5 violations that need addressing in protest law amendment

We welcome the recognition that the Peaceful Assembly and Peaceful Procession Law (the PAPP Law) is undemocratic and should again be amended by the government. Unfortunately, the Bill of Amendment of the Peaceful Assembly and Peaceful Procession Law (the Amendment Bill) which was proposed in The Mirror on 20 February 2018 does not yet address the law’s many weaknesses and instead proposes changes that would further undermine people’s human rights. We call on the government to amend the law to bring it up to international standards and democratic best practices.

Problems in the current PAPP Law

The PAPP Law clearly violates the Myanma people’s rights to freedom of expression and assembly by:

1. Prioritising control over, rather than, facilitation of protests
2. Requiring protesters to overcome burdensome and bureaucratic hurdles
3. Effectively making spontaneous protests unlawful
4. Overly restricting the content and conduct of protests, criminalising protesters
5. Giving the police vague powers – including the use of force – to stop protests based on ambiguous and merely potential risks

Problems in the Amendment Bill

Rather than address the violations listed above, the Amendment Bill proposes four key changes to the PAPP Law:

- Article 2 proposes that people can only exercise their right to peaceful protest if they do not
conflict with laws protecting “national security, rule of law, public order, or public morals”.

- Article 3 requires protest organisers to include details of their estimated budget and source of funding in their notification to the authorities.

- Article 4 proposes a new crime according to which anyone who gives financial, material or any other means of support to encourage protest against “national security, rule of law, public order or public morals”, faces three-years imprisonment and an unlimited fine.

- Article 6(b) adds an exception to the deadline of 15-days to bring charges against protesters, in cases where the protests were against “national security, rule of law, public order or public morals”.

While it is potentially legitimate to restrict the rights to freedom of expression and assembly, the Myanmar government has failed in its obligation under international law to ensure that any restriction must pass the three-part test as defined in international law. This bill would therefore violate the Myanmar people’s rights to freedom of expression and assembly.

**Part One of the three-part test: Provided in law**

International law requires all restrictions on the rights to freedom of expression and assembly to be clearly defined and specific to ensure that the law cannot be abused. Articles 2, 3, 4 and 6(b) fail Part One because they are vaguely written and could therefore be arbitrarily used. They also fail because persons wishing to protest would be unable to predict which of their actions would be lawful and which would not.

**Part Two: Pursue a legitimate aim**

International law requires all restrictions of the rights to
freedom of expression and assembly to be designed to pursue a legitimate aim as exclusively listed in international law. Any other aim is not permissible. Articles 2, 3, 4 and 6(b) fail Part Two because they pursue aims that are broader than what is accepted under international law. The rights to freedom of expression and assembly extend to ideas that annoy, offend or are not received favourably by the government or even the majority of the population.

**Part Three: Are necessary**

International law requires all restrictions of the rights to freedom of expression and assembly to be necessary to pursue the legitimate aim. International courts have defined necessity as being 1) in response to a pressing social need; 2) being the least intrusive approach; and 3) being proportionate.

Articles 2, 3, 4 and 6(b) fail Part Three because they are not necessary. They are unnecessary because there is no pressing social need to specify additional content-based restrictions on protests beyond those that exist in criminal laws of general application that apply to every person at all other times. For example, the Penal Code already includes provisions dealing with fraud and incitement to violence.

Article 3 fails Part Three because it is deeply intrusive. Informing the authorities of budgets and sources of funding would not enable or facilitate the authorities to prepare for the protest. It would rather add further bureaucratic hurdles that would deter people from exercising their right to protest.

Article 4 fails Part Three because it is disproportionate. Criminalising and imprisoning a person for supporting a protest, even if responding to a pressing social need, would be a grossly disproportionate punishment.

Article 6(b) fails Part Three because it could result in a
Recommendations for the Amendment Bill

The Amendment Bill should be changed to address the PAPP Law’s clear violations of the rights to freedom of expression and assembly as listed above:

1. Prioritising control over rather than facilitation of protests
   a. The Amendment Bill should change the PAPP Law objectives to a presumption in favour of the rights to freedom of expression and assembly and creating a duty for the state to protect and promote these rights without discrimination.
   b. Specific duties of the authorities to facilitate protests should be added.

2. Requiring protesters to overcome burdensome and bureaucratic hurdles
   a. The Amendment Bill should change the PAPP Law to only require advance notification for protests that are likely to be large and where authorities reasonably need to plan to facilitate them.
   b. The list of necessary information should be reduced to just information on the date, time, location or route, estimated numbers of protesters, and contact details for any organisers.
   c. All requests for information on the content of the protest should be removed.
   d. The burden of informing authorities in different locations should be shifted from the protesters to the authorities.
   e. The Law should ensure a transparent and
5. Giving the police vague powers – including the use of force – to stop protests based on ambiguous and merely potential risks

a. The Amendment Bill should change the PAPP Law to remove powers to prevent protests from going ahead, except where there is clear evidence of an intention to incite violence.
guidelines on in which situation they can use force, ensuring legality, legitimacy, necessity and proportionality.

We urge Parliament to conduct an accessible, open and rigorous public consultation before proceeding further with the Amendment Bill. In particular, we urge Parliament to review white papers from both government and civil society that document how the PAPP Law has been used so far, how protesters have been affected by it, and what case law exists in which protesters have been prosecuted.
မိမိနောက်ခံသူများ၏ အိမ်ထောင်ရေးရာ အာဏာပိုင်အမှုများနှင့် အခြားအာဏာပိုင်အမှုများကို အဖြစ်ဖြင့် ရှေးကြားပြီးပေးနိုင်သော အာဏာပိုင်အမှုများကို အဖြစ်ဖြင့် ရှေးကြားပြီးပေးနိုင်သည်။ အမှတ်အပြား အခြားအာဏာပိုင်အမှုများကို ရှေးကြားပြီးပေးနိုင်သော အာဏာပိုင်အမှုများကို အဖြစ်ဖြင့် ရှေးကြားပြီးပေးနိုင်သည်။