



Time to Hear Our Voices

Freedom of Assembly and the Youth Peace Movement in Myanmar

Progressive Voice



July 2018

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www.progressivevoicemyanmar.org

info@progressive-voice.org



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Photo Credits

From left to right on the front cover:

1. A youth leader wears a t-shirt with the slogan “Peace in Kachin-land, Peace in Myanmar.” © Kachin Youth Movement
2. A youth leader wears a “Stop War” shirt before the protest began on 12 May, 2018. © Victoria Milko
3. Riot police form a line to move forward as the Tamwe protest came to an end on 12 May, 2018. © Victoria Milko

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Executive Summary

Freedom of assembly is an essential part of a democratic system, allowing citizens to express themselves and defend human rights collectively, and to raise public awareness about important issues and pressure governments to act. Myanmar has a long history of peaceful assemblies, including peaceful protests,¹ speaking up for democracy and basic human rights – and a long history of government and military crackdowns on those peaceful assemblies, most famously the 1988 crackdown on the nationwide pro-democracy protests led by youth during the decades-long military dictatorship. Recently, peaceful protests were held by youth in Myitkyina and Yangon in response to the urgent humanitarian needs of internally-displaced persons (IDPs) in Kachin State and to the continuing civil war. These protests, and the official response to them, have demonstrated that the mindset of the Myanmar Government, including police and military, has not changed from one of limiting and controlling peaceful assemblies. Instead, at least 47 young activists have been charged for their role in peaceful protests, most under the Peaceful Assembly and Peaceful Procession Law (PAPPL), which still has vague and repressive provisions that enable police and local authorities to act in an arbitrary and controlling manner.²

This briefing paper covers two main aspects of the recent peaceful protests and the official response to them. First, it analyses the shortcomings in the PAPPL that are used to prevent and repress peaceful assemblies and to charge organizers with criminal offenses, and which allow biased and arbitrary enforcement. These shortcomings can be seen in three main categories. First, the amendments in 2016 to change the PAPPL from requiring official permission to hold an assembly to requiring prior notification of a planned assembly may seem positive, but the requirements for what information the notification must include are overly strict, and the requirement to give notification 48 hours before any assembly does not allow for spontaneous assemblies. Furthermore, a provision giving local authorities the power to make rules about assemblies relevant to their local condition opens a backdoor that local authorities can use to effectively reinstitute the need for permission or impose additional restrictions on assemblies. The second issue in the PAPPL and its enforcement is that it continues a regime that assumes peaceful assemblies must be closely controlled and monitored, instead of actively facilitated and protected, and these measures of control significantly restrict the space for freedom of assembly, placing participants in peaceful

1 This paper will use “assembly” to refer to a broad range of public assemblies protected by the right to freedom of peaceful assembly, and “protest” to refer to the subset of assemblies in which participants express disagreement with a government or military action or policy, and/or call for a different action or policy.

2 Athan, “Update List (June 4, 2018), <https://www.facebook.com/athan.foe.myanmar/posts/258711224687950>.

assemblies at risk from retaliation such as from violent counter-protesters. Finally, aspects of the law and its enforcement allow police and local government officials to restrict the rights to freedom of assembly based on the content of the planned assembly, and to target individuals in an arbitrary manner when making arrests.

The second issue examined in this paper is the additional discrimination and harassment faced by female human rights defenders and activists. Many of the organizers of the recent protests in Myitkyina and Yangon were young women. These young women experienced discrimination and harassment every step of the way, including from the police when they submitted required notification through when they were arrested and charged; from ultra-nationalists in person and on social media; and at times from their colleagues in civil society. Women were not taken seriously as leaders, were pressured and threatened to cancel the protest, and were subject to personal harassment and attacks in person and on social media in ways that were specific to the experience of women. Nevertheless, they persisted in their efforts to organize some of the most high-profile protests in Myanmar in recent years.

Objectives, Scope and Methodology

The objective of this briefing paper is to outline the restrictions on freedom of assembly based on law and practice in Myanmar, through the examples of two peaceful protests in Myitkyina and Yangon in April and May 2018, with a particular focus on the threats and harassment faced by women organizers.

Due to considerations of time and length, the paper focuses on the protests in Myitkyina from 30 April to 7 May, 2018, which called for the rescue of trapped IDPs and provision of humanitarian assistance with the involvement of civil society, particularly youth, and the 12 May, 2018 anti-war protest in Yangon. Related protests in other cities including Bago and Mandalay were not able to be included, though organizers of those protests face similar legal charges as those discussed in this paper.

Sixteen semi-structured interviews were conducted for this research in Yangon and Myitkyina in May and June 2018, with a total of 18 interviewees (10 men and 8 women), including with 15 people who organized and/or took part in the protests, many of whom are facing or have already faced criminal charges, two lawyers, and one political analyst. Attempts to interview more women involved in the protests were unsuccessful due to their travel outside Yangon and Myitkyina at the time the research was conducted, though interviews were conducted with most of the women leaders of the peaceful protests. Interview topics included the individual's role and motivation for involvement in the protest, their experience in organizing and/or participating in the protest including any interactions with police and/or counter-protesters, their experiences in the legal process thus far, and their assessment of the situation of freedom of assembly in Myanmar and how it can be improved.

Background: A Faltering Peace Process and Trapped IDPs

“We have done many workshops, conferences, talks, media briefing, etc. Has it changed anything? No. That’s why we are doing this protest.” – Protester in Yangon

Over the past year, outrage has been growing among ethnic minority communities and some rights-based civil society activists about the atrocities committed by the Myanmar Military against ethnic communities, the lack of progress in the peace process and the increasing intensity of conflict. Clashes between the Myanmar Military and the Kachin Independence Army (KIA) have been the most intense since conflict resumed in 2011. The Myanmar Military uses fighter jets and helicopter gunships to target civilian areas, consistently prevents humanitarian aid from reaching displaced people in KIA-controlled territory, and regularly commits abuses such as extrajudicial killings, indiscriminate shelling, torture, rape and other forms of sexual violence.³ Similar clashes and abuses have also been on-going in northern Shan State, where tens of thousands of other ethnic civilians including Shan and Ta’ang have been displaced. In Karen State, the Myanmar Military has expanded roads and reinforced troops in the territory of the Karen National Liberation Army (KNLA), the armed wing of the Karen National Union (KNU), leading to clashes which have displaced thousands of Karen civilians.⁴ The KNU is one of the largest and most influential signatories of the Nationwide Ceasefire Agreement (NCA). Incursions, road-building and troop reinforcement by the Myanmar Military in KNLA territory are in blatant violation of the terms of the NCA, leading many to question the utility of the NCA.

Conflict in Kachin, northern Shan and Karen States implies that the Myanmar Military is attempting to capture ethnic territories by force instead of negotiating peace. Meanwhile, the next session of the 21st Century Panglong Conference, the National League for Democracy (NLD)-led Government’s political dialogue process, has not been held for almost one year at the time of writing. One major obstacle to holding the next session of the Panglong Conference, in addition to increasing conflict and abuses, is the military’s refusal to compromise on key issues such as federalism and security sector reform.

