approved.”<sup>28</sup> Finally, the amended law maintained criminal penalties, including terms of imprisonment for administrative infractions and activities protected under human rights law.<sup>29</sup>

Following the historic victory of the pro-democracy National League for Democracy (NLD) party in Myanmar’s 2015 elections, the NLD-dominated parliament repealed and replaced the 2011 Peaceful Assembly Law on May 31, 2016.<sup>30</sup> While the 2016 law kept the overall architecture of its 2011 predecessor, the new law contained two significant improvements. First, the law did away with requiring consent or permission by authorities to hold an assembly and replaced it with a system of notification, whereby those wishing to hold an assembly must submit a “notification letter” 48 hours in advance of the protest.<sup>31</sup> Second, the law required authorities to charge potential violators of the law within 15 days of the alleged offense and in the township court where the offense was allegedly committed.<sup>32</sup>

<sup>28</sup> The Right to Peaceful Assembly and Peaceful Procession Law, Ch. 5, secs. 12(e), (f), and (h).

<sup>29</sup> The Law Amending the Law on the Right to Peaceful Assembly and Peaceful Procession, secs. 6–8.

<sup>30</sup> The Law relating to Peaceful Assembly and Peaceful Procession, 2016 [hereinafter The Peaceful Assembly Law].

<sup>31</sup> *Id.* at Ch. II, Sec. 4.

<sup>32</sup> *Id.* at Ch. VIII, secs. 23–24.

## Select Provisions of the Peaceful Assembly and Peaceful Procession Law (2016)

\* \* \*

### Chapter III: Notification

\* \* \*

4. The citizens or organizations desired to enjoy and exercise the rights to peaceful assembly and peaceful procession, in order to express their opinion and desire, shall submit a notification including the following facts in writing to the commander of the respective Township Police Force at least 48 hours prior to the day of such activity. If there are townships where the procession desired to pass along the route, a copy of notification shall be sent to the commanders of the respective Township Police Force 48 hours in advance:
- a. objective, place, date and period desired to hold peaceful assembly, the main subject matter desired to give a talk and slogans desired to chant in peaceful assembly;
  - b. objective, route and date desired to hold peaceful procession, townships desired to pass, period of time and slogans desired to chant;
  - c. name and full contact address of the person who notifies, leader and speaker of peaceful assembly and peaceful procession;
  - d. plan of and estimated number of attendance at peaceful assembly and peaceful procession;
  - e. if it holds as an organization relating to peaceful assembly or peaceful procession, record of decision or reference of such organization;



- f. conditions in this Law and agreement in respect of conditions predetermined by the authorized person or organizations according to the local requirement.

Violations of these sections provide maximum penalties that range from up to one month and/or a fine of up to 10,000 Myanmar Kyat (US\$6.62) to one-year imprisonment and/or a fine of up to 100,000 Myanmar Kyat (US\$66.22).<sup>33</sup>

<sup>33</sup> For example, Section 20 of the Peaceful Assembly Law provides a maximum penalty of one month imprisonment and/or a fine of up to 10,000 Myanmar Kyat (US\$6.62) for any violations of the conditions set in sections 8, 9, and 10 of the law, whereas the conviction of second conviction of violating provisions in Section 4 carries a sentence of up to one year imprisonment and/or 100,000 Myanmar Kyats (US\$66.22). *See*, the Peaceful Assembly Law, Ch. VII.

While an improvement on the old law, the 2016 Peaceful Assembly Law, much like the 2014 amendments, failed to bring the law fully in line with international human rights law and standards, and it continues to be used to curtail rights to freedom of expression and peaceful assembly in Myanmar. For example, the "notification letter" requires organizers to submit extensive information about the organizers and subject matter of the protest, including the slogans and chants to be used.<sup>34</sup> In practice, the authorities frequently use this notification regime to deny assemblies by human rights defenders, civil society organizations, and activists.<sup>35</sup> Failure to provide advanced notice of an assembly also continues to carry penalties of up to three months' imprisonment and/or a fine of up to 30,000 Myanmar Kyat (US\$19.50).<sup>36</sup>

The 2016 law also provides a litany of overly broad and subjective pre-conditions. For example, protesters cannot "spread rumors or incorrect information," "use loudspeakers other than the approved hand-held ones," "recite or shout chants other than the ones approved," or "talk or behave in a way to cause any disturbance or obstruction, annoyance, danger, or a concern that these might take place."<sup>37</sup> Violations of any of these conditions carries a criminal penalty of three months' imprisonment.<sup>38</sup>

Under the 2016 Peaceful Assembly Law, human rights defenders, journalists, and others exercising their basic rights in Myanmar continue to face arbitrary arrest and detention.<sup>39</sup>

On March 7, 2018, the upper house of parliament, the *Amyotha Hluttaw*, passed a bill containing three substantive amendments to the 2016 law.<sup>40</sup> The proposed amendments includes an expanded

<sup>34</sup> The Peaceful Assembly Law, Ch. V, secs. 4(a)-(f).

<sup>35</sup> U Myat Mon, "The Right to Demonstrate? It Depends Who You Are," *Frontier Myanmar*, April 11, 2019, <https://frontiermyanmar.net/en/the-right-to-demonstrate-it-depends-who-you-are>; Human Rights Watch, *Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar*, January 31, 2019, p. 56, <https://www.hrw.org/report/2019/01/31/dashed-hopes/criminalization-peaceful-expression-myanmar>; "Burma: 'Peaceful Assembly Law' Fails to End Repression," Human Rights Watch, January 26, 2015, <https://www.hrw.org/news/2015/01/26/burma-peaceful-assembly-law-fails-end-repression>.

<sup>36</sup> The Peaceful Assembly Law, Section 19.

<sup>37</sup> *Id.* at Section 10.

<sup>38</sup> *Id.* at Section 20.

<sup>39</sup> Human Rights Watch, *They Can Arrest You at Any Time: The Criminalization of Peaceful Expression in Burma*, June 29, 2016, p. 3, <https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma>.

<sup>40</sup> San Yamin Aung, "Upper House Approves Controversial Amendments to Protest Law," *The Irrawaddy*, March 7, 2018, <https://www.irrawaddy.com/news/burma/upper-house-approves-controversial-amendments-protest-law.html>; Win Ko Ko Latt, Khin Khin Ei, and Htet Arkar, "Myanmar's Lower House Prepares to Discuss Changes to Public

list of required information to be submitted with the “notification letter,” such as an agenda, the approximate number of participants, and the “estimated budget and source of funds.”<sup>41</sup> Another proposed amendment requires that the assembly does “not conflict with laws protecting national security, rule of law, public order, or public morals.”<sup>42</sup> The final proposed amendment provides up to three years’ imprisonment and/or a fine for anyone who “incited, persuaded, influenced or forced others to protest by giving money or things or any other means of support ... with the intention to break national security, rule of law, public order or public morals.”<sup>43</sup>

One member of parliament, Soe Thein, explained his support for the amendments, reportedly telling *The Myanmar Times*, “There are people who have threatened to destabilise the government. There are also people who mislead the public with money. I am supporting the bill to prevent this kind of destabilisation.”<sup>44</sup>

On March 5, 2018, 255 civil society organizations and individuals released a joint statement decrying the proposed amendments, and 500 people marched in Yangon to oppose the amendments.<sup>45</sup> Members of parliament representing the NLD party, the Arakan National Party, and the military also voiced opposition to the amendments during the parliamentary debate.<sup>46</sup>

At the time of writing, the bill remains pending before the lower house of parliament, the *Pyithu Hluttaw*.<sup>47</sup>

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Assembly Law,” *Radio Free Asia*, March 15, 2018, <https://www.rfa.org/english/news/myanmar/myanmars-lower-house-prepares-to-discuss-changes-to-public-assembly-law-03152018160129.html>; Bill of Amendment of the Peaceful Assembly and Peaceful Procession Law, 2018.

41 Bill of Amendment of the Peaceful Assembly and Peaceful Procession Law, Sec. 3. See, U.N. Human Rights Council, *Civil Society Space*, U.N. Doc. A/HRC/RES/27/31, October 3, 2014, para. 10. (“The Human Rights Council [. . .] Calls upon States to ensure that domestic provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underlines the importance of the ability to solicit, receive and utilize resources for their work.”) See also, for example, U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/23/39, April 24, 2013, para. 38 (“The Special Rapporteur warns against frequent, onerous and bureaucratic reporting requirements, which can eventually unduly obstruct the legitimate work carried out by associations.”)

42 *Id.* at Sec. 3.

43 *Id.* at Sec. 18. The final text passed by the upper house changed the maximum possible prison sentence from three years to two years. Ye Mon, “CSOs to Contest Peaceful Assembly Amendments,” *Democratic Voice of Burma*, March 9, 2018, <http://english.dvb.no/news/csos-contest-peaceful-assembly-amendments/80089>.

44 “Upper House Lawmakers Object to Changes in Peaceful Assembly Law,” *The Myanmar Times*, March 6, 2018, <https://www.mmtimes.com/news/upper-house-lawmakers-object-changes-peaceful-assembly-law.html>.

45 Thu Thu Aung, “Protests as Myanmar Parliament Debates New Curbs on Demonstrations,” *Reuters*, March 5, 2018, <https://www.reuters.com/article/us-myanmar-protest/protests-as-myanmar-parliament-debates-new-curbs-on-demonstrations-idUSKBN1GH1Q5>; “Hundreds March Against Proposed Changes to Peaceful Assembly Law,” *The Irrawaddy*, March 6, 2018, <https://www.irrawaddy.com/news/hundreds-march-proposed-changes-peaceful-assembly-law.html>.

46 “Hundreds March Against Proposed Changes to Peaceful Assembly Law,” *The Irrawaddy*; Oliver Slow, “Myanmar Government Accused of Backsliding Over Proposed Changes to Assembly Law,” *Voice of America News*, March 15, 2018, <https://www.voanews.com/a/myanmar-changes-to-assembly-law/4299653.html>.

47 Although 80 lawmakers registered to discuss the proposed amendments to the Peaceful Assembly Law in 2018, the NLD, as of the time of writing, has refused to put the bill on the agenda in the lower house. Explaining why the lower house has yet to discuss the proposed amendments, Myanmar human rights defender Thinzar Shunlei Yi said: “All of the civil society in Myanmar—we came up together, and we protested against the [2018 amendments] . . . [The parliament] had to hold on to it, and we haven’t heard anything about it since then . . . They don’t want to touch the bill anymore . . . The Peaceful Assembly Law is already controversial for them.” Fortify Rights interview with Thinzar Shunlei Yi, Action Committee for Democracy Development, West Yangon District, Myanmar, September 17, 2019. Win Ko Ko Latt, Khin Khin Ei, and Htet Arkar, “Myanmar’s Lower House Prepares to Discuss Changes to Public Assembly Law,” *Radio Free Asia*, March 15, 2018, <https://www.rfa.org/english/news/myanmar/myanmars-lower-house-prepares-to-discuss-changes-to-public-assembly-law-03152018160129.html>; and Fortify Rights interview with National League for Democracy parliamentarian, Mandalay District, Myanmar, March 15, 2019.

## STUDENT PROTESTS AT YADANABON UNIVERSITY IN MANDALAY

Yadanabon University is one of Mandalay's 21 universities, located six-and-a-half miles from Mandalay City and hosting more than 61,000 students and more than 1,000 administrators and teaching staff.<sup>48</sup> Beginning on November 13, 2018, students involved in the ABFSU at Yadanabon University initiated a series of protests calling for improvements in the management of the almost 85-acre campus of Yadanabon. In particular, the protesters called for the university to operate the stands and provide adequate security for the motorbikes for a monthly fee, improve the cleanliness of the university's bathroom facilities, and increase security measures to protect students from crime in Mandalay.

### Usage Fee for Motorbike Stands on Campus

In September 2017, Yadanabon University approved a plan to engage a private company to install and manage motorbike stands on campus. The company charged a fee of 100 Myanmar Kyat (US\$0.07) to every student each time they entered university grounds by motorbike.<sup>49</sup> These stands were intended to address reported thefts of motorbikes on Yadanabon University's campus.<sup>50</sup> As explained by Thu Tha, a professor of English at Yadanabon University, "The only way to prevent stealing motorcycles is . . . to create and maintain a place to secure motorbikes."<sup>51</sup>

While the ABFSU students at Yadanabon University agreed on the need for secure motorbike stands on campus, they opposed the privatization of the motorbike stands. As one ABFSU member involved in protesting the university's plan said, "We cannot concentrate on studying when we are worried about our motorbikes being stolen. The university should take responsibility for the security of the motorbikes."<sup>52</sup>

Instead, ABFSU students argued that the university should operate the stands and provide adequate security for the motorbikes for a flat, monthly fee.<sup>53</sup> The students also questioned the university's management of funds created from the sale of the contract to the private company, which reportedly amounted to more than 35 million Myanmar Kyat (about US\$24,000).<sup>54</sup> Explaining this perspective, Phone Myint Kyaw said, "What we want is for that money from the sale to come back to the students, to use it for the university needs—chairs, study materials, etc."<sup>55</sup>

The students also called on the university to create motorbike stands in addition to the stands already operational. Another ABFSU student involved in the protests, Kyaw Thiha Ye Kyaw, explained:

Even with the motorcycle stands, they are not in every faculty, so motorbikes are still going missing in some areas. There are only two stands on the whole campus, and it's not enough. There's not enough space in the two stands for all of the motorcycles—it's not enough.<sup>56</sup>

<sup>48</sup> Athan and Fortify Rights interview with Yadanabon University officials, Mandalay District, Myanmar, March 15, 2019.

