In-depth analysis of violations of the right to protest across Myanmar
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About FEM

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

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

- www.FreeExpressionMyanmar.org
- www.facebook.com/FreeExpressionMyanmar
- coordinator@FreeExpressionMyanmar.org

Participants

FEM would like to thank all of those that participated in this research, particularly all those interviewees who dedicated their time. Without their commitment to justice and reform this project would not have been possible.

FEM would also like to thank AAPP for their data which gave us a basis for our investigation, and Athan, Generation Wave, Progressive Voice, and Yangon Watch for providing feedback on our analysis.

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Executive summary and recommendations ..................... 3
Introduction .................................................................................................................. 9
Right to protest ............................................................................................................. 13
Pre-protest issues ........................................................................................................ 23
During protest issues ................................................................................................. 27
Post-protest issues ...................................................................................................... 35
Conclusion .................................................................................................................... 41
Executive summary and recommendations

2020 marks the hundred-year anniversary of the first major protests in Myanmar’s modern history. Protests have launched political leaders, political parties, new constitutions and elections. As a result, the State has historically viewed protesters with suspicion and clamped down on the rights to freedom of expression and assembly at every opportunity. Even today, the media continues to report regular harassment and intimidation of protesters. In 2019, almost 100 protesters were charged for protesting.

To mark the centenary, FEM has conducted one of the most in-depth, technical, and qualitative surveys of protesters, analysing their experiences and measuring Myanmar against international democratic standards on the right to protest.

Findings

People in Myanmar largely protest in response to what they regard as the authorities’ failure to act on public grievances. Both protesters and the authorities are generally unaware of the law, which is itself vague and problematic, despite legal reforms over the past few years. The authorities in particular still think protesters require permission in order to protest, and the authorities regularly interfere with the rights to freedom of expression and assembly by trying to dictate the content, form, and location of protests.

When protests do happen, the authorities’ primary aim is to shut them down, rather than facilitating them, and as such their preparations are usually unnecessary and disproportionate. The authorities also use unnecessary and disproportionate force against protesters, exploiting tactics that at least recklessly if not intentionally injure protesters. Despite most protests being non-violent, the authorities are quick to shut down protests and arrest protesters without a legitimate reason.
After protests are over, many protesters are charged simply for exercising their democratic rights. Often charges infer unlawful collective culpability. Charged protesters lack legal and financial support for what are slow trials resulting in punitive sentences. Protesters face a 100% conviction rate.

**Recommendations**

**To the government**

- Ratify the ICCPR and the ICCPR’s Optional Protocol.
- Amend the PAPP Law and Penal Code to bring them in line with international democratic standards (see below table for detailed recommendations).
- Retract all local regulations banning protests and ensure that they are not reinstated.
- Conduct a full and consultative review of police laws to bring them into line with international democratic standards.
- Amend the Myanmar National Human Rights Commission Law to bring it in line with the Paris Principles.\textsuperscript{1}
- Investigate and either discipline or prosecute police who have misused their authority against protesters.

**To the Myanmar Police Force**

- Adopt clear, operationally-focused and accessible rules on the policing of protests, guided by the human rights principles of legality, necessity, proportionality, and non-discrimination. These should comply with the UN Code of Conduct for Law Enforcement Officials.
- Train police on managing protests with a clear focus in all their planning, implementation, and evaluation upon facilitation of protests. Ideally, only trained police should manage protests.
- Develop and implement clearer guidance for police on restricting protests, including use of force. This should clarify the circumstances in which restrictions can be imposed on protesters. It should also clarify the limits of police authority, explain crowd behaviours, and describe methods such as negotiation and mediation for de-escalating conflict.
• Impose appropriate sentences.
• Conduct a review of conviction rates and sentencing for crimes related to the human rights to freedom of expression and association.

To the judiciary and courts

• Impress on judges, through internal guidelines and training, the importance of judicial independence, including the balanced treatment of expert testimony. Impress also the democratic standards relating to individual culpability.
• Encourage and empower judges to apply the law according to democratic standards, in particular in protest-related cases by interpreting any law narrowly and in favour of the principle of liberty as demanded in the Constitution Article 6.
• Train judges on international standards relating to the human rights to freedom of expression and freedom of assembly.
• Conduct a review of conviction rates and sentencing with the intention to develop internal guidelines on appropriate sentencing.

• Invite independent human rights experts to the court to provide advice to the court, independent from either parties’ legal teams.

To the Myanmar National Human Rights Commission

• Investigate and submit to Parliament a review of freedom of expression in Myanmar, with recommendations for legal and practical reforms.²

To civil society, media

• Use the evidence in this report to push for full amendment of the PAPP Law and Penal Code.
• Build a stronger support network for protesters who face criminal prosecution, including giving legal and financial support.
To the international community

- Use the evidence in this report to push for full amendment of the PAPP Law and Penal Code.
- Support programmes advocating for full amendment of the PAPP Law and Penal Code.
### Article 3

Chapter 4

Add a presumption in favour of the rights to freedom of expression and assembly, and a duty for the state to protect and promote these rights without discrimination.

### Chapter 3

Add: i) notifications are voluntary; ii) advance notification is only required for protests that are likely to be large and where authorities reasonably need to plan to facilitate them; iii) notifications only need to include information on the date, time, location or route, estimated numbers of protesters, and contact details for any organisers; iv) notifications must not include information on the content or form of the protest; v) the burden of informing other relevant authorities is on the authorities receiving the notification and not the protesters; vi) an exemption to notification where it is not practical or possible in the circumstances, or where there is no identifiable organiser.