While the world has focused largely on the Rohingya crisis in Rakhine State, there is a sense of urgency among many Myanmar civil society organizations about the dire humanitarian situation of the displaced ethnic civilians in other ethnic regions of

3 Lawi Weng, “Ongoing offensives in Tanai leave IDPs trapped between warring sides,” *The Irrawaddy*, (18 April, 2018) <https://www.irrawaddy.com/news/burma/ongoing-offensives-tanai-leave-idps-trapped-warring-sides.html>

4 Karen Peace Support Network, “The Nightmare Returns” (26 April 2018), <https://karenwomen.files.wordpress.com/2018/04/kpsn-media-release-the-nightmare-returns.pdf>

Myanmar, particularly the IDPs in Kachin State that have remained relatively hidden from the radar of the international community. The Myanmar Military is blocking the delivery of humanitarian aid to IDP camps in KIA-controlled territory, and has been pressuring churches and others hosting IDP camps in government-controlled territory to close the camps, despite increasing numbers of civilians fleeing the intensifying conflict.⁵ In February and March 2018, local humanitarian organizations working in Kachin State began reporting that fleeing civilians were trapped in the forest, with the Myanmar Military blocking their routes to seek shelter in larger towns and Myanmar Military troops occupying their villages, reportedly using them as human shields and porters, in addition to committing violations such as torture, extrajudicial killing and sexual violence. Humanitarian organizations and religious leaders attempted to negotiate with the Government and military to rescue the trapped IDPs, to no avail. When thousands more from villages in Tanai and Hpakant townships were trapped in April, and the regular advocacy and negotiation tactics failed, public protests were planned to call attention to the urgent humanitarian needs of the trapped IDPs.

These youth-led protests, which started in Myitkyina, the capital of Kachin State, sparked solidarity actions in cities across Myanmar, including Yangon, Bago and Mandalay. These protests were met with the strongest police crackdown on peaceful assembly since student protests in 2015,⁶ and this crackdown was the most visible representation of the shrinking space for freedom of assembly under the NLD-led Government. Particularly impacted were the many young women leading the protests, who in addition to legal charges faced gender-based harassment and discrimination by police and ultra-nationalists on social media. At the time of writing, at least 47 people have been charged with criminal offenses for their participation in the peaceful protests.⁷ Of these, four were charged due to the Myitkyina protests, and 17 were charged in Yangon in relation to the 12 May, 2018 protest. Meanwhile, ultra-nationalist counter-protesters,⁸ many of whom physically assaulted peaceful protesters, continue threatening and harassing youth activists in person and on social media.

5 Libby Hogan, "Slow Genocide: Myanmar's invisible war on the Kachin Christian minority," *The Guardian* (14 May, 2018) <https://www.theguardian.com/world/2018/may/14/slow-genocide-myanmars-invisible-war-on-the-kachin-christian-minority>

6 Burma Partnership, "Updates: National Education Law – Student Protests" (16 March 2015), <http://www.burmapartnership.org/updates-national-education-law-student-protest/>.

7 A Than, "Update List" (June 4, 2018), <https://www.facebook.com/athan.foe.myanmar/posts/258711224687950>.

8 Counter-protests were organized in support of the Myanmar military by members and supporters of extremist Buddhist ultra-nationalist organizations such as the Association for the Protection of Race and Religion (known as Ma Ba Tha for its initials in Burmese).

Legal and Procedural Restrictions on Peaceful Assembly

“The Government should be grateful to the civilians who do protests or demonstrations, because it shows the practice of democracy in Burma.” - Protest Organizer in Myitkyina

Freedom of assembly is important not only for its own sake, but because it facilitates the protection of other basic human rights. Peaceful assembly is an essential form of political participation, and an especially important tool for groups whose human rights may not be adequately protected by the majority, including women and ethnic or religious minorities.

“The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry. Assemblies can make a positive contribution to the development of democratic systems and, alongside elections, play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes.”⁹

International human rights treaties, and even the deeply flawed, military-drafted 2008 Myanmar Constitution, confirm a right to freedom of peaceful assembly.¹⁰ The right of peaceful assembly is one of the fundamental rights protected in the International Covenant on Civil and Political Rights (ICCPR),¹¹ which declares that “no restrictions may be placed on this right [to freedom of peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”¹²

International standards are clear that the role of police during peaceful assemblies should be to facilitate and protect those participating – for instance by re-directing traffic and making other necessary arrangements – and not to restrict or control the assembly.¹³

9 Human Rights Council, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” UN Doc. No. A/HRC/31/66 (4 February 2016).

10 2008 Constitution. Available at http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

11 At time of writing, Myanmar had not yet signed the ICCPR.

12 International Covenant on Civil and Political Rights (ICCPR), Art. 21 (16 December, 1966) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

13 Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,” Human Rights Council UN Doc. No. A/HRC/20/27 para. 28 (21 May 2012).

Toward that end, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has elaborated various sets of Best Practices and Recommendations, including stressing that “States have a positive obligation to actively protect peaceful assemblies. Such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agent provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies.”¹⁴

Peaceful Assembly in Myanmar

The PAPPL amendments passed by the NLD in 2016 made some positive changes, but the law retains the assumption that assemblies should be controlled, not facilitated. The amended 2016 PAPPL requires only prior notification, not permission, in order to hold a protest or other peaceful assembly. International standards are clear that prior notification should require only information that is necessary for authorities to make preparations to facilitate the assembly, like redirecting traffic, yet the notification requirements in the PAPPL require submission in advance of information far beyond that necessary for facilitation, including the content of all slogans and signs to be used. This requirement makes spontaneous assemblies categorically unlawful.¹⁵ They also require notification for even the smallest assemblies, while international standards encourage states to allow small assemblies without notification since they do not require prior preparation by authorities. Other provisions give police the power to disband assemblies, including with force, due to vaguely-defined threats. Amendments proposed in 2018, which were already passed in the Upper House of Parliament (Amyotha Hluttaw) and are at the time of writing awaiting a vote in the Lower House, would impose even more restrictive requirements on organizers of peaceful assemblies, requiring them to submit information on the source of funding for the assembly.¹⁶ The proposal of these amendments was met with opposition from civil society, including public protests in early 2018. All of these requirements create a regime of strict control rather than facilitation of peaceful assemblies, despite the change from permission to notification.

The requirement to provide the content of slogans also raises concerns about biased enforcement based on the content of an assembly – which appears to be the case in the two protests discussed in this briefing paper. While international standards encourage a prior notification policy over requiring permission, “[a]ny notification procedure should not function as a de facto request for authorization or as a basis for content-based regulation.”¹⁷ Article 20 then criminalizes assemblies in which even one participant uses a slogan that was not pre-approved.

14 Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,” Human Rights Council UN Doc. No. A/HRC/20/27 para. 33 (21 May 2012).

15 For more on the shortcomings of the PAPPL, see Free Expression Myanmar, “Peaceful Assembly and Peaceful Procession Law” (20 October 2017), <http://freeexpressionmyanmar.org/peaceful-assembly-and-peaceful-procession-law/>.