<sup>49</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019; Athan and Fortify Rights interview with Thu Tha, Mandalay District, Myanmar, March 14, 2019.

<sup>50</sup> According to students at Yadanabon University, a total of 70 motorcycles were stolen from 2016 to 2017, and 15 to 20 motorcycles were stolen in 2018 from Yadanabon University campus. Athan and Fortify Rights interview with Ye Myo Swe, Kyaw Thiha Ye Kyaw, Ye Min Htun, Myo Chit Zaw, Phone Myint Kyaw, Ye Lin Aung, and Nay Win Kyaw, Mandalay District, Myanmar, March 14, 2019; Athan and Fortify Rights interview with Kyaw Thiha Ye Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>51</sup> Athan and Fortify Rights interview with Thu Tha, Mandalay District, Myanmar, March 14, 2019.

<sup>52</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>53</sup> *Ibid.*

<sup>54</sup> Fortify Rights phone interview with Sithu Tun, Mandalay District, Myanmar, January 28, 2020. Sithu Tun sat on the university committee responsible for overseeing the auction of the motorbike stand contract and provided these figures.

<sup>55</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>56</sup> Fortify Rights interview with Kyaw Thiha Ye Kyaw, Mandalay District, Myanmar, November 6, 2019.

In addition to meeting with university officials to discuss the fee, on three separate occasions the students requested meetings with Chief Minister of Mandalay Region Dr. Zaw Myint Maung, who approved the plan to allow the company to manage and profit from the motorbike stands on Yadanabon University.<sup>57</sup> However, each time the students went to his office to request a meeting, Dr. Zaw Myint Maung's staff told the students he was not present and declined to schedule one with them.<sup>58</sup>

## Poor Bathroom Sanitation

The lack of proper bathroom sanitation in the university facilities formed another basis for the ABFSU-organized protests.

Dr. Aye Aye Thant, a Yadanabon University professor, described how the university relied on 15 janitorial staff to clean the university's 21 departments on a rotating schedule—a system that resulted in poor overall sanitation. She said: “[The 15-janitorial staff] is not enough. If cleaning for the zoology department is on Monday, then cleaning for the physics department is on Tuesday . . . So, each department gets one day a week or one day in two weeks.”<sup>59</sup>

Ye Myo Swe, one of the seven students arrested for his involvement in the protests, also described the poor level of sanitation at Yadanabon University, saying:

The students need to go back to their hostel when they want to use a toilet. It annoys the students and interferes with the learning process of the campus. When the students from other universities visit Yadanabon University, it also provides a bad image of the school.<sup>60</sup>

Although the university claimed to increase its janitorial staff in December, sanitation remained a concern for the students.<sup>61</sup>

## Lack of Adequate On-Campus Security

Violent crime is reportedly common in the city of Mandalay.<sup>62</sup> For example, in a survey of five cities in Myanmar, the Asia Foundation found that 15 percent of respondents surveyed in Mandalay reported that “they or a family member had been a victim of violence or a crime in the past year.”<sup>63</sup>

The Mandalay police force launched “Operation Hawk” in June 2018 to combat crime, increasing the number of nightly patrols by police officers in the Mandalay Region.<sup>64</sup> However, the government has not provided information on the impact of the operation on reducing crime in Mandalay.<sup>65</sup> Some communities also set up patrol teams to monitor and mitigate crime in their neighborhoods.<sup>66</sup>

<sup>57</sup> Athan and Fortify Rights interview with Dr. Aye Aye Thant, Mandalay District, Myanmar, March 14, 2019; Athan and Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, January 28, 2020.

<sup>58</sup> Athan and Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, January 28, 2020.

<sup>59</sup> Athan and Fortify Rights interview with Dr. Aye Aye Thant, Mandalay District, Myanmar, March 14, 2019.

<sup>60</sup> Athan and Fortify Rights tele with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

<sup>61</sup> Fortify Rights interviews with Kyaw Thiha Ye Kyaw, Ye Myo Swe, Myo Chit Zaw, and Phone Myint Kyaw, Mandalay District, Myanmar, November 5, 2019.

<sup>62</sup> Zarni Mann, “Mandalay Residents Concerned Over Reported Rise in Violent Crimes,” *The Irrawaddy*, April 11, 2017, <https://www.irrawaddy.com/news/burma/127945.html>; Kyaw Ko Ko, “Mandalay District Tops Crime Rate,” *The Myanmar Times*, January 09, 2018, <https://www.mmtimes.com/news/mandalay-district-tops-crime-rate.html>.

<sup>63</sup> The Asia Foundation, *Insight into Urban Well-Being in Myanmar: The 2018 City Life Survey*, February 22, 2019, p. 50, [https://asiafoundation.org/wp-content/uploads/2019/02/City-Life-Survey-2018\\_Myanmar.pdf](https://asiafoundation.org/wp-content/uploads/2019/02/City-Life-Survey-2018_Myanmar.pdf).

<sup>64</sup> Kyaw Ko Ko, “Crime Wave Challenges Mandalay Law Officers,” *The Myanmar Times*, June 7, 2018, <https://www.mmtimes.com/news/crime-wave-challenges-mandalay-law-officers.html>; Aung Ko Oo, Soe Thu Aung, “Mandalay Uses ‘Operation Hawk’ to Tackle Growing Crime Wave,” *Mizzima*, September 15, 2018, <http://www.mizzima.com/news/mandalay-uses-operation-hawk-tackle-growing-crime-wave>.

<sup>65</sup> Aung Ko Oo, Soe Thu Aung, “Mandalay Uses ‘Operation Hawk’ to Tackle Growing Crime Wave,” *Mizzima*, September 15, 2018, <http://www.mizzima.com/news/mandalay-uses-operation-hawk-tackle-growing-crime-wave> (According to the article, the Chief Minister “did not say how much Operation Hawk had achieved in terms of lowering the crime rate.”)

<sup>66</sup> Phyo Wai Kyaw, “Communities Set Up Teams to Fight Crime Spree in Mandalay,” *The Myanmar Times*, September 19, 2018, <https://www.mmtimes.com/news/communities-set-teams-fight-crime-spree-mandalay.html>.

Students at Yadanabon University, located six-and-a-half miles from Mandalay city, have not been immune from crime affecting Mandalay city and region. Students reported that a total of 70 motorcycles were stolen from 2016 to 2017, and 15 to 20 motorcycles were stolen in 2018 from Yadanabon University campus.<sup>67</sup> Other students reported having their wallets stolen while on campus.<sup>68</sup> In the fall of 2018, three students attending university in Mandalay Region—Ko Nay Min Htet, age 19, Htet Lin Thant, age 18, and Soe Moe Hein, age 20—were murdered and reportedly robbed.<sup>69</sup> The authorities apprehended and convicted the three men who killed Ko Nay Min Htet, but the other murders remain unsolved.<sup>70</sup>

In 2018, Yadanabon University officials reportedly employed 40 security and cleaning staff, which senior university officials conceded was insufficient to accommodate the needs of the university.<sup>71</sup> Students and professors claimed that Yadanabon University employed only one to two security guards in 2018.<sup>72</sup> For example, Professor Aye Aye Thant explained: "There was no one before [March 2019] . . . [the university] had just two security men at the middle gate."<sup>73</sup>

Another Yadanabon University professor described the security measures taken by the university, saying:

There are a few security guards in the school, and it's not enough . . . The mandate of the security [guards] is not to protect the students but to maintain the equipment—the chairs, the tables, things like that . . . It's to protect private materials, not to prevent threats against students.<sup>74</sup>

<sup>67</sup> ABFSU students at Yadanabon University reportedly maintained a list of stolen motorbikes from the campus. Athan and Fortify Rights interviews with Ye Myo Swe, Kyaw Thiha Ye Kyaw, Ye Min Htun, Myo Chit Zaw, Phone Myint Kyaw, Ye Lin Aung, and Nay Win Kyaw, Mandalay District, Myanmar, March 14, 2019; Athan and Fortify Rights interview with Kyaw Thiha Ye Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>68</sup> *Ibid.*

<sup>69</sup> Ko Nay Min Htet was a student specializing in mechanical power at Kyaukse Government Technical Institute and was murdered during an armed robbery in Mandalay region on August 8. In a separate incident on the same night, a man's throat was slashed and his motorcycle robbed in Mandalay. Zarni Mann, "Man Sentenced to Death Penalty for Murder of 19-year-old Student," *The Irrawaddy*, November 20, 2018, <https://www.irrawaddy.com/news/burma/man-sentenced-death-penalty-murder-19-year-old-student.html>; Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019. Htet Lin Thant was a second-year student specializing in information communication technology engineering at Pyin Oo Lwin Yadanabon Technological Institute, who was murdered during an armed robbery on December 6 in Thone Htaung village. Bo Bo, "Yadanabon Cyber City Students Union Meets Region Government Over Murder," *Mizzima*, December 12, 2018, <http://mizzima.com/article/yadanabon-cyber-city-students-union-meets-region-government-over-murder>. Soe Moe Hein was similarly murdered during an armed robbery. Fortify Rights, "Myanmar: Free Seven University Students in Mandalay," February 15, 2019, <https://www.fortifyrights.org/publication-20190215.html>; Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019. Soe Moe Hein specialized in industrial chemistry at Yadanabon University and was robbed and murdered by four masked men on December 25, 2018. Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

<sup>70</sup> The Myanmar authorities sentenced one of the men—Aung Thu Hein—to death, and he remains in prison at the time of writing. The other two men—Min Khant Kyaw and Min Chit Aung—received 21 years' imprisonment and 20 years' imprisonment, respectively, "Man Sentenced to Death Penalty for Murder of 19-year-old Student," *The Irrawaddy*.

<sup>71</sup> Although the university hired 25 additional security staff as part of a separate security plan in December 2018, these new hires did not start working at the university until March 2019. Athan and Fortify Rights interviews with Yadanabon University officials, Mandalay District, Myanmar, March 15, 2019; Athan and Fortify Rights interviews with Dr. Aye Aye Thant, Ye Myo Swe, Kyaw Thiha Ye Kyaw, Ye Min Htun, Myo Chit Zaw, Phone Myint Kyaw, Ye Lin Aung, and Nay Win Kyaw, Mandalay District, Myanmar, March 14, 2019.

<sup>72</sup> Athan and Fortify Rights interviews with Dr. Aye Aye Thant, Ye Myo Swe, Kyaw Thiha Ye Kyaw, Ye Min Htun, Myo Chit Zaw, Phone Myint Kyaw, Ye Lin Aung, and Nay Win Kyaw, Mandalay District, Myanmar, March 14, 2019.

<sup>73</sup> Students involved in ABFSU similarly suggested that Yadanabon University employed one security guard and roughly 15 cleaning staff. Athan and Fortify Rights interviews with Ye Myo Swe, Kyaw Thiha Ye Kyaw, Ye Min Htun, Myo Chit Zaw, Phone Myint Kyaw, Ye Lin Aung, and Nay Win Kyaw, Mandalay District, Myanmar, March 14, 2019.

<sup>74</sup> Athan and Fortify Rights interview with Thu Tha, Mandalay District, Myanmar, March 14, 2019.

## The History of All Burma Federation of Student Unions

The student organizers of the protests at Yadanabon University are all members of ABFSU, known as *Bakatha* in Burmese, the largest student union in Myanmar. Founded in 1936 by students seeking an alternative to the pro-British Rangoon University Students' Union, the then-called All Burma Students' Union (ABSU) provided a network for politically engaged students.<sup>75</sup> The founding members of the ABSU include Major General Aung San—Myanmar's independence leader and father of State Counsellor Aung San Suu Kyi—Myanmar's Prime Minister from 1960 to 1962 U Nu, and Myanmar's Deputy Prime Minister from 1948 to 1949 Ko Kyaw Nyein.<sup>76</sup> In 1951, ABSU changed its name to the All Burma Federation of Student Unions (ABFSU) to represent all student unions in Myanmar.<sup>77</sup>

After General Ne Win overthrew the democratically elected government in a *coup d'état* in March 1962, ABFSU organized nationwide student protests. The military responded with violence, occupying Rangoon University campus, killing scores of student protesters, arresting student leaders, and bombing the ABFSU headquarters.<sup>78</sup> After this attack, ABFSU went underground.<sup>79</sup>

The ABFSU re-emerged during the August 8, 1988 nationwide pro-democracy demonstrations, playing a prominent role in the largely student-led protests.<sup>80</sup> The military again responded with violence, killing more than 3,000 protesters and arresting thousands over a six-week period.<sup>81</sup> Following the “8888 Uprising,” the military shut down Myanmar's universities for three years and arrested many of ABFSU's leaders and members, forcing ABFSU back underground.<sup>82</sup> However, ABFSU continued to oppose Myanmar's military rulers through the formation of the Democratic Party for a New Society political party and the affiliated All Burma Students' Democratic Front (ABSDF) armed group.<sup>83</sup>

<sup>75</sup> Thar Nyunt Oo and Ingjin Naing, “A Brief History of Students' Movement in Burma/Myanmar,” *Maukkha*, para. 6.

<sup>76</sup> *Id.* at para. 5.

<sup>77</sup> *Ibid.*

<sup>78</sup> The government estimated that the authorities killed 16 students. However, other sources put the number at more than 100. Steinberg, *Burma's Road Toward Development*, p. 111; Thar Nyunt Oo and Ingjin Naing, “A Brief History of Students' Movement in Burma/Myanmar,” *Maukkha*, para. 17.

<sup>79</sup> Thar Nyunt Oo and Ingjin Naing, “A Brief History of Students' Movement in Burma/Myanmar,” *Maukkha*, para. 16.