16 Bill of Amendment of the Peaceful Assembly and Peaceful Procession Law (2018) (draft), <http://freeexpressionmyanmar.org/wp-content/uploads/2018/02/Peaceful-Assembly-and-Peaceful-Procession-Law-draft-amendment-2018-EN.pdf>.

17 Human Rights Council, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” UN Doc. No. A/HRC/31/66 para. 21 (4 February 2016).

Furthermore, whether intentionally or not, the NLD has left a ‘backdoor’ in the law which appears to be used by police and local authorities to require permission or to ban assemblies, despite the removal of the direct requirement for permission in the amended law. Article 10, which contains the rules that apply during an assembly, includes a catch-all subsection at the end: “Those who participate in a peaceful assembly and a peaceful procession must obey the following rules: ... (k) They must not violate that predefined regulation and related agreement created by competent person and organization for the local need.” Article 20 then provides criminal sanctions of up to 1 month in prison and/or a fine of 10,000 kyat for violating any provision of Articles 8-10. While it may be necessary for police and assembly organizers to negotiate details of a planned assembly, for instance if there is another assembly planned for a given day or place, this negotiation should not be required or binding, and local authorities should not be able to enact rules that contradict the PAPPL.

As will be discussed below, police and local administrators seem to have interpreted Article 10(k) to mean that local authorities, including police, can make rules that apply to all assemblies in a given township, or can insist on coming to an agreement with organizers about all details of an assembly – and if local authorities withhold agreement or the agreement is not upheld, the assembly participants can be charged with violating this provision of the law. This is particularly concerning given the control that the Ministry of Home Affairs, and thus ultimately the military, has over most local government positions, including the General Administration Department and the police. In November 2017, the Yangon Region Security and Border Affairs Minister, a military-appointed Regional Minister, appeared to use this provision to issue a blanket ban on assemblies within 11 townships in Yangon, except in one pre-specified location, citing traffic concerns and the need to ensure safety for government officials and visiting dignitaries.¹⁸ It is apparently this provision which the 17 youth charged for the 12 May, 2018 protests are accused of breaking.¹⁹ In addition, many township-level General Administration Department authorities have issued separate instructions to ban assemblies in certain areas in their townships. A blanket ban on assemblies is clearly in violation of the PAPPL. Traffic and other minor public inconvenience is not a legitimate reason to ban virtually all peaceful assemblies in 11 townships. As the Special Rapporteur on the Freedoms of Assembly and Association stated,

“Assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic. ... A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.”²⁰

18 Due to its timing just before Pope Francis visited Yangon, and after a large interfaith rally led by the NLD, this ban is suspected by many in civil society to be intended to suppress interfaith assemblies and assemblies by religious minorities.

19 As of mid-June, 2018, those being charged under Article 20 of the PAPPL have still not been informed of the details of the charges they are facing, but most of those interviewed for this research reported hearing from police that they were violating local administrative orders including the November 2017 ban, and that this was why the protest was not allowed and why they were being arrested/charged.

20 Human Rights Council, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” UN Doc. No. A/HRC/31/66 (4 February 2016).

In addition to legal restrictions, the political climate for basic rights such as freedom of expression has become in some ways more restrictive under the NLD-led Government. Many people in government, civil society and the general public have a content-based understanding of freedom of expression – in other words, support for freedom of expression exists only when people agree with what is being expressed. According to one activist, “[t] here are many people talking about freedom of expression. However, when it comes to the word or issue that they disagree [with], they would [be] against it.”²¹ This has in turn led to decreased support for peaceful assemblies that express opposition to Government policies or actions, or that might cause tension between the Myanmar Military and the Government.

The above-described legal vagaries and restrictions played out differently in the two situations described in this paper: youth-led protests in Myitkyina from 30 April to 7 May, 2018 and in Yangon on 12 May, 2018. Compared to Myitkyina, there were far more people charged with violating the PAPPL as a result of the protests in Yangon, and there was a much more repressive police response in Yangon. Protesters in Myitkyina were able to maintain their protest camp for several days and negotiated with government officials to achieve part of their goal, securing the rescue of trapped IDPs from Awng Lawt village and Lainong Ku village (Man Wai in Burmese), two of the affected villages. However, three organizers have since been sued by Lt. Col. Myo Min Oo for criminal defamation under Article 500 of the Penal Code, due to their alleged statements, during the protest and a related press conference, about military abuses. These charges carry far harsher penalties than under the PAPPL. While it is beyond the scope of this paper to speculate on the reasons for the different treatment, such differences in the application of the same law in different cities demonstrates the impact of the vagueness in the PAPPL, and the lack of rule of law in the country.

21 Interview in Yangon, June 2018.

Myitkyina

Protests in Myitkyina started with a march on 30 April, 2018, organized as a joint effort between many Kachin civil society organizations, of which youth formed a major part. This protest was part of an emergency response strategy to the situation of thousands of trapped IDPs, as described above. By 30 April, 2018 previous strategies of advocacy and negotiation described above had resulted in the rescue of very few IDPs, and concern and outrage were growing, particularly among Kachin youth, from politically-active youth leaders to those who had not previously been politically active. Thus, when the peaceful protest on 30 April, which drew reportedly 5,000 people, did not result in concrete government action, a group of youth decided to continue the protest as a sit-in. They decided on three narrow demands: 1) free trapped IDPs; 2) allow humanitarian aid to be delivered to all IDPs; and 3) include youth and civil society on missions to rescue trapped IDPs and delivery of humanitarian aid to other IDPs throughout Kachin State. These messages were specifically chosen because they were perceived by the youth to be achievable and non-political, and thus increase the chances of success and reduce the risk of a crackdown.

Notification

As mentioned above, the PAPPL does not require that assembly organizers obtain permission. Instead, it simply requires notification, at least 48 hours before a peaceful assembly, of the date, time, place, slogans, organizers, and other details of the assembly. All those involved in the youth protest who were interviewed for this paper stressed that they had attempted to follow the law closely, and some of them had successfully organized protests in the past, including navigating the notification process, so they felt confident that things would work out well this time as well.

Leaders of the 30 April, 2018 protest and the subsequent sit-in described how they attempted multiple times to notify the police of their intention to hold a peaceful assembly.²² After the first notification on 26 April, they did not receive a response until the peaceful protest had already started, at which point the police told one organizer that permission could not be given. The peaceful protests continued over the objection of the police. On the evening of 30 April, a group of around 100 youth decided to continue the peaceful protest in the form of a prayer demonstration, and submitted a notification letter to the township police commander²³ to hold a prayer demonstration overnight in front of the Kachin State Government office. When that was rejected they proposed another location near a school. The township police commander told the youth that he would not

22 Interviews with protest leaders, Myitkyina, 2018.

23 မြို့နယ်ရဲမှူး in Burmese.

allow an overnight assembly, saying it would disrupt traffic and the presence of women in an overnight assembly would pose a safety risk.