<sup>80</sup> See, *Id.* at para. 23; Fink, *Living Silence in Burma*, p. 56; Steinberg, *Burma's Road Toward Development*, p. 2; Fogarty, “Was Burma's 1988 Uprising Worth It?,” *BBC News*; “Myanmar Profile – Timeline,” *BBC News*, August 19, 2015, <http://www.bbc.com/news/world-asia-pacific-12992883>.

<sup>81</sup> See, Thar Nyunt Oo and Ingjin Naing, “A Brief History of Students' Movement in Burma/Myanmar,” *Maukkha*, para. 23; Fink, *Living Silence in Burma*, p. 56; David Steinberg, *Burma: The State of Myanmar* (Washington D.C.: Georgetown University Press, November 30, 2001), p. 2; Fogarty, “Was Burma's 1988 Uprising Worth It?,” *BBC News*.

<sup>82</sup> Dan Chan Koon-Hong, *Legacy of the Fighting Peacock: Analyzing the Role of Student Activism in Burmese Democratic Movements*, University of Hong Kong, 2014, p. 82.

<sup>83</sup> Donald Seekins, “Historical Dictionary of Burma (Myanmar): All Burma Federation of Student Unions,” *website*, 2014, [http://hist\\_burma.enacademic.com/20/All\\_Burma\\_Federation\\_of\\_Student\\_Unions](http://hist_burma.enacademic.com/20/All_Burma_Federation_of_Student_Unions).



When thousands of monks took to the streets to call for an end to military rule during the Saffron Revolution in August 2007, ABFSU members joined them.<sup>84</sup> ABFSU leaders and members were among those arrested during the military's violent crackdown on the Saffron Revolution in the weeks that followed.<sup>85</sup> Some ABFSU student leaders remained arbitrarily detained until 2012 when the military government under General Thein Sein granted amnesty to thousands of prisoners.<sup>86</sup>

Following Myanmar's partial transition to civilian rule and the connected expansion of freedoms for civil society organizations in Myanmar, ABFSU re-established itself on university campuses in 2012.<sup>87</sup>

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<sup>84</sup> Nyein Nyein, "A Child of the Revolution," *The Irrawaddy*, February 8, 2012, p. 2, [https://www2.irrawaddy.com/article.php?art\\_id=22995&page=2](https://www2.irrawaddy.com/article.php?art_id=22995&page=2).

<sup>85</sup> Koon-Hong, *Legacy of the Fighting Peacock*, p. 84.

<sup>86</sup> *Id.* at p. 85.

<sup>87</sup> *Ibid.*



# I. HUMAN RIGHTS VIOLATIONS AND ABUSES

Between November 13, 2018 and January 2, 2019, students involved with ABFSU organized a series of five peaceful protests, calling for improvements in the management and security of Yadanabon University. The protests lasted between 15 to 30 minutes and involved groups of protesters ranging from three to more than 600.<sup>88</sup> University officials interfered with the protests by either closing the gates of the university or stationing professors to guard the gates, thereby preventing the students from protesting on campus.<sup>89</sup> On December 28, 2018 and January 2, 2019, government authorities arrested and detained seven of the protest organizers, who were then convicted and sentenced to a total of three months in detention for violating Section 435 of the Myanmar Criminal Code and Section 19 of the Peaceful Assembly Law. The students spent nearly 90 days in detention. While detained, prison officials beat four of the student protesters.<sup>90</sup>

Athan and Fortify Rights documented violations of international law by the Yadanabon University and Myanmar authorities, including restrictions on the rights to freedom of expression and peaceful assembly, arbitrary arrest and detention, and torture or ill-treatment.

## RESTRICTIONS ON THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

Three ABFSU members at Yadanabon University—Ye Myo Swe, 23, Kyaw Thiha Ye Kyaw, 23, and Myo Chit Zaw, 18—organized the first protest on November 13.<sup>91</sup> The protest lasted 15 minutes and attracted little attention. The protest took place in front of the main gate of Yadanabon University, where the students chanted demands for the university to upgrade security, maintain toilets, and let the students use the motorcycle stand budget to better the school.<sup>92</sup>

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<sup>88</sup> According to Ye Myo Swe, while the first protest on November 13 attracted little support from the public, more than 100 people attended the second protest on December 7 and more than 600 people attended the third protest on December 13. Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

<sup>89</sup> Athan and Fortify Rights interview with Ko Linn Kyaw, Mandalay District, Myanmar, March 13, 2019.

<sup>90</sup> Fortify Rights interviews with Kyaw Thiha Ye Kyaw, Ye Myo Swe, Myo Chit Zaw, and Phone Myint Kyaw, Mandalay District, Myanmar, November 5, 2019.

<sup>91</sup> *Ibid.*

<sup>92</sup> Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, September 13, 2019.

Following this first protest, the same four members of ABFSU with three additional ABFSU students—Zaw Moe Naing, 23, Phone Myint Kyaw, 20, and Tint Htoo Aung, 21—organized a second protest on December 7 on the same issues.<sup>93</sup> However, as Ye Myo Swe explained, university officials intervened before the protest got underway:

Before we started [the protest], the authorities knew we were coming. They saw us and so they closed the gates to the university and put their teachers at the gate. We made our campaign in front of the gate, the one at the back entrance of the university.<sup>94</sup>

With lecturers guarding the gate, the students held their protest just outside of the back gate of the university. In addition to their core concerns, the students also protested the use of lecturers to guard gates, as Ye Mwo Swe explained: “We demanded at the second protest that the university not use teachers [as guards], because the rector was overusing his power over the administration of the university.”<sup>95</sup>

The second protest lasted 20 minutes and attracted more attention than the first, drawing a crowd of approximately 100 people, including the parents of the student murdered in Mandalay.<sup>96</sup>

After the murder of Htet Lin Thant, 19, on December 6—the second student from Mandalay Region killed within four months—ABFSU organized a third protest on December 13, calling for increased security for university students and the ouster of the Chief Minister of Mandalay Region Dr. Zaw Myint Maung.<sup>97</sup> Twenty-five members of ABFSU participated in the protest, which lasted about 30 minutes and took place near the Student Affairs Department where new students to Yadanabon University were in the process of registering.<sup>98</sup> The protesters held signs and handed out flyers requesting a meeting with Dr. Zaw Myint Maung and university authorities during the protest.<sup>99</sup> However, the officials provided no response to the students’ request to meet.<sup>100</sup>

When another university student—Soe Moe Hein, age 20—was murdered in Mandalay on December 25, members of ABFSU called Yadanabon University Rector Dr. Maung Maung Naing, who was traveling in China for business.<sup>101</sup> In response, the rector reportedly said that the student died at night and not during school hours, so it was not the responsibility of the university or the university council.<sup>102</sup> He continued, saying, “We are all human. Humans can die.”<sup>103</sup>

<sup>93</sup> *Ibid.*; Fortify Rights interviews with Kyaw Thiha Ye Kyaw, Ye Myo Swe, Myo Chit Zaw, and Phone Myint Kyaw, Mandalay District, Myanmar, November 5, 2019.

<sup>94</sup> Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, September 13, 2019.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.* Htet Lin Thant was a second-year student specializing in information communication technology engineering at Pyin Oo Lwin Yadanabon Technological Institute. He was murdered during an armed robbery on December 6, while returning from Thone Htaung village where he had been eating dinner with a friend. Bo Bo, “Yadanabon Cyber City Students Union Meets Region Government Over Murder,” *Mizzima*, December 12, 2018, <http://mizzima.com/article/yadanabon-cyber-city-students-union-meets-region-government-over-murder>. The organizers of this protest included: Phone Myint Kyaw, Ye Lin Aung, Nay Win Kyaw, Aye Min Htun, Myo Chit Zaw, Naing Lin Aung, Ye Myo Swe, Kyaw Thiha Ye Kyaw, Zaw Toe Aung, and Minn Htike Soe. Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

<sup>98</sup> Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, September 13, 2019.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> Athan and Fortify Rights interview with Ko Linn Kyaw, Mandalay District, Myanmar, March 13, 2019.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*; Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

In response to the rector's comment and lack of action to ensure security for students, members of ABFSU organized a mock funeral for the rector and other university and government officials.<sup>104</sup> The students created an open invitation on the Yadanabon University ABFSU Facebook page for a "funeral procession" to take place the following day, on December 28, for Chief Minister of Mandalay Region Dr. Zaw Myint Maung, Minister for Electricity and Transportation Zar Ni Aung, Minister for Security and Border Affairs Colonel Kyaw Kyaw Min, Minister for Home Affairs Lieutenant General Kyaw Swe, and Yadanabon University Rector Dr. Maung Maung Naing.<sup>105</sup>

The organizers scheduled the mock funeral procession to begin at 1 p.m. nearby the Student Affairs Department of Yadanabon University.<sup>106</sup> As the students prepared to begin the demonstration at the student center, the vice rectors of Yadanabon University Tin Moe Tu Zar and Si Si Khin approached the students, and Si Si Khin reportedly told them: "Do not protest in the school compound. Get out of the compound or else you will be in trouble."<sup>107</sup> In response, the students moved the protest to outside the university grounds in front of the main gate of the university—the location of the first protest.<sup>108</sup>

At 12:40 p.m., six members of ABFSU, including the Yadanabon University chapter President Kyaw Thiha Ye Kyaw, Vice President Ye Min Htun, and members Ye Myo Swe, Myo Chit Zaw, Phone Myint Kyaw, Ye Lin Aung, and Nay Win Kyaw, walked in procession from the ABFSU meeting room towards the main gate of Yadanabon University.<sup>109</sup> Once in front of the university gate, the protesters placed photographs of the officials named in the Facebook event invitation into a mock cardboard coffin on the ground.<sup>110</sup>

Before the gathered crowd of more than 100 students, lecturers, university officials, and passersby, Kyaw Thiha Ye Kyaw, speaking into a megaphone, gave a mock eulogy.<sup>111</sup> He said: "The rector of Yadanabon University, Dr. Maung Maung Naing, has parted this life. Dr. Maung Maung Naing, you may go to wherever you please. You have nothing to do with Yadanabon University anymore."<sup>112</sup>

Another student protester then poured petrol on the mock coffin and set fire to the photographs and coffin.<sup>113</sup> Ye Myo Swe described what happened next:

Right then, Thein Tun, a professor from Yadanabon University, arrived with a small hammer. He was angry and aimed the hammer at the students. Some students and authorities stopped him and pulled him back. Teachers were shouting negative things. One female teacher shouted, "Hit them! Hit them!"<sup>114</sup>

<sup>104</sup> Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

<sup>105</sup> *U Kyaw Win Htut v. Kyaw Thiha Ye Kyaw, Ye Min Htun, Ye Myo Swe, Myo Chit Zaw, Phone Myint Kyaw, Ye Lin Nawng, Ne Win Kyaw*, Amarapura Township Court, Criminal Case No. 65, Judgment (Trial), February 13, 2019, p. 3. It is available on ABFSU's Facebook page: <https://www.facebook.com/yadanabonstudentunion>.

<sup>106</sup> *Id.* at p. 3; Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

<sup>107</sup> Fortify Rights interviews with Kyaw Thiha Ye Kyaw, Ye Myo Swe, Myo Chit Zaw, and Phone Myint Kyaw, Mandalay District, Myanmar, November 5, 2019; Fortify Rights interview with Phone Myint Kyaw, Mandalay District, January 27, 2020.

<sup>108</sup> Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, September 13, 2019.

<sup>109</sup> *Htut v. Students*, Amarapura Township Court, Case No. 65, p. 2; Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, May 22, 2019.

<sup>110</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>111</sup> Fortify Rights interview with Kaung Zaw Hein, Mandalay District, Myanmar, March 15, 2019; *Htut v. Students*, Amarapura Township Court, Case No. 65, p. 3.

<sup>112</sup> Athan and Fortify Rights interview with Kaung Zaw Hein and Naing Lynn Oo, Mandalay District, Myanmar, March 14, 2019.

<sup>113</sup> Fortify Rights interviews with Kyaw Thiha Ye Kyaw, Phone Myint Kyaw, Ye Myo Swe, and Myo Chit Zaw, Mandalay District, Myanmar, November 5, 2019.

<sup>114</sup> Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, September 13, 2019. A journalist at the protest confirmed that a professor yelled, "Hit them!" Fortify Rights interview with Kaung Zaw Hein, Mandalay District, Myanmar, March 14, 2019.

Six university security guards intervened to extinguish the fire, pouring water on the mock coffin and kicking it apart.<sup>115</sup> Approximately 20 plainclothes police officers then arrested three of the student protesters: Ye Myo Swe, Kyaw Thiha Ye Kyaw, and Ye Min Htun.

Ye Myo Swe described the arrest: “Then the plainclothes officers arrived. I asked them, ‘Are you the police? Are you going to arrest us?’ They said, ‘Yes.’ So, we went into the car with them after doing interviews with the media. The cars were not marked as police cars.”<sup>116</sup>

The police officers drove the students to Amarapura Township Police Station where the authorities detained them overnight.<sup>117</sup> Later that day, Deputy Superintendent of Police Khin Maung Soe charged the seven students who participated in the procession with a litany of offenses, including the following alleged violations under the Myanmar Criminal Code:<sup>118</sup>

- Section 505(b), which penalizes anyone who “makes, publishes, or circulates any statement, rumor or report . . . with intent to cause, or which is likely to cause, fear or alarm to the public . . . whereby any person may be induced to commit an offence against the State or against the public tranquility.” This section carries a sentence of up to two years’ imprisonment and/or a fine.
- Section 353, which prohibits using criminal force to deter a public servant from discharging their duty and carries a sentence of up to two years and/or a fine.
- Section 435, which prohibits arson defined as causing 100 Rupees or more worth of damage to any property and carries a sentence of up to seven years and a fine.
- Section 114, which prohibits abetment to a crime.

The police also charged the students with alleged violations of Section 4 of the Peaceful Assembly Law, which requires protesters to submit a detailed notification letter to local authorities at least 48 hours in advance of a proposed assembly or procession. Violations of Section 4 carry a sentence of up to three months’ imprisonment and/or a fine of 30,000 Myanmar Kyat (US\$19.50).<sup>119</sup>

Although not a participant in the protest, the police also charged the former vice president of ABFSU at Yadanabon University Naing Ye Wai with these offenses.<sup>120</sup>

The following day, the Amarapura Township Court ordered the students to be held at Obo Prison in Mandalay without bail.<sup>121</sup>

After the arrest of the three organizers of the mock funeral procession, four other ABFSU members—Ye Lin Aung, 20, Nay Win Kyaw, 22, Phone Myint Kyaw, 20, and Myo Chit Zaw, 18—organized a

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 17, 2019.

<sup>118</sup> *Htut v. Students*, Amarapura Township Court, Case No. 65, p. 4; Myanmar Criminal Code, January 5, 1861 (amended July 1, 2016), Section 505(b). The Rupee was the currency in colonial Burma until it was replaced by the Kyat in 1943.

<sup>119</sup> Myanmar Criminal Code, sections 505(b), 353, 435, and 114. *Htut v. Students*, Amarapura Township Court, Case No. 65, p. 4; Fortify Rights interview with Kaung Zaw Hein, Mandalay District, Myanmar, March 14, 2019; Fortify Rights, “Myanmar: Free Seven University Students in Mandalay.”

<sup>120</sup> The court judgment wrote that “former Vice-President of [ABFSU] Naing Ye Wai . . . walked in procession” with the other ABFSU students. However, ABFSU students contest this account. Ye Myo Swe told Fortify Rights that Naing Ye Wai did not participate in the procession or protest but was simply at a local tea shop nearby the protest when it happened. According to Ye Myo Swe, Naing Ye Wai evaded arrest for weeks before turning himself in to the police in March 2019. Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, September 13, 2019; *Htut v. Students*, Amarapura Township Court, Case No. 65, p. 2.

<sup>121</sup> Fortify Rights interviews with Kyaw Thiha Ye Kyaw, Phone Myint Kyaw, Ye Myo Swe, and Myo Chit Zaw, Mandalay District, Myanmar, November 5, 2019.

protest on January 2 to demand the release of the detained students.<sup>122</sup> These students participated in the December 28 procession, but moved away from the protest once the students began burning the coffin.<sup>123</sup> Mo Chit Zaw explained:

We decided beforehand who would do what, who would speak, who would light the coffin, etc. We knew from experience that the police would arrest us, so we chose three people to be close to the police to attract their attention. That way, we’d have four more students to protest later on. When our colleagues were arrested, we ran away so we could protest later on.<sup>124</sup>

The four students returned to the main gate of Yadanabon University on January 2 and sat on the ground in front of the gate, chanting “release the prisoner students.”<sup>125</sup> After 30 minutes, 15 police officers dressed in plainclothes arrested them and took them to Amarapura Township police station in unmarked civilian cars.<sup>126</sup>

The police took the four student leaders to Pyigyitagon Township Police Station in Mandalay, and later that same day, the Amarapura Court ordered the students to be held at Obo Prison without bail.<sup>127</sup>

On January 11, the Amarapura Township Court considered the five charges against the seven students.<sup>128</sup> That same day, ABFSU members along with the parents of the students murdered in Mandalay protested in front of the central government office building in Mandalay, calling for the government to drop charges against the students.<sup>129</sup>

Min Htet Myat, one of the student protesters, described how the police threatened the protesters, saying:

We gathered in front of the government office building. The government threatened to sue us for blocking traffic. The police came and nearly arrested us because there were so many people. A lot of students came to meet with the chief minister. Fifty people, including parents and students, were there. Many people were there. [The police] had not given permission to gather in front of the government building.

Representatives of the regional government and universities eventually agreed to meet with the protest organizers. The meeting took place on January 24 at 9 a.m. and included six student ABFSU representatives—Thet Maung Maung, 21, Pyae Sone, 26, Aung Thurein, 20, Naung Htet Aung, 20, Thet Oo Paing 20, and Min Htet Myat, 24—and one student from the Shan State Student Union, Sai Kyaw Zaw Han, 23.<sup>130</sup> Government and university representatives included Mandalay Chief Minister Dr. Zaw Myint Maung, Minister for Security and Border Affairs Kyaw Kyaw Min, Mandalay Region Attorney General Aung Wan, Chief of Mandalay Region Police Force Sein Lwin, and four rectors from different universities: Soe Hla Naing from the Government Technology Institute; Thu Wai Lwin from Sagaing Education College; Min Htet Myat from Meikhtila University; and Thet Maung Maung from Pakokku University.<sup>131</sup>

<sup>122</sup> Athan and Fortify Rights interview with Ko Linn Kyaw, Mandalay District, Myanmar, March 13, 2019.

<sup>123</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 13, 2019.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*; Fortify Rights interview with Kaung Zaw Hein, Mandalay District, Myanmar, March 14, 2019.

<sup>127</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 17, 2019.

<sup>128</sup> De Hlaing Winn, “Seven University Students Jailed in Connection with Effigy Burnings,” *The Irrawaddy*, February 15, 2019, <https://www.irrawaddy.com/news/seven-university-students-jailed-connection-effigy-burnings.html>.

<sup>129</sup> Athan and Fortify Rights telephone interview with Min Htet Myat, Lanmadaw District, Myanmar, September 16, 2019.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*



Min Htet Myat described the meeting:

The chief minister told us that he was concerned that the protests would disrupt the upcoming elections. He said he wanted to protect tranquility in Mandalay and asked us to not protest anymore during the trial. He asked us to come to him for things, saying, “If there’s something you want, tell us first. Come to me. Don’t protest first. If you need something, we will fulfill your need if possible. Just don’t protest first.”<sup>132</sup>

The students agreed not to protest during the trial of the seven students and, in exchange, the students asked the government to drop the charges under the criminal code and cease further legal action against the students.<sup>133</sup>

While the issues underlying the original protests were still relevant, Min Htet Myat explained that their focus “wasn’t on security or cleanliness at this meeting. What we wanted to focus on was the charges against our colleagues and ending the lawsuits against students.”<sup>134</sup>

The authorities agreed to drop three of the five charges against the students, including the charges under sections 505(b), 114, and 335 of the Myanmar Criminal Code.<sup>135</sup> Min Htet Myat explained the reason that all the charges were not dropped, saying:

The government said three charges were from the government and two from the police. The two from the police were the 435 [arson] charge and the peaceful assembly law charge. At our meeting, the government said it would withdraw their charges, but the police kept their charges. The government cannot tell the police how to act.<sup>136</sup>

In line with these negotiations, on February 2, Deputy Township Officer of Amarapura Township Kyaw Win Htut withdrew the three charges against the students. However, the alleged violations of Section 435 of the Myanmar Criminal Code and Section 19 of the Peaceful Assembly Law remained.

## TORTURE AND ILL-TREATMENT IN PRISON CUSTODY

The four students arrested by police on January 2—Ye Lin Aung, Nay Win Kyaw, Phone Myint Kyaw, and Myo Chit Zaw—reported being beaten by prison authorities in Obo Prison.

Athan and Fortify Rights spoke to Myo Chit Zaw, who described how the prison authorities threatened and beat him and his colleagues on March 24 around 9 p.m. He said:

In the evening, when prisoners are supposed to go to sleep, we were playing chess and singing . . . One drunk prison guard came to us and asked us to stop singing and playing chess. When we refused, the guard left and came back with the deputy, Kyaw Swe . . . Kyaw Swe yelled at us, “Who do you think you are?” and said, “Stop [playing chess] now, or I’ll shoot you with a slingshot.” We refused to stop. We asked them to call the head of the prison. We were arguing and so we wanted them to get their boss.<sup>137</sup>

After a 15-minute standoff between the students and Kyaw Swe, Kyaw Swe left and returned with 20 to 30 guards carrying sticks and guns.<sup>138</sup> Phone Myint Kyaw explained what happened next:

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

<sup>137</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 13, 2019.

<sup>138</sup> *Ibid.* Athan and Fortify Rights telephone interview with Phone Myint Kyaw and Ye Myo Swe, Lanmadaw District, Myanmar, April 2, 2019.

As the argument was beginning to end, the guards started kicking the chess board and other things in the cell, like plates, a table, and cups. We said, “You shouldn’t have done that. You shouldn’t kick our things.” We realized we were adding fuel to the fire.<sup>139</sup>

Myo Chit Zaw explained what followed:

[One of the guards] said, “The head of the prison wants to see you [pointing at Phone Myint Kyaw].” I said, “We want him to come here.” After that, [the guards] went out and shut the door. They came back and said, “Phone Myint Kyaw, you are the loudest. You come along alone.” We said, “He’s not going to follow you. He shouldn’t follow you.”

Myo Chit Zaw told Athan and Fortify Rights why they opposed going alone to meet the warden:

We said no because they usually beat up prisoners if they call them out one-by-one. That’s why we said, “Bring us all out if you want us to come out of our cell.” At this point, the guards and officer tried to pull Phone Myint Kyaw out of the cell, but we resisted and that created a struggle.<sup>140</sup>

The assembled prison guards and officer began to beat the four students after they tried to protect Phone Myint Kyaw from being taken by the guards. Myo Chit Zaw described the beatings, saying:

Four to five guards beat each student. They kicked Nay Win Kyaw in the face with [their] military boots. Another guard pulled my arms from the back so I couldn’t move while another guard hit my face and kicked my chest. Two guards were pulling me from the back while two others were kicking, beating me. The guards also beat my back with a truncheon. They beat our hands and legs as well. They were beating us for at least 15 minutes. The guards also beat us with truncheons and beat us with a normal stick and a special type of stick that is only used in prisons.<sup>141</sup>

Phone Myint Kyaw described similar beatings: “I was beaten up by seven guards. I was beaten with sticks. They had a special stick that is coiled with a wire—they hit me with it. They punched me in the head. I was kicked.”<sup>142</sup> He said that following the beatings, “We couldn’t sleep on our backs. We had to sleep sideways. That’s how bad it was, how painful it was.”<sup>143</sup>

Ye Lin Aung explained how he tried to defend himself from the blows:

I tried to shield my head with my arms, so [the guards] hit my arms and neck. Because I am not very tolerant of pain, after not very long, I stopped moving and fighting back. I was surrounded by three guards. When they were hitting me, I tried to protect my head, but when they pulled me out, they dragged me by my hands . . . Afterwards I couldn’t move for a week.<sup>144</sup>

Nay Win Kyaw also described being beaten by the Obo Prison guards:

[The guards] kicked me and I fell down. They pulled me from the legs while beating me up. It’s about four-five for each of us. I had a swollen cheek and a concussion. I could not see clearly. I remember that we were all shouting, “We students are being beaten.” While they were beating us, they were dragging us outside of our cell. The head of the jail came around and said, “Stop”, once we were outside the cell.<sup>145</sup>

<sup>139</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>140</sup> Fortify Rights interview with Myo Chit Zaw, Mandalay District, Myanmar, November 6, 2019.

<sup>141</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 13, 2019.

<sup>142</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>143</sup> *Ibid.*

<sup>144</sup> Fortify Rights interview with Ye Lin Aung, Mandalay District, Myanmar, January 27, 2020.

<sup>145</sup> Fortify Rights interview with Nay Win Kyaw, Mandalay District, Myanmar, January 27, 2020.

The guards then dragged the four students to Warden Cho Win Htun's office. Nay Win Kyaw was one of the students brought to the office. He said:

When we arrived in front of the office of the prison, Phone Myint Kyaw and I were called out to meet individually with the warden. He asked us individually to tell him what happened. I told him that we had been doing what we always do, and we weren't bothering the other prisoners in the cell. The problem started from the officer not talking nicely. I told him that his staff were drunk. He said "This is jail, not home. You have to follow the jail's rules." He also cursed at us "You motherfuckers give me the most problems." He was mostly defending his staff in the conversation.<sup>146</sup>

According to Myo Chit Zaw, he told Warden Cho Win Htun during their meeting:

I've been beaten up and slapped in the face. I asked him, "Will [the officers] be held responsible for what they did to me?" The head of the prison said, "Do you remember who slapped you? If you do, point them out here and give us proof. If you don't remember, and you don't have proof, then let it go." I said, "No, I couldn't remember their faces." He said, "If you don't remember, it didn't happen."<sup>147</sup>

The students could not identify their attackers because, as Myo Chit Zaw explained, "The prison guards covered my face when they attacked me, so I couldn't see well. It was around 9 to 10 p.m. and dark in the cell. I don't remember what each person looked like."<sup>148</sup>

Myo Chit Zaw described the pain he felt following the beatings:

After we were beaten, our pain was severe for three days. We couldn't get up or stand. Afterwards, our skin was black, yellow, red . . . I could not eat properly for two days because of the pain in my face, and it was so painful that I couldn't lie on my back. We had to sleep on the floor in the cells, and I already had back pain [before the beatings] . . . so it was made much worse. I drank a lot of fluids, but I could not chew any hard food, such as rice . . . After our release, one week later, it was very painful. I had to rest in my old house for a week before I recovered.<sup>149</sup>

The next day, the students attempted to meet with the prison doctor. Phone Myint Kyaw explained: "We tried to get permission to meet the prison doctor because of our injuries. But even when we met with the prison doctor, he didn't treat us. He ignored us completely, so we didn't receive any treatment."<sup>150</sup>

According to the students, an investigation occurred three days after the incident when five people the students did not recognize came and spoke to them about the beatings.<sup>151</sup> Phone Myint Kyaw explained:

We were invited into a small room one-by-one. Then the investigators introduced themselves like, "We are from the investigation committee. We came here to investigate the case of you being beaten up in the prison. Can we ask a few questions about the beating?" . . . They were dressed in black and looked like lawyers or judges, and there was a police officer in uniform and a few people dressed in normal clothes. They told us their names, but I can't remember . . . [The investigators] talked to us about the beatings [and] also asked other [prisoners] around us if we were beaten up, and they checked on

<sup>146</sup> *Ibid.*

<sup>147</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019; Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 13, 2019; and Athan and Fortify Rights telephone interview with Phone Myint Kyaw and Ye Myo Swe, Lanmadaw District, Myanmar, April 2, 2019.