After a few attempts to come to an agreement with the police on a location for their protest, the youth then retreated to the Manau Park, a public park of religious and cultural significance to the Kachin people, where they set up a protest camp. One protest leader said that Manau Park was chosen because it is viewed as a place belonging to all Kachin people, so the organizers believed that they did not need permission to hold a prayer ceremony and non-political gathering there.²⁴ However, this was not their first choice because it is less visible to the public and less centrally-located.

At four o'clock the next morning, some protesters set up a camp outside the Kachin State Government offices. A few hours later, when police arrived, the police attempted to convince them to move the camp, but the youth refused and in the end the police allowed them to remain until they obtained a meeting with the Kachin State Chief Minister, where they negotiated for the Kachin State Government to take concrete steps to rescue trapped IDPs.²⁵ During a series of negotiations between protest leaders and civil society with the State Government, and later with the Union Minister for Social Welfare, Relief and Resettlement, Dr. Win Myat Aye, protesters remained in Manau Park to maintain pressure. When trapped IDPs in Awng Lawt village and Lainong Ku village were rescued, they agreed to disperse and pursue other tactics to get trapped IDPs from other villages rescued as well.

After the peaceful protests were over, the police charged two youth leaders— Lum Zawng and Sut Seng Htoi — with Article 19 of the PAPPL, which sets out the penalties for failing to notify authorities. During the first hearing on these charges, the judge found them guilty and fined them 30,000 Myanmar Kyat (MMK) each.

“We confess[ed] in the court that we wanted to and tried to follow the law but we’re intentionally being rejected. We told the judge that we’re demanding to help the trapped IDPs. We wanted to do it within the law boundary, but we were rejected and that’s why this happen[ed]. We don’t feel guilty.”— Protest Organizer in Myitkyina

These charges, and the actions of the police before and during the peaceful protest, are a clear contradiction to the terms of the PAPPL, and of the right to freedom of assembly. While the township police commander’s attempted to negotiate a mutually-satisfactory place and time for the peaceful protests, when they could not reach an agreement, he

24 Interviews with protest leaders, Myitkyina, 2018.

25 Youth representatives and other Kachin civil society leaders met with the Chief Minister on 3 May. After hours of negotiation and waiting, the Chief Minister proposed a vague, noncommittal statement that was rejected by the youth leaders. Eventually the Chief Minister agreed to lead a government team to Lainong Ku village (Man Wai in Burmese) the next morning. At the agreed time, the youth and civil society representatives arrived to find the government team had already left (without the Chief Minister). When they tried to travel to Lainong Ku village themselves, the military blocked them, and after a few hours said they could visit the village but not bring anyone back with them. The delegation decided to turn back, as it was thought that visiting but not rescuing the trapped IDPs would be demoralizing for the IDPs. The youth and supporters remained at the protest camp, and after extensive background negotiation and the arrival of the Union Minister for Social Welfare, Dr. Win Myat Aye, the rest of the trapped IDPs in Awng Lawt and Lainong Ku were, eventually rescued, at which point the protest camp disbanded.

and the rest of the police resorted back to the denial of ‘permission,’ which is not actually required.

Facilitation and Protection

The State has a duty to proactively facilitate and protect peaceful assemblies. The purpose of police action and legal restrictions on peaceful assemblies should be to facilitate the rights to freedom of assembly and to protect peaceful protesters.

“What I know is, if we notify them they have to protect us for our security. If there is a traffic jam they have to clear it for us. That’s what they should be doing. They only have to arrest if we [are] violent [to] them. Now it is the other way around. I don’t understand.” - Protester in Myitkyina

The actions of the police in Myitkyina did not appear to be intended to facilitate or protect the protesters, but rather to control them and minimize the size and impact of the protest. Peaceful protest participants and organizers reported hundreds of police officers constantly surrounding their peaceful protest camp, monitoring by suspected Special Branch officers, and repeated phone calls from police to organizers demanding information and meetings in person. Female organizers in particular described being called many times a day by police officers looking for information and demanding to meet. Youth protesters formed their own security team, which intercepted multiple attempts to disturb the protest camp, including by pro-military agitators, while the police looked on and did nothing to protect the peaceful protesters. Overall, the impression given by the police actions and presence at the protest camps was one of trying to control, instead of facilitating and protecting.



Myitkyina township police commander talks with protest organizers during peaceful protests in Myitkyina on 1 May, 2018. (Photo Credit: Kachin Youth Movement)

However, many organizers did express gratitude for the township police commander's attempts to negotiate, to allow the protest camp, and to not use violence against the peaceful protesters. According to peaceful protest organizers' and participants' accounts, the township police commander and other police officers were under pressure from the military to contain and minimize the peaceful protests, but also under pressure from the public not to crack down. Many interviewees felt that the police did as much as they could to withstand that pressure, and in the end the police did not use violence against peaceful protesters. Interviewees also stressed the fact that in the end, the township-level police officials were not able to refuse orders from higher up in the police and ultimately the military.²⁶

Biased and Inconsistent Enforcement

Many organizers interviewed believed that this protest was treated differently than past protests because of the content of their demands. Many expressed frustration that even humanitarian demands such as saving the lives of civilians in conflict areas was seen as controversial, but thought that the crackdown would have been worse if their message had been more political.

“We are not doing politics. We just request Government to help the trapped IDPs for the humanitarian purpose, to free them. No political purpose involved. Do not think about arresting us.” – Protest Organizer in Myitkyina

Despite their attempts to present their demands as humanitarian and not political, they acknowledged that calling attention to the situation of the trapped IDPs, and the government's lack of action to rescue them, highlighted the military's brutality and the government's inability to even protect the lives of its citizens. They felt that this might be the reason this peaceful protest, as opposed to others they had organized, was more strictly controlled and why the police attempted to deny permission, and ultimately charged the organizers.

“When a protest is organized, it is always about something against the Government. The demand is usually something that the Government doesn't do even though it is supposed to be done by the Government. They are afraid something will happen if something goes wrong, and it is even worse if the demand is something the Government can't do.” – Lawyer in Myitkyina

In addition to the charges related to the PAPPL, three protests leaders – Lum Zawng, Nang Pu and Zau Jat – were sued by Lt. Col. Myo Min Oo for criminal defamation under Article 500 of the Penal Code for statements they made about the military's abuses against civilians. These charges carry a significantly more serious potential jail sentence: up to two years imprisonment.

²⁶ In Myanmar, the police are part of the Home Affairs Ministry. Under the highly-flawed, military-drafted 2008 Constitution, the military controls the Home Affairs Ministry, as well as the Ministries of Defense and of Border Affairs.

In the end, many of those interviewed for this report thought that the charges, particularly the defamation charges by a military officer against three activists, were in relation to the fact that the protest had made the military look bad by calling attention to its brutality, and a way for the military to ‘punish’ and threaten the movement even after police had resisted its pressure to crack down.