<sup>148</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 13, 2019.

<sup>149</sup> *Ibid.*; Fortify Rights interview with Myo Chit Zaw, Mandalay District, Myanmar, November 6, 2019.

<sup>150</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>151</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

the prison guards who were on shift that night . . . They also talked with the officer who ordered for us to be beaten . . . I saw him standing in line to be interviewed by the investigators after us.<sup>152</sup>

Myo Chit Zaw gave a similar account of the investigation. He told Athan and Fortify Rights:

Some investigators came and met with us individually a few days after the beating. They interviewed me and asked about the beating. There were around five people who asked me questions.<sup>153</sup>

The government did not share the results of the investigation with the students.<sup>154</sup> San Sout, the Manager of the Ministry of Agriculture, Livestock, and Irrigation for the Mandalay Region Government, told Athan and Fortify Rights: "There was an investigation into the beating of the students, and my boss was on the committee, but the investigation's results are classified so I cannot share anything beyond that."<sup>155</sup>

Despite the secrecy of the investigation, Phone Myint Kyaw told Fortify Rights that he and the other students returned to the prison after their release to follow up with the result of the investigation. He said: "We went back to the prison to ask about the investigation. [Warden Cho Win Htun] told us that he was suspended from receiving a promotion."<sup>156</sup>

However, a Facebook post by the Myanmar Prisons Department on January 14, 2020 shows Cho Win Htun being promoted to director.<sup>157</sup>

<sup>152</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019 and January 27, 2020; Athan and Fortify Rights electronic communication with Phone Myint Kyaw, February 3 and 13, 2020.

<sup>153</sup> Fortify Rights interview with Myo Chit Zaw, Mandalay District, November 6, 2019.

<sup>154</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>155</sup> Fortify Rights interview with San Sout, Mandalay District, Myanmar, January 28, 2020.

<sup>156</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, January 27, 2020.

<sup>157</sup> Myanmar Prisons Department, Facebook post, January 14, 2020, <https://www.facebook.com/myanmarprisonsdepartment/posts/2984445581566700>. The caption for the photo reads: "The piping ceremony of police officers was held at 10:00 hours on the morning of 14/1/2020 at Main Hall No. 1 of the Prisons Departments, Office No. 49, Director General Office, Prisons Department, Ministry of Home Affairs, Nay Pyi Taw, for four promoted officers from Deputy Director to Director ..." (Translation and original on file with Fortify Rights).



## II. LEGAL FRAMEWORK AND ANALYSIS

According to the investigation conducted by Athan and Fortify Rights, the Myanmar and Yadanabon University authorities interfered with the students' rights to freedom of expression and peaceful assembly, and the Myanmar authorities subjected the students to arbitrary arrest and detention as well as torture or ill-treatment while in prison. As such, the students are entitled to an effective remedy under international law.

Under international human rights law, Myanmar is obligated to uphold rights guaranteed under customary international law as well as human rights treaties to which Myanmar is a party.<sup>158</sup> Myanmar is also a signatory to the Universal Declaration of Human Rights (UDHR) and recently affirmed its commitment to the rights articulated in the UDHR with its adoption of the ASEAN Human Rights Declaration in 2013.<sup>159</sup> Although Myanmar is not a party to the International Covenant on Civil and Political Rights (ICCPR), the provisions of the UDHR and some provisions of the ICCPR are generally recognized as binding on all nations under customary international law.<sup>160</sup>

In line with its commitments under international human rights law and customary international law, Myanmar has a responsibility to ensure the rights to freedom of expression and peaceful assembly and protection from arbitrary arrest or detention and torture or ill-treatment.

### THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

The rights to freedom of expression and peaceful assembly are protected under customary international law and are included in several international instruments, including the UDHR and the ICCPR.<sup>161</sup> Neither right is absolute,

<sup>158</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, ratified by Myanmar on October 6, 2017; Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. A/RES/61/106, U.N. Doc. A/61/49, acceded by Myanmar December 7, 2011; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/44/49, ratified by Myanmar July 15, 1991; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46, ratified by Myanmar July 22, 1997.

<sup>159</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810; Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, adopted February 2013, [https://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf).

<sup>160</sup> For a discussion on customary international law, and with specific reference to the rights to freedom of expression and peaceful assembly, see Gillian Triggs, *International Law: Contemporary Principles and Practices* (Sydney: LexisNexis Butterworths, Second Edition, 2006).

<sup>161</sup> UDHR, Art. 19 (right to freedom of opinion and expression), 20(1) (right to freedom of peaceful assembly and association); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, Art. 19(2) (right to freedom of expression) and Art. 21 (right of peaceful assembly).

meaning that states may impose limited restrictions on these rights if certain conditions are met.<sup>162</sup> International law only permits restrictions that are “in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”<sup>163</sup> A restriction based on one of those enumerated grounds must also be: (1) prescribed by law, “which implies that the law must be accessible and its provisions must be formulated with sufficient precision;” (2) applied or invoked in a manner that does not impair the essence of the right; (3) applied in a case-by-case basis; (4) necessary for achieving a legitimate aim; and (5) proportionate to the interest to be protected.<sup>164</sup>

Only when these conditions are met are restrictions permissible under international law. However, as noted by former U.N. Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai, “freedom is to be considered the rule and its restriction the exception.”<sup>165</sup> The U.N. Human Rights Council further provides that “in adopting laws providing for restrictions . . . States should always be guided by the principle that the restrictions must not impair the essence of the right . . . [T]he relation between right and restriction, between norm and exception, must not be reversed.”<sup>166</sup>

Myanmar’s domestic law also protects the rights to freedom of expression and peaceful assembly. Article 354(b) of the Myanmar Constitution provides for the right “to express and publish freely their convictions and opinions” and “to assemble peacefully without arms and holding procession.”<sup>167</sup> In language similar to the permissible restrictions listed in the ICCPR, the Myanmar Constitution allows for the rights to freedom of expression and peaceful assembly to be limited only by laws “enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality.”<sup>168</sup>

## The Right to Freedom of Expression

Myanmar authorities violated the right to freedom of expression of the protesting students by ending their protest early and arresting them. Under the UDHR, Article 19 provides: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>169</sup>

<sup>162</sup> ICCPR, Art. 4(1), (2).

<sup>163</sup> *Id.* at Art. 21. The permissible restrictions on the right to freedom of peaceful assembly slightly differ from the permissible restrictions for the freedom of expression listed under Article 19(3) of the ICCPR, which are those that are “provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.” *Id.* at Art. 19(3).

<sup>164</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, May 21, 2012, para. 16; U.N. Human Rights Committee, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, General Comment No. 31*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004, para. 6; U.N. Human Right Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, U.N. Doc CCPR/C/GC/34, September 12, 2011, para. 35; U.N. Human Rights Committee, *Toregozhina v. Kazakhstan*, Case No. CCPR/C/112/D/2137/2012, para. 7.4 (holding limitations must be proportionate); Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, (Kehl am Rhein: N.P. Engel, 1993), p. 387; ICCPR, arts. 19(3) and 21.

<sup>165</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, para. 16.

<sup>166</sup> U.N. Human Right Committee, *General Comment 27: Article 12 (Freedom of Movement)*, U.N. Doc CCPR/C/21/Rev.1/Add.9, November 2, 1999, para. 13.

<sup>167</sup> Constitution of the Republic of the Union of Myanmar, Art. 354(a), (b).

<sup>168</sup> *Id.*

<sup>169</sup> UDHR, Art. 19. The ICCPR contains similar language in guaranteeing the same right: “(1) Everyone shall have the right to freedom of opinion. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.” ICCPR, Art. 19.



The U.N. Human Rights Committee has interpreted the right to freedom of expression as "integral to the enjoyment of the rights to freedom of assembly and association."<sup>170</sup> The right is "essential for any society" and considered to form the "foundation stone for any free and democratic society."<sup>171</sup> This freedom covers "communications of every form of idea and opinion capable of transmission to others," including "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse."<sup>172</sup> All forms of expression and their means of dissemination, including verbal expression and non-verbal expression, such as images and objects of art as well as written forms of expression, such as posters and banners, are protected.<sup>173</sup>

While the right to freedom of expression may be limited in certain respects, expression cannot be restricted because the content of the expression itself is objectionable or provocative. Indeed, the right "embraces even expression that may be regarded as deeply offensive."<sup>174</sup>

Under international law, the burning of the mock coffin and photographs is considered a protected form of expression.<sup>175</sup> For example, the European Court of Human Rights found that the conviction of two Spanish men who burned a photo of the Spanish king and queen to protest the monarchy "amounted to an interference with the men's right to freedom of expression."<sup>176</sup> The Court found that the act of burning photos should be interpreted as "the symbolic expression of dissatisfaction and protest" and that "freedom of expression extended to 'information' and 'ideas' that offended, shocked or disturbed."<sup>177</sup> Other jurisdictions have similarly found such symbolic acts to constitute protected expression.<sup>178</sup>

<sup>170</sup> U.N. Human Rights Committee, *CCPR Article 19: Freedoms of Opinion and Expression, General Comment No. 34*, para. 4.

<sup>171</sup> *Id.* at para. 2.

<sup>172</sup> *Id.* at para. 11.

<sup>173</sup> *Id.* at para. 12.

<sup>174</sup> *Id.* at para. 11.

<sup>175</sup> The common practice of burning or hanging effigies during the colonial era in the U.S. to express dissent and opposition to the British monarchy and its policies spurred debate on the role of such expression and contributed to the development of the right to freedom of expression. See, Stephen D. Solomon, *Revolutionary Dissent: How the Founding Generation Created the Freedom of Speech* (New York City: St. Martin's Press, April 26, 2016) (suggesting "[u]nlike other forms of expression that involved words, either spoken or written, the tree and the effigies were symbols. But they were speech nonetheless. [Those] who strung the effigies . . . did so to communicate a profound disagreement . . . Their use of symbols to express opposition to the new taxes involved a completely new different mode of speech, but one that was ultimately as important as the essays discussing the constitutional rights of Englishmen.") See also, Eugene Volokh, "Symbolic Expression and the Original Meaning of the First Amendment," *Georgetown Law Journal*, Vol. 97, 2009, pp. 1057–59. The burning and/or hanging of effigies has continued throughout the world as a form of expression. See, for example, Melissa Turpin, "Hanging Trump Effigy Protected By First Amendment," *WishTV*, January 31, 2017, <https://www.wishtv.com/news/local-news/hanging-trump-effigy-protected-by-first-amendment/1064107848>; Sandesh Chaurasia, "Modi's Effigy Burnt in JNU: Is Freedom Of Expression Being Misused?," *University Express*, October 16, 2016, <https://www.universityex.com/community/opinion-community/prime-ministers-effigy-burnt-in-jnu-is-freedom-of-expression-being-misused/>. "Croatian Journalist's Effigy Burned Publicly During Carnival," *Reporters Without Borders*, February 26, 2015, <https://rsf.org/en/news/journalists-effigy-burned-publicly-during-carnival>.

<sup>176</sup> *Stern Taulats and Roura Capellera v. Spain*, European Court of Human Rights (ECtHR), Application no. 51168/15, Judgment (Appeal), March 13, 2019. See, Raphael Minder, "Burning King's Picture Is Free Speech, European Court Warns Spain," *New York Times*, May 13, 2018, <https://www.nytimes.com/2018/03/13/world/europe/echr-spain-free-speech.html>.

<sup>177</sup> *Id.* at p. 2, quoting *Handyside v. the United Kingdom*, ECtHR, Application no. 5493/72, Judgment (Appeal), December 7, 1976, para. 49.

<sup>178</sup> See, for example, New Zealand Human Rights Commission, *Ch. 9: Freedom of Opinion and Expression*, 2010, p. 124, [https://www.hrc.co.nz/files/6914/2388/0492/HRNZ\\_10\\_Freedom\\_of\\_opinion\\_and\\_expression.pdf](https://www.hrc.co.nz/files/6914/2388/0492/HRNZ_10_Freedom_of_opinion_and_expression.pdf); Office of the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, June 10, 2009, p. 9, <http://www.oas.org/en/iachr/expression/docs/publications/inter-american%20legal%20framework%20of%20the%20right%20to%20freedom%20of%20expression%20final%20portada.pdf>.

The students' protest involving setting fire to a mock coffin containing the photos of government and university officials is a protected form of expression under international law. The subject of the students' protest was an issue of public affairs—safety and sanitation on campus and the management of university funds. Moreover, they expressed their opinion through protected verbal and non-verbal communication, including images and symbols, such as the burning of the coffin and the script they recited. While some may have found the students' choice to burn photos in a mock funeral offensive, human rights law protects such forms of expression. As such, the restrictions placed on the students' protest amount to a violation of the right to freedom of expression.