Yangon

Youth activists and civil society organizations in Yangon have held periodic anti-war protests and activities for many years. Many of the organizers of the 12 May, 2018 peaceful protest saw it as a continuation of these previous anti-war efforts, while mentioning that this event was inspired by Kachin youth peaceful protests in Myitkyina. Many youth activists in Yangon felt a responsibility to support and show solidarity for the Kachin youth, despite concerns for their own safety from the start. The situation of the trapped IDPs, and the mounting delays and failures of the peace process, added to the urgency of staging a public protest instead of other, less-visible tactics. The demands were to 1) stop the war immediately; 2) hold dialogue to solve the conflict; 3) allow humanitarian aid to all victims of war; and 4) protect conflict-affected communities.²⁷ Despite the police crackdown, many felt that the protest had been successful in raising public awareness of the ongoing civil war and humanitarian situation due to the wide media coverage of their peaceful protest and the charges against them.

Notification

Originally, the peaceful protest was intended to be a march, to start in Tamwe and move through the city to end at Sule Pagoda in downtown Yangon. Therefore, on 10 May, 2018, the three lead organizers – Thinzar Shunlei Yi, Ei Ei Moe and Shar Yamone – submitted notification letters to five township police stations, based on the townships through which the march would pass. In the first police station, Tamwe Township, the police officers immediately tried to reject their notification, reportedly saying “It’s not happening, it’s not happening.”²⁸ The organizers responded that the law does not require their permission, and asked the officers to just submit the notification to their superiors. They continued to submit notifications to the police station of each township through which the march would pass, and the notifications were received without response.

That night, around 11pm, a truck full of police officers arrived at the office of one of the organizers’ organization, along with the ward administrator,²⁹ to ask for a list of the

27 Public Peace Movement Statement. See <https://www.facebook.com/photo.php?fbid=2065603886800522&set=a.528850097142583.138893.100000527934440&type=3&theater>

28 Interview with Protest Leader, Yangon, 2018.

29 The ward administrator is a local government position elected through a democratic but flawed procedure and is ultimately responsible and accountable to the General Administration Department, the local administration structure that is part of the Ministry of Home Affairs, a military-controlled ministry. For more on ward administrators, see Progressive Voice and Action Committee for Democracy Development, “Grassroots Democracy: An Analysis of the Ward and Village Tract Administration Law” (2018), https://progressivevoicemyanmar.org/wp-content/uploads/2018/05/20180410_ACDD_Grassroots_Democracy_-_Print-ready.pdf.

organization's members and confirm that she had notified the authorities about organizing a protest. The next morning, the rejection letter was delivered to the homes of all three organizers, with a large police contingent present as the street filled up with curious onlookers. The organizers felt shocked and intimidated by this show of force simply to deliver a letter. Due to this event, the landlords of two organizers have informed them that they must move out of their apartments.

The organizers declined to accept the rejection letter, and replied with their own letter explaining the law, noting that they do not in fact need permission, and went ahead with the peaceful protest as planned. When they arrived to the site of the planned peaceful protest the next day, in addition to the large group of threatening counter-protesters [see Facilitation and Protection below], there were hundreds of police surrounding their meeting place, and they were not allowed to march as planned. When peaceful protesters and organizers asked why they were prohibited from carrying out the march as planned, and tried to explain the law, the police only repeated "[w]e do not allow as per order" and insisted that they end the peaceful protest.

This attempted denial of permission, the blocking of the planned march and the insistence that peaceful protesters disperse, are in direct contradiction of Article 8 of the PAPPL. The charges filed by the police against protesters – Article 20 instead of Article 19 – demonstrate that they do, in fact, know that they cannot deny permission. Instead, they use the backdoor created by Article 10(k) to deny permission through overly broad local regulations and directives. The Yangon Minister of Security and Border Affairs issued a directive in November 2017 that banned all assemblies in 11 townships in Yangon, citing public disturbances such as traffic jams, and requiring that all assemblies be held in one designated area.³⁰ Some organizers were also reportedly informed of a local administrative directive from a number of township administrators, a military-appointed position under the Ministry of Home Affairs, banning assemblies in their townships.

As mentioned above, international standards do not permit the right to freedom of peaceful assembly to be restricted solely on the basis of a disruption to traffic or other public inconvenience, particularly not through a blanket ban that does not take into account the circumstances of each assembly.³¹ There is also nothing in the PAPPL which would appear to allow a ban this broad.³²

Facilitation and Protection

Once organizers have notified authorities of their plans to hold a peaceful assembly, police negotiations and actions should have the purpose of facilitating the assembly, protecting assembly participants and only dispersing an assembly when "violence is serious and widespread and represents an imminent threat to bodily safety or property, and where law enforcement officials have taken all reasonable measures to facilitate the assembly and

30 Human Rights Watch, "Burma: Withdraw Protest Ban in Yangon" (15 November 2017), <https://www.hrw.org/news/2017/11/15/burma-withdraw-protest-ban-yangon>.

31 Human Rights Council, "Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies," UN Doc. No. A/HRC/31/66, Art. 30 (4 February 2016).

32 See also Toe Wai Aung, "Civil Groups Question Assembly Ban," Myanmar Times (10 November 2017), <https://www.mmtimes.com/news/civil-groups-question-assembly-ban.html>.

protect participants from harm.”³³ However, from the beginning the police presence was clearly intended to intimidate protesters and to prevent them from holding the assembly. The police did little to protect protesters from violent ultra-nationalist counter-protesters, and in fact at times appeared to respond to commands of the counter-protesters, including in one highly concerning case, which will be discussed below, to arrest someone who was brought to them by counter-protesters from an area outside the peaceful protest.

The police presence in the protest location was overwhelming, with hundreds of police in full riot gear and large trucks with what protesters and media suspected to be water cannons. The police far outnumbered the approximately one hundred protesters, and blocked all traffic near the meeting place, in front of a large shopping center at a major intersection. Instead of allowing the protesters to assemble there and march down the road as planned, minimizing the public disturbance, they surrounded them in a small space where the protesters changed tactics to a sit-in until they agreed with the police to disperse since they would not be able to march as planned.

Ultra-Nationalist Counter-Protesters

In the days leading up to the anti-war protest, organizers and observers had become aware of ultra-nationalist groups, such as supporters and members of the ultra-nationalist Buddhist organization the Association for the Protection of Race and Religion (known as Ma Ba Tha for its initials in Burmese),³⁴ organizing a counter-protest via social media in support of the military, to be held at the same location and time as the anti-war protest. In addition, ultra-nationalists violently threatened the organizers on social media, and called on the government to prevent the march, or else the ultra-nationalists would “stop” it themselves.

On the day of the march, anti-war protest organizers arrived hours early to the meeting place and noticed, in addition to police, large groups of counter-protesters hanging around and taking photos and videos of organizers as they arrived. When the protest started, more counter-protesters arrived and tried to disrupt the peaceful protest, including by trying to start confrontations with anti-war protesters and by threatening protesters and telling police to arrest or beat protesters. These counter-protesters shouted pro-military slogans and accused the peaceful protesters of supporting insurgency. They also entered into the peaceful protest area and mingled among anti-war protesters, trying to provoke a confrontation with the apparent intent that it would lead to a police crackdown. At the beginning, police simply looked on while anti-war protesters attempted to remove counter-protesters from within their group and tried to protect themselves, instead of fulfilling their duty to protect peaceful protesters and keep counter-protests separate. Eventually the police formed a barrier between the groups of protesters, surrounding the anti-war protesters and telling them to disperse, while not doing anything to disperse the counter-protesters, who were standing behind the police and continuing to threaten peaceful protesters. This temporary separation was insufficient to protect the peaceful anti-war protesters.

³³ Id. at para. 61.

³⁴ While the State Sangha Council has ordered the organization not to use the name Association for the Protection of Race and Religion, it is still commonly used for the group and its affiliated and/or successor organizations. See Matthew J. Walton, “Misunderstanding Myanmar’s Ma Ba Tha,” *Asia Times* (9 June 2018), <http://www.atimes.com/article/misunderstanding-myanmars-ma-ba-tha/>.

“They [counter-protesters] were shouting to the police from behind [the line of police]. They also drove out the media from taking the news. They were ordering the police; it is worse than coordinating with the police.”- Protester in Yangon

Once anti-war protesters had agreed to disperse, one of the three female lead organizers made the announcement using a loudspeaker that they would end the protest and return home. The anti-war protesters had started to move from the sit-in location through the line of police when police started to arrest and beat some protesters, and ultra-nationalist counter-protesters started to beat and restrain other protesters. The police did nothing to stop the counter-protesters from beating and restraining protesters, and in fact in at least one case [see Biased and Inconsistent Enforcement below] arrested a protester based on specific instructions from the counter-protesters.



Counter-protesters and police carry a peaceful anti-war protester to the police van for arrest in Yangon on 12 May, 2018 (Photo credit: Victoria Milko).

The potential for violent clashes between protesters, or attacks by counter-protesters, was clear from the language and threats made publicly on social media. Given this atmosphere the police had a duty to prevent such violence, to manage the protests in a neutral way and to protect all peaceful protesters. The Best Practices on the Right to Freedom of Assembly state that, “in the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement

authorities in protecting and facilitating the events is crucial.”³⁵

Instead of taking proactive steps to provide security, the police did nothing to reduce the threat posed by ultra-nationalists, and instead focused their attention on getting the anti-war protest to disperse. Some interviewees reported rumors that the Yangon Chief Minister had ordered the police to disband the anti-war protest out of fear of clashes between anti-war protesters and ultra-nationalist counter-protesters. Even if these rumors are true, a peaceful protest should not be required to disband simply because of the threat posed by counter-protesters, but police should protect the peaceful protesters, including by ensuring counter-protests are separate from the protests they target, arresting counter-protesters who commit crimes against protesters including physical assault and incitement to violence and, if necessary, negotiate with protest organizers to make arrangements for their safety.

Biased and Inconsistent Enforcement

In relation to the Yangon 12 May peaceful protest, there are two ways that authorities were biased and inconsistent in their interpretation and enforcement of the law. First, from the moment of notification the police treated the situation differently from past protests based on the content of the slogans and calls of the protest. Other peaceful assemblies had been recently allowed to take place in Yangon unimpeded, including one against proposed amendments to the PAPPL and another in support of the military, while this anti-war protest was disbanded with a massive show of force by the police. Second, on the day of the protest and in later charges, police appeared to arrest or later charge not simply the leaders of the protest or those who allegedly broke the law during the protest, but the most outspoken youth activists present, whether or not they were leaders of the protest or individually broke any laws. All those interviewed interpreted the police action as an attempt to prevent a broader anti-war movement from developing and to punish ‘undesirable’ activists and human rights defenders for their broader human rights work. The vagueness in the law, and the lack of rule of law, allows these arbitrary and biased charges to go forward.

Organizers and participants who were arrested reported that, when they submitted notification or were questioned after being arrested, police asked them many questions about their motives for holding the peaceful protest. Police appeared particularly bothered about the protesters’ general calls to end the war, and told them they should protest specifically against the ethnic armed organizations instead. Some police also commented that they shouldn’t hold the protest because it might disturb the dialogue of the peace process.

“The police officer asked me, so in your slogan, why don’t you use stop the war from both side, why don’t you mention both side? ... So they are suspecting that we are making the Tatmadaw [Myanmar Military] image very low and we are giving favor to the KIO [Kachin Independence Organization].” - Protester in Yangon

35 Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,” Human Rights Council UN Doc. No. A/HRC/20/27, para. 30 (21 May 2012).

The justification that police used to try to prevent the protest, and then to charge protesters, appeared on the surface to be neutral. Police invoked the ban on protests in 11 townships, saying that protesters had violated local regulations governing protests and thus the protest would not be allowed. Though the police did not cite specific legal provisions, it can be assumed that they are invoking Article 10(k) of the PAPPL, the backdoor mentioned above that requires assembly organizers to abide by rules issued by, and agreements made with, local authorities. Despite this apparent neutrality, the police in the same townships have recently allowed other assemblies, including assemblies in support of the military and against a government policy which did not directly relate to the military. It can be implied from the difference in enforcement and comments by police that this anti-war protest was targeted due to its message involving the image of military, not its failure to comply with the law.

“If they say that 11 townships are banned from protest and demonstration, what about the protest organized by Ma Ba Tha and another one by Daw Nyo Nyo Thinn on freedom of expression? ... The law should not be used for certain people or organization’s benefit. If everyone only looks for their own benefit, there will be no peace.” - Protester in Yangon

The second form of inconsistency in the enforcement of the law is evident from the people who were arrested and charged. First, the lead organizers, who were known to the police and who spoke at length with police and local administrators during the peaceful protest, were not arrested during the protest. While it is unclear how police selected each arrestee for arrest, there are some cases as described above where counter-protesters singled out who should be arrested. In other cases, activists who were well-known to police for their anti-discrimination or anti-hate speech work were targeted, while those who were less well-known but who had more leading roles in the peaceful protests were not arrested. Later, when police released the list of those who would be charged, activists noticed that it included the most outspoken youth activists who participated in the protest, even though some did not have a leading role in organizing. One protester who was arrested at the protest was released and not charged, which protest organizers attributed to him having no civil society or activism background. From these discrepancies, all of those interviewed felt that the intent was to discourage youth from being involved in activism and to target activists who were already on their radar, not to respond to specific instances of law-breaking or to target only those responsible for the organization of the event.

“[The 9 people who were arrested on 12 May] are from different organizations, some come to join just to show solidarity, some aren’t really familiar with us. ... But many of them are quite experienced activists. Some of them are from the public peace movement, but one, he just came and showed up with no affiliation to CSOs... so police released him the night he was arrested, while the others were detained for 24 hours.” - Protest Organizer in Yangon

In the case mentioned above, counter-protesters singled out Myat Kyaw, an activist who has been leading the Anti-Injustice Committee and has filed legal suits against leading members of Ma Ba Tha. According to multiple eye-witness accounts, he had left the peaceful protest and was across the road when some counter-protesters came up and grabbed him and forcibly restrained him. They then dragged him across the street to the police, who surrounded him until the counter-protesters dragged him to the police truck and forced him inside. The police then arrested him when he was in the police truck. All organizers and protesters interviewed believe that Myat Kyaw was targeted due to his work against Ma Ba Tha. A few others were reportedly also individually targeted by counter-protesters, who recognized them and called on police to arrest them, saying they were the organizers, despite the fact that some of them had not been involved in the organization of the event.