The students also faced two years' imprisonment for allegedly violating Section 505(b) of the Myanmar Criminal Code, a criminal penalty that is incompatible with human rights law. Section 505(b) prohibits making, publishing, or circulating any statement, rumor or report "with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility."<sup>179</sup> Both the NLD-led government and the prior military regime have used this provision to penalize speech critical of the government or military under the guise of protecting "public tranquility."<sup>180</sup> While that goal plausibly fits within one of the permissible objectives for restrictions to freedom of expression under Article 19(3) of the ICCPR, the formulation in 505(b) renders it too vague and broad to be compatible with the ICCPR. Indeed, the term "public tranquility," which is inherently subjective and overly broad, is not defined in the criminal code, and the provision gives the government largely unfettered discretion in determining what constitutes an offense against it.

If the court had convicted the students of violating Section 505(b), the students would have faced up to two years' imprisonment, a fine of an unspecified amount, or both.<sup>181</sup> However, on February 4, Deputy Township Officer for the General Administration Department in Amarapura Township Kyaw Win Htut withdrew the charge against the students after ABFSU students agreed to cease protesting during the trial.<sup>182</sup> Human rights law allows governments to negotiate plea deals, sentencing, and charges, but they cannot do so by limiting what rights third parties are allowed to exercise, such as the right to freedom of expression.<sup>183</sup> As such, the government's demand that the students cease protesting during the trial infringed on their right to freedom of expression under international law.

## The Right to Freedom of Peaceful Assembly

The right to peaceful assembly is set out in Article 20(1) of the UDHR and Article 21 of the ICCPR.<sup>184</sup> An assembly is understood to mean an intentional and temporary gathering in a private or public space for a specific purpose.<sup>185</sup> An assembly can take many forms, including "demonstrations, inside meetings, strikes, processions, rallies, or even sits-in."<sup>186</sup> Any form of peaceful assembly is protected under human rights law without distinction as to its form, so long as the assembly is peaceful.<sup>187</sup>

<sup>179</sup> Myanmar Criminal Code, Section 505(b).

<sup>180</sup> See, for example, Human Rights Watch, *Dashed Hopes*, pp. 47–52.

<sup>181</sup> Myanmar Criminal Code, Section 505(b).

<sup>182</sup> *Htut v. Students*, Amarapura Township Court, Case No. 65, p. 4.

<sup>183</sup> The U.N. Human Rights Committee has clarified that "Restrictions [on the right to freedom of expression] are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated." U.N. Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, para. 22. Total restrictions on a person's right to freedom of expression and peaceful assembly over a significant amount of time do not fit in either of the categories provided for in Article 19(3) of the Covenant.

<sup>184</sup> ICCPR, Art. 21; see also, UDHR, Art. 20(1), (providing that "(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.")

<sup>185</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, para. 24.

<sup>186</sup> *Ibid.*

<sup>187</sup> U.N. Human Rights Council, *Joint Report of the Special Rapporteurs*, U.N. Doc. A/HRC/31/66, para. 18.

The Yadanabon University and Myanmar authorities prevented the students from protesting on campus on two occasions. The right to peaceful assembly imposes a positive obligation on state actors and their agents to protect and facilitate peaceful assemblies.<sup>188</sup> Such an obligation means authorities should allow protestors, as much as possible, to hold their assemblies within "sight and sound" of the intended target audience and not interfere with protesters' access to public spaces, which includes streets, roads, squares, and other "areas to which the public has access or should have access."<sup>189</sup>

Athan and Fortify Rights documented how Yadanabon University officials failed to fulfill their obligation to facilitate the students' protests by actively preventing them from protesting on campus. At the students' first protest on November 13, the university closed its gates, preventing the protest from taking place on university grounds—a space to which the public has access as it is a public university.<sup>190</sup> During their second protest on December 7, under alleged orders from University Rector Dr. Maung Maung Naing, lecturers blocked the university gates, preventing the students from protesting on campus and forcing them to protest outside the university. Far from facilitating the students' protests, Yadanabon University officials actively prevented the protests from taking place "within sight and sound" of the intended audience. Such obstruction of a peaceful assembly runs counter to the university's obligations under international human rights standards.

While university officials prevented the students from protesting on campus, Myanmar police officers disrupted and ended the students' fourth and fifth protests, arresting participants.

Among the reasons for the students' arrest, the authorities pointed to the failure of the student leaders to submit a "notification letter" in advance of the protest as required by Section 4 of the Peaceful Assembly Law.

The "notification letter" and its overly broad requirements contravene human rights standards. While assembly organizers may be required to give "prior notification" in advance of "large assemblies or for assemblies at which some degree of disruption is anticipated," the protests organized at Yadanabon University failed to threaten disruption at a level that would have required advance notification<sup>191</sup> Moreover, international law instructs that the purpose of such notification should be to "facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others."<sup>192</sup> The notification should further be subject to a proportionality test, be required for a maximum of 48 hours prior to the day the assembly is planned to take place, and not be unduly bureaucratic.<sup>193</sup>

<sup>188</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, para. 27 ("The Special Rapporteur stresses that the enjoyment of the right to hold and participate in peaceful assemblies entails the fulfilment by the State of its positive obligation to facilitate the exercise of this right.") See also, International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, 2001, Art. 4, ("The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.") See also, *Enver Şahin v. Turkey*, ECtHR, Application no. 23065/12, Judgment (Appeal), January 30, 2018 (holding that a public university had violated the rights of one of its students). As a public university, Yadanabon University performs a public function, receives its funding from public sources, and operates under the jurisdiction of the Myanmar Ministry of Education. As such, the university can be considered an organ of the state with attendant international legal obligations for its acts or omissions.

<sup>189</sup> *Id.* at para. 40; U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/23/39, para. 66; U.N. Human Rights Committee, *General Comment 37: Article 21: Right of Peaceful Assembly, Revised Draft Prepared by the Rapporteur, Mr. Christof Heyns*, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>.

<sup>190</sup> Athan and Fortify Rights interview with Ko Linn Kyaw, Mandalay District, Myanmar, March 13, 2019.

<sup>191</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, para. 28. See also, U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/23/39, para. 52.

<sup>192</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, para. 28.

<sup>193</sup> *Id.* at paras. 28–29.

Although the students failed to comply with this administrative requirement, such a failure should not have resulted in the dissolution of the assemblies nor criminal sanctions for participants involved in the protest.<sup>194</sup> The U.N. Human Rights Committee has held that imposing criminal penalties, including fines and imprisonment, for holding a peaceful assembly is incompatible with human rights law.<sup>195</sup>

Given that the students' protests centered on issues of public concern in a public space and the protests were peaceful and posed no potential threat to public order, the dissolution of the protest and subsequent arrest of the protesters cannot be justified by international law and are therefore a violation of the students' right to peacefully assemble.

<sup>194</sup> *Id.* at para. 29.

<sup>195</sup> U.N. Human Rights Committee, *Patrick Coleman v. Australia*, U.N. Doc. CCPR/C/87/D/1157/2003, July 17, 2006, para. 73; U.N. Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, para. 26.

## The Peaceful Assembly and Peaceful Procession Law

Several provisions of the Peaceful Assembly Law are expressly incompatible with human rights law and standards. For example, Section 4 requires assembly organizers to submit extensive information regarding assembly's participants, speakers, and funding, which exceeds the information necessary for the government to facilitate an assembly.<sup>196</sup> Furthermore, the criminal and administrative penalties articulated under Section 19 of the Peaceful Assembly Law for violations of certain provisions of the law are neither necessary nor proportionate to the goal of facilitating assemblies.

The ICCPR requires any restriction on the right to freedom of peaceful assembly to be for a legitimate purpose and be necessary and proportionate to achieving that purpose.<sup>197</sup> In order to pass those tests, criminal and administrative penalties must be the "least intrusive means to achieve the desired objective."<sup>198</sup> The penalties provided in Section 19 of the Peaceful Assembly Law fail to meet this test.

<sup>196</sup> Authoritative guidance from two Special Rapporteurs raises concerns regarding these provisions in relation to the right to freedom of association and the right to freedom of peaceful assembly: "Human Rights Council Resolution 22/6 provides that States need to ensure that the reporting requirements 'do not inhibit functional autonomy' of associations. The former Special Rapporteur on the rights to freedom of association and peaceful assembly considers that the use of 'onerous and bureaucratic reporting requirements' can eventually 'obstruct the legitimate work carried out by association' (A/HRC/23/39, para 38)." U.N. Office of the High Commissioner for Human Rights, *Mandates of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; and the Special Rapporteur on the Situation of Human Rights Defenders, Letter to the Government of Sierra Leone*, U.N. Doc. OL SLE 1/2018, February 22, 2018, p. 7.

<sup>197</sup> ICCPR, Art. 21.

<sup>198</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/23/39, para. 23.



## PROHIBITION AGAINST TORTURE AND OTHER FORMS OF ILL-TREATMENT

The right to be free from torture and other forms of ill-treatment is a fundamental human right protected by international criminal law, international human rights law, and customary international law.<sup>199</sup> It is also a fundamental right that all States, including Myanmar, are legally bound to uphold.<sup>200</sup>

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) defines torture as “severe pain or suffering, whether physical or mental,” intentionally inflicted for a specific purpose, such as punishment, intimidation, or coercion, “or for any reason based on discrimination of any kind.”<sup>201</sup> Torture is committed “when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>202</sup>

Certain acts that may amount to torture are also prohibited in Myanmar’s Criminal Code.<sup>203</sup> For example, Section 330 prohibits voluntarily causing harm for three enumerated purposes: “extorting from the sufferer . . . any confession . . . which may lead to the detection of any offence or misconduct; or . . . constraining the sufferer . . . to restore . . . any property or valuable security; or to satisfy any claim or demand.”<sup>204</sup> However, Myanmar’s legal regime falls short of protecting against torture as defined by international law.<sup>205</sup>

The beating of the four students while imprisoned in Obo Prison amounts to torture or ill-treatment, both of which are prohibited under international law. The beatings suffered by Ye Lin Aung, Nay Win Kyaw, Phone Myint Kyaw, and Myo Chit Zaw while imprisoned likely amount to “severe pain or suffering” in line with the definition of torture under international law.<sup>206</sup> According to Myo Chit Zaw, four to five guards beat each student at a time, using truncheons and other sticks to strike the

<sup>199</sup> Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 1998, U.N. Doc. A/CONF.183/9, 2002, Art. 7(1)(f); UDHR, Art. 5; ICCPR, Art. 7; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. Res. 39/46, U.N. Doc. A/39/51, Art.1. For an in-depth discussion of torture as a violation of customary international law, see *Prosecutor v. Anto Furundzija*, International Criminal Tribunal for the Former Yugoslavia (ICTY), Case No. IT-95-17/1-T, Judgment (Trial), December 10, 1998, paras. 143–146.

<sup>200</sup> International Law Commission, *Responsibility of States for Internationally Wrongful Acts, with Commentaries*, 2001, Art. 26, para. 5 (“Those peremptory norms that are clearly accepted and recognised include . . . torture.”) See also, for example, *Prosecutor v. Anto Furundzija*, ICTY, Case No. IT-95-17/1-T, paras. 153–156 (finding that the prohibition on torture has acquired the status of *jus cogens*, meaning “the prohibition has now become one of the most fundamental standards of the international community.”)

<sup>201</sup> CAT, Art. 1(1).

<sup>202</sup> *Ibid.*

<sup>203</sup> Myanmar Criminal Code, sections 330–331.

<sup>204</sup> *Id.* at Section 330. Section 331 prohibits causing “grievous hurt” for the same purposes as listed under Section 330, with mandatory punishment of up to ten years’ imprisonment.

<sup>205</sup> While the acts covered by the Criminal Code are similar to the Convention Against Torture’s prohibited acts, they are too limited in scope to rise to the Convention’s standard. For example, the Code’s prohibition is not limited to instances involving the act or acquiescence of public officials acting in their public capacity, as required by the Convention. Instead, the Criminal Code punishes “whoever” commits the offense. Similarly, the prohibited purposes of the acts listed under the Code are too narrow and do not include punishment or intimidation, both of which are included in the Convention’s list of prohibited purposes. While the acts listed under the Code would constitute torture if committed by or at the acquiescence of a public official to the requisite severity of suffering, many other acts are not covered by the Code’s narrow formulation. As such, the Criminal Code does not sufficiently prohibit torture as required by the Convention.

<sup>206</sup> CAT, Art. 1.

students.<sup>207</sup> While holding him on the ground, guards kicked Naw Win Kyaw's face with military-style boots; guards similarly held Myo Chit Zaw's arms back while other guards kicked his chest, legs, hands, and feet.<sup>208</sup> Myo Chit Zaw described the intensity of the pain as "severe" and lasting for several days.<sup>209</sup>

According to the testimony of the students, the guards beat the four students after the students refused to stop singing or playing chess and tried to stop the guards from taking Phone Myint Kyaw, indicating that the beatings were "intentionally inflicted for a specific purpose"—namely to reprimand the students for failing to take direction from the guards.

Furthermore, some 30 prison guards—serving in their official capacity—were reportedly involved in the beatings. The Convention Against Torture requires that the act in question must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."<sup>210</sup> If a public official, such as a prison guard, engages in conduct that causes severe pain or suffering, then the "state action" requirement is met in "all but the exceptional circumstances when the official is acting for purely private reasons."<sup>211</sup> In the case of the students, the beatings occurred while the guards were on duty and at their place of work—the prison. As such, it is clear that the guards were acting in their official capacity as agents of the state when they beat the students.

Given the severity of the beatings inflicted by prison guards for the apparent purpose of punishing the imprisoned students, the beatings likely constitute torture under international law.

Even if the severity of the beatings do not qualify as torture, the beatings may amount to cruel, inhuman, and degrading treatment or punishment, which is also prohibited by CAT.<sup>212</sup> While such treatment is not precisely defined by CAT, guidance by the U.N. Special Rapporteur on Torture explained that "the decisive criteria for distinguishing torture from [ill-treatment] may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted."<sup>213</sup> In other words, acts that do not meet the "severe pain or suffering" requirement to constitute torture can instead amount to ill-treatment where the elements of "purpose" and "powerlessness" are present.<sup>214</sup> For example, if an act does not result in severe pain or suffering, it can still be considered ill-treatment if done with the specific purpose of punishment, intimidation, or discrimination, and the victim is powerless in relation to the perpetrator.<sup>215</sup>

Detainees are by definition powerless while incarcerated. Persons deprived of their liberty "find themselves in a situation of complete dependency and are therefore particularly vulnerable to any

<sup>207</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 13, 2019.

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.*

<sup>210</sup> CAT, Art. 1(1).

<sup>211</sup> Gail Miller, *Defining Torture* (New York City: Floersheimer Center for Constitutional Democracy, December 2005), p. 18.

<sup>212</sup> CAT, Art. 16; ICCPR, Art. 7. See also, U.N. Commission on Human Rights, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, U.N. Doc. E/CN.4/2006/6, December 23, 2005, paras. 35, 41.

<sup>213</sup> U.N. Commission on Human Rights, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, U.N. Doc. E/CN.4/2006/6, para. 39. See also, World Organisation Against Torture, *Interpretation of the Definition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment in the Light of European and International Case Law: the Need to Preserve Legal and Jurisprudential Evolutions and Acquis*, October 30, 2004, <https://www.refworld.org/docid/46c190b20.html>.

<sup>214</sup> U.N. Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/39/CRP.2, September 17, 2018, para. 162.

<sup>215</sup> CAT, Art. 1: U.N. Commission on Human Rights, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, U.N. Doc. E/CN.4/2006/6, para. 35.

abuse," such as torture or ill-treatment.<sup>216</sup> As such, even if the severity of the pain suffered by the students does not rise to the level enshrined in the Convention, due to the context in which the beatings occurred—prison—and the powerlessness of the victims, it is likely that the students' suffering constitutes ill-treatment under the Convention.

## THE RIGHT TO LIBERTY

International law protects the right to freedom from arbitrary arrest and detention as guaranteed under the UDHR and ICCPR.<sup>217</sup> Article 9 of ICCPR provides:

Everyone has the right to liberty and security of person. No one will be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.<sup>218</sup>

While the right to liberty can be restricted in certain situations, an arrest is considered unlawful if a person is arrested for engaging in activity that is protected under international law, such as exercising the rights to freedom of peaceful assembly and freedom of expression.<sup>219</sup> Therefore, the arrest and detention of the students for their involvement in exercising their rights to freedom of expression and peaceful assembly is arbitrary and in violation of international law.

## THE RIGHT TO AN EFFECTIVE REMEDY

When fundamental rights are violated, international law provides for the right to "an effective remedy" as determined by a competent authority.<sup>220</sup> Such remedies may include: "restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition."<sup>221</sup>

"Restitution" seeks to put persons whose rights have been violated in the position they enjoyed before the violation took place. For example, restitution may include a "restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."<sup>222</sup>

The survivor may also be compensated for any economically assessable damage resulting from the violation, such as material damages, loss of employment, and costs required for legal or medical expertise, or psychological and social services.<sup>223</sup> An effective remedy may also include rehabilitation, such as medical and psychological care or legal and social services.<sup>224</sup>

<sup>216</sup> U.N. Commission on Human Rights, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, U.N. Doc. E/CN.4/2006/6, para. 37.

<sup>217</sup> UDHR, Art. 3; ICCPR, Art. 9.

<sup>218</sup> ICCPR, Art. 9.

<sup>219</sup> U.N. Human Rights Committee, *Article 9: Liberty and Security of Person, General Comment No. 35*, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 17.

<sup>220</sup> UDHR, Art. 8; ICCPR, Art. 3, ("Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.")

<sup>221</sup> U.N. General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* ("The Right to Remedy Principles"), G. A. Res. 60/147, U.N. Doc. A/RES/60/147, March 21, 2006, Principle 18.

<sup>222</sup> *Id.* at Principle 19.

<sup>223</sup> *Id.* at Principle 20.

<sup>224</sup> *Id.* at Principle 21.

“Satisfaction” aims to recognize the harm done and provides measures to prevent violations from continuing. Satisfaction may include provisions to verify the facts, and where appropriate, provide a full public disclosure of the truth; repair any harm done to the reputation or dignity of the victims; and a public apology that includes acceptance of responsibility.<sup>225</sup>

“Guarantees of non-repetition” may include: ensuring effective civilian control of military and security forces; strengthening the independence of the judiciary; protecting persons in the legal, medical, and health-care professions, the media, and human rights defenders; providing human rights trainings; implementing codes of conduct; promoting mechanisms for preventing social conflicts; and reforming laws that contribute to or allow gross violations of international law.<sup>226</sup>

According to the students, a government commission investigated the students’ allegations of torture. However, the government failed to publish its findings and took action only against the prison warden, Cho Win Htun. According to the students, the government only suspended opportunities for Cho Win Htun to be promoted, and it is not clear for how long as he was promoted to director a year after the beatings took place.

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<sup>225</sup> *Id.* at Principle 22.

<sup>226</sup> *Id.* at Principle 23.



### III. STUDENT HUMAN RIGHTS DEFENDERS AT YADANABON UNIVERSITY

Student activists have played a role in advocating for basic freedoms and human rights protections in Myanmar since before the country gained independence from colonial powers in 1948. The students highlighted in this report view their role in Myanmar today as continuing this tradition, as members of ABFSU and young activists. These students have faced imprisonment, torture, and expulsion from their university for their activism. The six students profiled in this chapter—Kyaw Thiha Ye Kyaw, Phone Myint Kyaw, Ye Myo Swe, Myo Chit Zaw, Ye Lin Aung, and Nay Win Kyaw—provide select insight into the personal background and motivations of the students involved in the Yadanabon University protests as well as their hopes for the future.

#### KYAW THIHA YE KYAW

Born in 1996, Kyaw Thiha Ye Kyaw learned about ABFSU while still in high school. He said:

After the matriculation exam in 11th grade, before university, I learned about ABFSU in a book called *As the Sun Rises from the East*. It was a history of ABFSU student union in Yangon. That’s where I learned about ABFSU in the book, about why students protest, how the education system functions, and I started to be curious about everything—the struggle of students to achieve their goals. I was hoping to have a student union just like that in the university I was going to attend.<sup>227</sup>

When Kyaw Thiha Ye Kyaw arrived at Yadanabon University, restrictions on student organizations at the university hindered ABFSU’s activities:

Because of a law against student groups on campus, whenever we wanted to meet to organize and talk, we have to go outside campus to tea shops, to pagodas. It’s not like we didn’t exist, but we had to create distance between us and the university. That made it harder to find and join ABFSU at first.<sup>228</sup>

<sup>227</sup> Athan and Fortify Rights telephone interview with Kyaw Thiha Ye Kyaw, Lanmadaw District, Myanmar, September 17, 2019; Fortify Rights interview with Kyaw Thiha Ye Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>228</sup> *Ibid.*

Kyaw Thiha Ye Kyaw described how being part of ABFSU made him feel, saying:

I feel like I am the protector of student rights. I am not doing it for myself but for the whole student body and for the next generation. Because I really feel like we need a change. We are starting to get together the other students who have the same motivations and same ideas, so we start to protest.<sup>229</sup>

Kyaw Thiha Ye Kyaw became the chapter's president during his second year at Yadanabon University. Explaining his leadership as the chapter president, he said:

We are helping find the solution that the students profit from, where they have full rights under the education system . . . I feel insecure when I look at our education system. I worry about the future generations. What I feel now, I know they will feel it again and again in the future. The future generations will get the trouble. That's why I'm pushing the education system and the budget.<sup>230</sup>

As president, he led a series of protests in January 2018 calling for an increase in education funding that led the university to expel him and 13 other students.<sup>231</sup> He told reporters at the time of his expulsion that “[o]ur demands are not for us . . . but for all students and all educational staff around Myanmar.”<sup>232</sup> A few weeks after the protests, the Ministry of Education announced that the expelled students could return to their classes.<sup>233</sup>

## PHONE MYINT KYAW

Born in Byawbwe village in Mandalay Region in 1997, Phone Myint Kyaw told Athan and Fortify Rights that he became interested in political activism in 2015 during the student-led march from Mandalay to Yangon calling for educational reforms. Myanmar security forces stopped the march in Letpadan and violently dispersed the protesters, arresting 127.<sup>234</sup> The student leaders spent 13 months in detention before being released on April 8, 2016 during a general amnesty.<sup>235</sup> Phone Myint Kyaw described the impact of the protest march on his life, saying:

I heard about the protest march from Mandalay to Yangon in 2015. [The students] were protesting about the national education law, and they made 11 points about what they wanted to change. There was a lot of publicity about it in 2015 . . . The march was a call to action for us. The protests started in Letpadan and then they were crushed, so we started the campaigns in our towns after Grade 11 exams to protest the crackdown. We had some slogans—“We are students, respect our rights.” We held out those signs.<sup>236</sup>

Phone Myint Kyaw explains that this moment was critical for the beginning of his interest in activism: “The main reason why we started to participate in ABFSU was because of those actions, that march. It motivated us to become activists.”<sup>237</sup>

<sup>229</sup> *Ibid.*

<sup>230</sup> Athan and Fortify Rights telephone interview with Kyaw Thiha Ye Kyaw, Lanmadaw District, Myanmar, September 17, 2019.

<sup>231</sup> “Myanmar Students Expelled After Rally For Funds,” *Agence France-Presse*, January 27, 2018, <https://www.bangkokpost.com/thailand/general/1403030/myanmar-students-expelled-after-rally-for-funds>.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> See, Fortify Rights, *Crackdown at Letpadan: Excessive Force and Violations of the Rights to Freedom of Peaceful Assembly and Expression*, October 2015, [https://www.fortifyrights.org/downloads/FR\\_Crackdown\\_At\\_Letpadan\\_October\\_2015.pdf](https://www.fortifyrights.org/downloads/FR_Crackdown_At_Letpadan_October_2015.pdf).

<sup>235</sup> Fortify Rights, “Myanmar: Investigate Use of Excessive Force Against Letpadan Protesters,” April 14, 2016, <https://www.fortifyrights.org/mya-inv-2016-04-14/>.

<sup>236</sup> Fortify Rights interview with Phone Myint Kyaw, Mandalay District, Myanmar, November 6, 2019.

<sup>237</sup> *Ibid.*

Reflecting on his activism following the Letpadan crackdown, Phone Myint Kyaw told Fortify Rights:

We were scared at that time . . . If [the authorities] are going to beat us, then we are afraid . . . We were afraid, we would be put in jail too . . . But when our brothers were being beaten, we couldn't keep quiet. Even though we were afraid, we couldn't keep quiet because the other students were put in jail.<sup>238</sup>

## YE MYO SWE

Born in 1996, Ye Myo Swe joined Yadanabon University in 2016 to continue his studies in law. He has been active in ABFSU since 2013 and currently serves as an executive member of ABFSU at Yadanabon University.

Ye Myo Swe explained how he felt about the protests that led to his arrest: "The feelings we had are that our rights were taken away by the government. Because of that, we protest. I felt satisfied by our protests because that was all we could do."<sup>239</sup>

In explaining his motivation for his activism, Ye Myo Swe said:

For freedom of expression, we have many unjust laws like the [Peaceful Assembly Law] and the telecommunications law in our country. The government and military's definition of freedom of expression is, "You can only say what we want you to say." We should have the right to freedom of expression, freedom of thoughts, freedom of beliefs, freedom to write. These are the things we are fighting for.<sup>240</sup>

## MYO CHIT ZAW

Originally from Mandalay, Myo Chit Zaw is a third-year archeology student at Yadanabon University. Despite his current role in ABFSU as its public relations officer, Myo Chit Zaw grew up as "a boy who wanted to be a soldier." He told Fortify Rights:

I did not really experience activism when I was a kid. But I watched the news in 2007 during the monk demonstration on TV. When I was in tenth grade, I heard about the 2015 student march. Because I was a child, I only thought of it as a child does, in a childlike way. I did not understand these kinds of activities and protests. I really wondered why they were protesting and I couldn't find answers at the time. I hadn't deeply investigated human rights issues at the time.<sup>241</sup>

Myo Chit Zaw arrived at Yadanabon University hoping to become a soldier, but his parents forbade him from joining the military. During his second year, he learned about ABFSU. He explained to Fortify Rights:

ABFSU started to demonstrate for the educational budget, and I began to become interested in these issues. I started to compare what we needed as students and what they were asking for, and I realized they were asking for things we really needed in student life.<sup>242</sup>

Myo Chit Zaw joined ABFSU the following semester in 2018: "After I joined, I started to take on the role of spokesperson, through which I met with university officials and administration officials. I started to put my heart in the work and try really hard in our activities."<sup>243</sup>

<sup>238</sup> *Ibid.*

<sup>239</sup> Fortify Rights interview with Ye Myo Swe, Mandalay District, Myanmar, November 6, 2019.

<sup>240</sup> Athan and Fortify Rights telephone interview with Ye Myo Swe, Lanmadaw District, Myanmar, September 17, 2019.

<sup>241</sup> Fortify Rights interview with Myo Chit Zaw, Mandalay District, Myanmar, November 6, 2019.