Women Organizers and Protesters

In both Myitkyina and Yangon, young women played prominent roles in organizing and implementing the peaceful protests. In Myitkyina, one of the two lead organizers was a woman, as was one of the two leaders selected as ‘back-up’ leaders. In Yangon, the three lead organizers were young women. In both cities, many other women participated actively in planning and leading the events. These women took leadership roles despite facing additional challenges due to their gender, including personal harassment by authorities and ultra-nationalists in person and on social media. However, women also used the roles and expectations placed on them by society in order to achieve their objectives, including in providing security for their colleagues by forming a barrier between male protesters and the police on the assumption that police would be more reluctant to use violence on unarmed women in front of the media. These attempts to use social expectations to their own benefit did not always succeed, and social expectations of gender roles still negatively impacted these young women and their efforts to lead.

International human rights conventions including the Convention on the Elimination of all forms of Discrimination against Women, to which Myanmar is a signatory, set forth women’s rights to protection against discrimination and to equal enjoyment of their rights and participation in public and political life.³⁶ Peaceful assembly is an important tool that women human rights defenders often use to call public attention to and pressure the government to act on other issues that affect women, especially when women are underrepresented in political institutions. This includes peaceful assembly as a form of participation in peace processes, the formal aspects of which women are often denied participation despite international commitments such as UN Security Council Resolution 1325. Protecting women’s rights to equal enjoyment of the right to the freedom of peaceful assembly is thus a crucial way to ensure women’s equal participation in politics.

However, women human rights defenders are also at a higher risk of threats and stigmatization when they challenge social and cultural norms including through peaceful assemblies.³⁷ The very fact of leading a peaceful assembly often challenges social and cultural norms about women’s roles in society, in which they are expected to focus on family and housework, and not be involved in politics, thus requiring extra measures by the Government to ensure that threats, in person or via social media, against women leaders of and participants in peaceful assemblies are halted.³⁸ Vulnerability to attacks also increases when women are also members of ethnic and/or religious minorities, or when they are

36 Convention on the Elimination of All Forms of Discrimination Against Women, Art. 7(c) (18 December 1979), <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

38 Id.

working in conflict zones, where the exercise of the right to peaceful assembly can be particularly dangerous.³⁹ The Myanmar Government has a positive obligation to facilitate the right to peaceful assembly and to take appropriate measures to eliminate discrimination against women. This obligation requires not only ensuring that police treat women equally in the context of notification and facilitation of peaceful assemblies, but that the Myanmar Government take a gender-sensitive approach to the protection of participants in peaceful assemblies. This approach must include protection against threats and harassment on social media, which have formed a crucial part of ultra-nationalists' intimidation of women organizers of peaceful assemblies.

Personal Harassment

Women organizers and peaceful protesters in Myitkyina and Yangon were subject to much more personal harassment than their male colleagues, by authorities and ultra-nationalists, in person and online. Women reported that police asked them many personal questions, including about their families and how their parents viewed their activism, and ridiculed their involvement in political issues. Other aspects of the women's identities were used against them, including religion, ethnicity, marital status and history of international travel for conferences or other events. Only two men interviewed reported receiving harassment on social media as a result of the peaceful protest, and both of these men were already main targets of ultra-nationalists because of their on-going human rights work.

“At that time they asked me my biography, like mother, father, address, and my siblings and my religion, and so in my religion question, [I said] it is private question and I cannot answer that. The very funny thing [they asked] was are you single or married? So, also private question and I don't need to answer and they said you have to answer. But [I asked them] according to which laws and which article do I have to answer my private question? And so we fought a lot.”
- Protest Organizer in Yangon

Personal attacks were particularly strong on social media against women activists. All women interviewed for this research experienced serious personal attacks on Facebook due to their role organizing the peaceful protests. During the protests, many people live-streamed the events on Facebook, and there was a flood of comments on those posts consisting of sexually-explicit insults and threats directed at the women involved in the protests. Most women interviewed for this paper reported that ultra-nationalists had gone through their Facebook accounts and found old photos of the women with foreigners, particularly darker-skinned or (what the ultra-nationalists perceived to be) Indian- or Muslim-looking men, and posted them claiming that the women were dating Muslim men and controlled by foreign interests. Ultra-nationalist Facebook users also posted a photo of the ID card of a young Muslim woman involved in the protests, along with photos they had

39 Id.

taken from her Facebook account from previous years. These photos were shared despite the fact that she had deactivated her account on the day of the protests – suggesting that the ultra-nationalists had already saved those photos in advance.⁴⁰ The photo of her ID card is particularly concerning because she had never posted it herself, and does not know how they obtained the photo. Another was accused of being a member of an EAO due to one photo of herself with an EAO leader at a public event, taken five years previous.

Some tried to report the harassment to Facebook. One woman was successful in getting some posts removed, though they had already virally spread to thousands of users. Another tried to report it to Facebook but was unsure which category to report it under and whether Facebook had taken any action against the account she reported for repeatedly sharing her photos with false information.

Manipulating Social Roles

Leaders in both cities noted that the authorities they interacted with, as well as others in civil society and in the general public, were surprised that such a serious protest was being led, in whole or in part, by young women. According to one organizer in Yangon, this led the police not to take them seriously at first, which was working in their favor as police did not think the protest would be a threat. That changed when the police realized that it was actually a large assembly.

“When we were in the police station, they saw the three of us... all of us, young girls, and we look different than previous activists they have been seeing, so they were quite welcoming ... [and] at the same time disrespectful of us. Because we are young girls they teased us and they took us as a child case, like child’s-play, not a serious thing, that’s how I feel. At the same time that made us more able to engage with the police officers, so the police officers won’t treat us as badly. They can’t treat us all badly because we are women. They didn’t take us that seriously either. Maybe after they heard this peace march is quite huge, it’s not only going to be just three of us, then they took it quite seriously.” - Protest Organizer in Yangon

The assumption that the police will not treat women as badly as men, or that they will not beat women, was also used consciously in Myitkyina to prevent clashes between protesters and police, in addition to assumptions that young men were more likely to get into fights with the police. Some interviewees described the way the protesters organized themselves:

40 When a user deactivates her Facebook account, her profile including photos and posts are immediately inaccessible and not visible on Facebook, though some posts that are posted to friends’ timelines or in groups may still be visible but are not hyperlinked to her account. Facebook Help Center, “How Do I Deactivate My Account?”, <https://www.facebook.com/help/214376678584711> (accessed 20 June 2018).

“We already planned to control ourselves, we will not respond with violent reaction, just be calm and try to stay as peaceful as we can. We lined up with women already in front. Women should be in front, in order to avoid confrontation with the military or police, if we are man-to-man then there can be hostility”. - Male Protester in Myitkyina

“If only men were leading, it would be easier for them to crack down because they can just hit them, beat them or be violent. But with women, they can’t do the same, it will show a very bad image to the international community. The police have to be very careful with that. That’s why it’s harder for them to handle women.” - Protest Organizer in Myitkyina



Female protesters form the frontline of a peaceful protest in Myitkyina on 3 May, 2018 (Photo Credit: Kachin Youth Movement)

Women are at risk of different forms and experiences of violence than men, and women taking frontline positions at peaceful protests are often subjected to more threats and verbal harassment from police and counter-protesters. Women on the frontline of peaceful protests are also put at increased risk of arrest and sexual or gender-based violence, and it is not guaranteed that police will not use physical violence against them. The flip side of the assumption that women will be less confrontational meant that police seemed to intentionally communicate with the women leaders instead of the men, perhaps because they thought they would be easier to deal with, or because they thought threats would be more effective on women. Police also appeared to take advantage of the fact that male protesters were protective of their female colleagues and thus might stop the protest if the police threatened women.

Conclusion

The events described above represent concerning developments for the situation of freedom of assembly in Myanmar, and demonstrate the failures of the Peaceful Assembly and Peaceful Procession Law, even as amended in 2016. The Government's flawed approach to freedom of assembly is based on control and differentiated depending on content and political opinion. Such an approach is counter to democratic norms. However, these protests also illustrate the emboldened role and dangerous influence of ultra-nationalists in civic space, including their apparent influence over police on the ground, and the inability of the Government to protect human rights defenders from their threats. In particular, the Government has failed to ensure that women can participate equally in politics and public life, free from harassment and threats.⁴¹

“I got more motivation after this experience. I have desire to do more. ... There are a lot more civilians who are still suffering, and I want to stand up for them. I'm not afraid. I've got courage.” – Female Protest Organizer

Despite all the challenges laid out in this briefing paper, the efforts of young people across Myanmar to meet the urgent needs of trapped IDPs, and to call attention to broader injustices of war and the power imbalance between the Government and military, are inspirational and further encourage democracy and human rights to take root in the country. These efforts must be supported and celebrated. These protests were very well-organized given the repressive nature of the laws in Myanmar in addition to the complex circumstances in which the country currently finds itself. All fifteen organizers and participants interviewed for this research felt empowered and motivated by their roles in the protests, despite the legal charges most of them face. In the frustration and disappointment of the failures of the union peace process and backsliding on basic freedoms, there is hope to be found in these young activists and human rights defenders. If the Myanmar Government hopes to establish genuine democracy and peace within Myanmar, it must do more to protect and promote the rights of its citizens, particularly these inspirational youth activists who continue to forge ahead towards democracy and human rights.

⁴¹ Though some interviewees thought that some restrictions in the PAPPL may be aimed at preventing ultra-nationalists from holding assemblies, they noted that it is more important to confront the ideology represented by the ultra-nationalists than to prevent all peaceful assembly. Using overly broad restrictions on basic freedoms to combat dangerous speech, including the hate speech expressed by ultra-nationalists, is not a legal or effective way to combat hate speech and incitement to violence by ultra-nationalists.

Recommendations

To the Government of Myanmar:

- ✿ Support the calls made by the youth to end conflict, provide safe passage for IDPs, ensure all IDPs have access to humanitarian aid, and involve local humanitarian, religious and rights-based local civil society in the protection of IDPs and delivery of humanitarian aid.
- ✿ Amend the Peaceful Assembly and Peaceful Procession Law to:
 - Remove the requirement of notification in the case of spontaneous assemblies or assemblies whose size does not require prior preparations by local authorities;
 - Remove the requirement to notify of planned slogans and anything else that can serve as a proxy for content-based regulation;
 - Remove the vague backdoor requirement to follow local rules and agreements in Article 10(k);
 - Emphasize facilitation of peaceful assemblies and processions instead of control;
 - Create a positive duty of police officers to protect peaceful protesters from counter-protesters and others who seek to disrupt a peaceful assembly;
 - Remove criminal liability for minor deviations from the plan submitted in a notification, and limit criminal liability to individuals who commit violence or other crimes, including incitement to violence, during a peaceful assembly; and
 - Include a gender-sensitive approach to protecting female peaceful protesters from the particular threats they face.
- ✿ Drop all charges against peaceful protesters in relation to recent peaceful protests in Myitkyina, Yangon and elsewhere, including charges under the PAPPL and Article 500 of the Penal Code.
- ✿ Renounce and declare invalid the 2017 ban on all assemblies in 11 townships in Yangon.
- ✿ Actively promote an understanding of freedom of assembly and expression that includes respect for the rights of those who hold unpopular opinions.
- ✿ Investigate and prosecute all counter-protesters who physically or verbally assaulted peaceful protesters, including verbal assaults and threats delivered via social media.
- ✿ Investigate whether and to what extent police coordinated and/or cooperated with counter-protesters in the arrest of peaceful protesters, and appropriately discipline any police officers who acted under orders of counter-protesters.
- ✿ Take action to prosecute violent threats and hate speech on social media, in accordance with international principles and in a content-neutral way.

To the Myanmar Military:

- ✿ Cease all offenses against ethnic armed organizations (EAOs) and targeting of civilians and civilian areas; and engage in the peace process and dialogue with ethnic nationalities for establishment of a genuine federal democratic system.
- ✿ Allow deliveries of humanitarian aid to all areas affected by conflict, including those controlled by EAOs.
- ✿ Cease preventing IDPs from fleeing conflict-affected areas to seek safe shelter.
- ✿ Allow humanitarian, religious and rights-based local civil society organizations to assist in protection of and delivery of humanitarian aid to IDPs, including by traveling into EAO-controlled territory.
- ✿ Drop all charges of defamation against civil society actors speaking out concerning the situation of IDPs.
- ✿ Cease pressure on community leaders and religious and civil society organizations to close IDP camps they are supporting.

To the International Community:

- ✿ Provide support to human rights defenders, activists and rights-based civil society organizations combating hate speech and promoting and protecting freedom of assembly and expression.
- ✿ Encourage the Myanmar Government to reform the Peaceful Assembly and Peaceful Procession Law in accordance with international standards.
- ✿ Call on the Myanmar Government and Military to drop all charges against peaceful protesters.
- ✿ Strongly urge the Myanmar Government to address the situation of IDPs as called for by the youth protesters, including: providing safe passage for IDPs, ensuring all IDPs have access to humanitarian aid, and involving humanitarian, religious and rights-based civil society in the protection of IDPs and delivery of humanitarian aid.



Photo Credit: Victoria Milko

Progressive Voice is a participatory rights-based policy research and advocacy organization rooted in civil society, that maintains strong networks and relationships with grassroots organizations and community-based organizations throughout Myanmar. It acts as a bridge to the international community and international policymakers by amplifying voices from the ground, and advocating for a rights-based policy narrative.

Progressive Voice



info@progressive-voice.org



www.progressivevoicemyanmar.org