<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*

Participating in ABFSU protests makes Myo Chit Zaw feel “alive and satisfied.” He explained to Athan and Fortify Rights why he protests:

Before the protests, we were trying to negotiate with the state and the government, but they ignored us. That’s why we started to protest, so that everyone would know. What we are trying to do is to show and publicize what we need as students. In the demonstrations, we don’t bring anything that could harm someone. We are just using our right to freedom of expression.<sup>244</sup>

Myo Chit Zaw explained the important and continuing role of students in Myanmar’s struggle for democracy:

Our whole generation will fight again and again for the democracy, just like in the 1988 revolution. At that revolution, our fathers and grandfathers, the old student unions—they all had to fight. Students have always fought for democracy. For the rights for the people, for the rights of students, democracy is necessarily needed in this country.<sup>245</sup>

He went on to explain how this struggle has underpinned his activism at Yadanabon University:

In Myanmar, the Union budget for education and health is lower than the [budget for the] military. The military budget is bigger than everything. In the education bills, the students lose their rights, like facilities on campus, the right to participate in politics, and the right to have academic freedom, or to freely do research. That’s why I am trying to advocate for the rights of students . . . If democratic education isn’t in the country or society, we will have to flee again.<sup>246</sup>

## YE LIN AUNG

A student of archeology at Yadanabon University, Ye Lin Aung grew up in Sagaing Region. Like Phone Myint Kyaw, Ye Lin Aung became interested with political activism in 2015 during his final year of secondary school when he heard about the student-led march for educational reforms and subsequent crackdown in Letpadan. He said:

I heard about the march from Mandalay to Yangon. I was inspired by that event. I agreed with the 11 objectives of the strike and was really angered by how the students were beaten up. That’s why I joined ABFSU in university.<sup>247</sup>

Further elaborating his reasons for joining ABFSU, Ye Lin Aung said:

I didn’t have big hopes, but when I joined, I hoped to work for the students’ rights that had been lost, such as the right to participate in writing policies for the university in self-governing acts. We don’t have a voice in the university administration.<sup>248</sup>

Now, Ye Lin Aung holds the position of protection officer for students’ rights in ABFSU at Yadanabon University. In this position, he is responsible for the welfare of students and works to solve problems in the students’ lives.<sup>249</sup>

<sup>244</sup> *Ibid.*

<sup>245</sup> Athan and Fortify Rights telephone interview with Myo Chit Zaw, Lanmadaw District, Myanmar, September 17, 2019.

<sup>246</sup> *Ibid.*

<sup>247</sup> Fortify Rights interview with Ye Lin Aung, Mandalay District, Myanmar, January 27, 2020.

<sup>248</sup> *Ibid.*

<sup>249</sup> *Ibid.*



## NAY WIN KYAW

Born the oldest of six children in Taung Oo village, Homalin Township in Sagaing Region, Nay Win Kyaw said: “My family didn’t engage much in politics, so I was the pioneer for my family in this area.”<sup>250</sup> At 16, Nay Win Kyaw became politically active after seeing his family and community suffer at the hands of the Myanmar military. He said:

We have suffered from the mistreatment of the military in the areas where minority ethnic groups live. For example, forcing them to volunteer or portering. This has happened in my community.<sup>251</sup>

Explaining his decision to join ABFSU, Nay Win Kyaw explained:

I believed joining ABFSU would ultimately allow us to achieve ABFSU’s five objectives of peacekeeping, countering the military dictatorship, democracy, full rights for students, and democratic education. It’s my dream to live in peace.<sup>252</sup>

Within the Yadanabon University chapter of ABFSU, Nay Win Kyaw is the public relations officer. Explaining the responsibilities of this post, he said:

Due to the constitution of ABFSU, I’ve been assigned the duty of public relations. I issue reports. When we are going to do an event, I have to share links between the members and other roles in ABFSU. That’s my responsibility.”<sup>253</sup>

Sharing his hopes after he graduates from university, Nay Win Kyaw told Fortify Rights: “I haven’t decided what I will do after graduation. But I want to be on the side of what I believe is right.”

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<sup>250</sup> *Ibid.*

<sup>251</sup> Fortify Rights interview with Nay Win Kyaw, Mandalay District, Myanmar, January 27, 2020.

<sup>252</sup> *Ibid.*

<sup>253</sup> *Ibid.*



# RECOMMENDATIONS

## TO THE GOVERNMENT OF MYANMAR

- **IDENTIFY** and release all individuals, regardless of race or religion or any other factors, who are arbitrarily detained in the country, including those detained for exercising rights protected by international human rights law.
- **REPEAL** or amend laws, policies, and orders that are incompatible with the rights to freedom of expression and peaceful assembly, including the 2016 Peaceful Assembly and Peaceful Procession Law. In particular, with regard to the 2016 Peaceful Assembly and Peaceful Procession Law:
  - **AMEND** the notice provision to limit information requests to basic logistical questions; and
  - **REMOVE** all criminal or administrative penalties for violating provisions of the Peaceful Assembly Law.
- **PROVIDE** a full remedy and proper reparations to the seven students who experienced human rights violations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
- **RELEASE** publicly the findings of the government investigation into the beatings of the students by authorities in Obo Prison and ensure that perpetrators are held accountable, regardless of rank or position, and are provided with due process rights and trials that meet international fair trial standards.
- **CONDUCT** a prompt, impartial, and independent investigation into violations of the rights to freedom of expression and peaceful assembly by Myanmar and Yadanabon University officials as well as the arbitrary detention and torture or ill-treatment of student protesters involved in exercising their rights in and around Yadanabon University.
- **INSTRUCT** and provide training to Myanmar police, other law enforcement officials, and relevant university staff on international standards and best practices relating to overseeing assemblies, including their positive obligation to facilitate peaceful assemblies and appropriately protect the safety of all participants.
- **ENSURE** that all individuals imprisoned at Obo Prison and elsewhere are treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners and that conditions of detention meet the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- **AFFIRM** publicly the right of Myanmar citizens to exercise the rights to freedom of peaceful assembly and freedom of expression as established by international law, including through engagement with civil society and political organizations.
- **END** immediately and publicly condemn the use of torture and other cruel, inhuman, and degrading treatment or punishment in places of detention. Amend the Myanmar Criminal Code to bring it in line with the definition of torture provided by the Convention against Torture.
- **ISSUE** a standing invitation to conduct a country visit to Myanmar to U.N. special procedures, in particular the special rapporteurs on freedom of peaceful assembly and association, on the promotion and protection of the right to freedom of opinion and expression, on torture and

other cruel, inhuman or degrading treatment or punishment, on the situation of human rights in Myanmar, and the Working Group on Arbitrary Detention. Finalize, without delay, an agreement with the U.N. Office of the High Commissioner for Human Rights to establish a Country Office in Myanmar with a full mandate for human rights protection, promotion and technical support.

- **RATIFY** the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and their respective protocols, as well as other international human rights instruments.

## TO THE YADANABON UNIVERSITY ADMINISTRATION

- **TRAIN** university administrators and staff on the rights to freedom of expression and peaceful assembly and their obligation to uphold them.
- **CEASE** the practice of using university professors and staff to block students from accessing university grounds to engage in protected expression.
- **PROVIDE** opportunities for students to provide feedback and input on the administration of the university, for example, by holding monthly consultations with student groups on campus.
- **ENSURE** students enjoy equal access to university grounds and facilities for engaging in protected expression under international law.

## TO THE INTERNATIONAL COMMUNITY

- **ENGAGE** the Government of Myanmar with concrete, time-bound benchmarks to free all arbitrarily detained prisoners in Myanmar and to amend the 2016 Peaceful Assembly and Peaceful Procession Law and other laws, policies, and orders that violate the rights to freedom of expression and peaceful expression.
- **URGE** the Government of Myanmar to conduct a prompt, impartial, and independent investigation into violations of the rights to freedom of expression and peaceful assembly by Myanmar and Yadanabon University officials as well as the arbitrary detention and torture or ill-treatment of student protesters involved in exercising their rights in and around Yadanabon University and elsewhere with a view towards holding institutions and individuals to account.
- **PROVIDE** financial and technical support to provide human rights training for the Myanmar police and other law enforcement officials, including on facilitating peaceful assemblies and protecting participants in line with international standards and best practices.
- **URGE** the Myanmar government to drop all charges and immediately release individuals arbitrarily detained for exercising rights protected by international law.
- **URGE** the Myanmar government to publicly affirm the rights to freedom of expression and peaceful assembly, the right to liberty, and protection from torture.
- **SUPPORT** the mandate and recommendations of the U.N. Special Rapporteur on the situation of human rights in Myanmar and the establishment of a U.N. Office of the High Commissioner for Human Rights Country Office in Myanmar.

# ACKNOWLEDGEMENTS

This report is the product of a collaborative effort by Athan and Fortify Rights from February 2019 to January 2020. Athan co-founder Ye Wai Phyo Aung facilitated the research process with support from Fortify Rights. Fortify Rights Legal Fellow Jacob Bogart is the lead author of the report. The writing, research, and editing team included Fortify Rights Executive Director Amy Smith and Chief Executive Officer Matthew Smith. Ye Wai Phyo Aung and Aung San Thein provided interpretation assistance. Fortify Rights Visual Design Specialist Iuri Kato created the layout and design of the report. Hkun Lat and Myanmar Pressphoto Agency provided photographs for the report.

Athan and Fortify Rights extend a special thanks to all those who contributed to the research and documentation and generously shared their time, energy, and experiences. Athan and Fortify Rights also extends solidarity and support to Myanmar human rights defenders and civil society members who continue to exercise their rights to freedom of expression and peaceful assembly, often at great personal risk.

Special thanks to the generous supporters of Athan and Fortify Rights, who make our work possible.



# ANNEX I: LETTER TO THE GOVERNMENT OF MYANMAR



## President Win Myint

Office of the President  
Naypyidaw  
Republic of the Union of Myanmar

February 7, 2020

### Re: Case against Yadanabon University Students Involved in Peaceful Protests

Dear President Win Myint,

Athan and Fortify Rights are preparing a report about the case of seven students from Yadanabon University who the Myanmar authorities arrested for holding a peaceful protest in Mandalay, Myanmar in December 2018 and January 2019. Our research examines the actions of the University and Myanmar authorities with regard to the students' peaceful protest in relation to the Government of Myanmar's obligations under international law to protect the rights to freedom of expression, peaceful assembly, and liberty as well as to prevent torture or inhumane treatment.

Our findings are based on first-person interviews with the students in question, eyewitness to the protests, university officials, including professors and administrators, and others. Athan and Fortify Rights endeavors to produce objective human rights publications based on all available information. We hope your office will respond at your earliest opportunity to the attached questions so that we may reflect your views in our reporting. Please also feel free to include any additional information, materials, or statistics that might be relevant to our research.

To fully incorporate your views in our forthcoming publication, we would appreciate a response no later than February 17, 2020. If an in-person meeting would be preferable, we would be happy to discuss our research in detail at a time that is most convenient for your schedule.

Thank you for your time and consideration of this matter. We look forward to engaging with your office to further advance human rights protections in Myanmar.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MS'.

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 Republic of the Union of Myanmar

Enclosures (1)

Questions from Athan and Fortify Rights to the Government of the Republic of the Union of Myanmar


1. Could you please describe the series of protests that took place in and around Yadanabon University in 2018 and 2019 and the government's response to those protests?
2. Who ordered the government intervention of the protests that took place in and around Yadanabon University in 2018 and 2019 and the arrest of students involved in those protests?
3. How are government officials authorized to respond when protest organizers fail to submit notification letters in advance of a protest?
4. When are government officials authorized to prevent, disrupt, or disband a public assembly? What is the decision-making process for determining when the government may prevent, disrupt, or disband a public assembly?
5. What training or information is provided to law enforcement officials to ensure students and others are able to exercise their rights to freedom of expression and peaceful assembly? What disciplinary or other measures are taken against law enforcement officials who fail to perform their duties to protect the rights to freedom of expression and peaceful assembly?
6. Could you please provide a timeline and description of the discussions and results of meetings between government officials and the members of All-Burma Federated Students Union Yadanabon University chapters from July 2018 through January 2019?
7. What steps have the government or administration of Yadanabon University taken to respond to the demands of the student protesters? In particular, could you please detail any improvements taken with regard to security on campus, the sanitation of the university's bathrooms, and the administration and cost of motorbike stands on campus?
8. Could you please provide information on the alleged beating of the four students at Obo Prison in March 2019, including details on and results of the investigation conducted into the beating? What, if any, actions have been taken against officials involved in the beatings?
9. What mechanisms, practices, or policies does the government of Myanmar generally, and the Obo Prison specifically, have in place to prevent the torture of detainees?

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There are currently more than 180 political prisoners in Myanmar, and since 2015, the government released more than 740. None of the former political prisoners received effective remedies.

*This report documents a representative case of violations and abuses against student activists, including restrictions on their rights to freedom of expression and peaceful assembly and right to be free from torture.*

The students featured in this report are members of the All Burma Federation of Student Unions, an historic Myanmar student activist organization. They spent three months in prison for holding a peaceful protest. While in prison, authorities beat them.

Based on a 12-month investigation into the arrests of the students, ***“Our Demands are for All Students”***: *Violations of Students’ Rights in Mandalay, Myanmar* details the context in which the protests occurred, providing an overview of the events leading up to the arrests and an extensive legal analysis of the law used to convict the students, the Peaceful Assembly and Peaceful Procession Law. The report offers detailed recommendations to the government of Myanmar and Yadanabon University regarding how to respect students’ human rights to freedom of expression and peaceful assembly.



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