### Chapter 4

Remove all reference to issuing or denying of permission. Replace it with a transparent and prompt process for placing prior conditions on the time, place or manner of a protest, which include clear justifications and options for appeal. Add a clear prohibition on the authorities pressuring protest organisers to change any other element of their plans.

### Chapter 5

Remove all rules and add only one prohibition for inciting violence which reflects the Penal Code.

### Chapter 6

Replace with a new chapter “Duties to facilitate protests”. Add duties to: i) inform protest organisers; ii) de-escalate protests using negotiation and communication; iii) to use dispersal as an exceptional measure only in response to imminent incitement to violence.
Remove all references to "unlawful assemblies". All assemblies are lawful, only specific acts should be unlawful.

Remove all collective culpability. All culpability must be individual.

Replace all with clear crimes of incitement to violence, threat of violence, and acts of violence only. All other potentially criminal acts are already covered under other parts of the Penal Code.
Introduction

“Protests have historically played a constructive social and political role in the development of more just and accountable societies, and such protests can continue to make a positive contribution to human development.”
- UN HRC Resolution 38/11

2020 marks the hundred-year anniversary of the first major protests in Myanmar’s modern history. Exercising the right to protest has been fundamental to Myanmar’s struggle for democracy since the independence protests in 1920. It was media freedom protests in 1936 that launched independence leader, Aung San. The “8-8-88” protests led to the creation of the National League for Democracy (NLD), the emergence of Aung San Suu Kyi as a political leader, and the 1990 general elections. The “Saffron revolution” protests in 2007 were followed by a new constitution in 2008, and general elections in 2010.

It is hardly surprising therefore that Myanmar’s authoritarian governments have historically regarded protests as an existential threat to their authority and responded with disproportionate, repressive, and often violent consequences.

After the military gave up absolute power in 2010, the quasi-civilian government granted a limited right to protest. This has not however resulted in proper respect or protection of the right to protest. The media has reported regular harassment, intimidation, and illegitimate convictions of protesters.

But what is the actual problem? How is the legal framework used or misused? What is the role and response of the police? Where are there gaps in awareness, undemocratic attitudes, or problematic behaviour?

To mark Myanmar’s hundred-year anniversary, this report has answered these questions through the most in-depth, technical, and qualitative survey of protesters ever conducted in Myanmar. Based on clear, concise, and verifiable analysis of the weaknesses, it proposes substantial reforms that are necessary to truly guarantee the right to protest.
Methodology

FEM identified 229 individuals who had been charged between October 2016 and November 2019 for exercising their right to protest.¹ FEM chose 50 individuals to participate in this research, ensuring that any findings are representative and generalisable across all protesters. FEM ensured appropriate representation of different genders, ethnicities, urban and rural locations, educational standards, and protest issues.

FEM conducted 47 face-to-face interviews with due regard to ethical guidelines. Each participant was surveyed on 99 questions. 24 questions were open and 75 were closed, with 400 potential answers. Each of the questions was designed to measure a particular protest-related international standard. For example, one question measured the international standard on the visibility of a police officer’s individual identification number.

Limitations

Participants were identified on the basis that they were charged with a crime for protesting. Protesters who were not charged have therefore not been included. However, as will be highlighted below, charges are often laid against individuals chosen on an arbitrary basis, not on the basis of their individual acts. Because of this arbitrariness, the findings are generalisable for protesters.
FEM’s methodology included asking technical and often complex questions which in many cases required building the human rights awareness and analytical capacity of the participant so that they were capable of providing an informed and reliable answer. In several cases, targeted individuals decided not to participate due to perceived repercussions on their lives particularly relating to employment.

**Report structure**

This report is formed of three sections: introduction, findings, and conclusion. The findings have been broken down into findings relevant to before the protest took place, during the protest, and following the protest. This has enabled a better understanding of the notification system, the authorities’ management of protests, and any court processes afterwards. Recommendations are included in the executive summary.

**Definitions**

“Government”: Myanmar’s Constitution puts several government functions, including the police, under the authority of the military, rather than under the authority of elected civilian representatives. In effect, this creates two parallel governments. References to the “government” in this report should be understood to include one or both parties depending on the context.

“Authorities” and “police”: The command structures and decision-making policies and processes of the police and the authorities are often unclear (the authorities meaning the broader spectrum of decision-makers including government, local government, elected and unelected officials). The choice of which of these terms to use is based on the best information available. However, there may be occasions where the report places responsibility with the police when it should be with the authorities more broadly. There may also be occasions where the report uses “police” whereas those involved are actually from other parts of Myanmar’s complex and secretive security apparatus.
Right to protest

“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.”
- Article 19, UDHR

“Everyone has the right to freedom of peaceful assembly and association.”
- Article 20(1), UDHR

The right to protest is essential to democracy because it enables people to engage in public life in a way that is more direct and timelier than other participatory processes such as elections. Protests are also beneficial for governments as “early warning systems” enabling the correction of public grievances that could if ignored grow into larger issues more difficult to solve.³

International law does not refer to a specific right to protest. Instead the right to protest is derived from a combination of two main human rights: the right to freedom of expression and the right to freedom of assembly and association.⁴ Other human rights relevant to protest include the right to strike,⁷ and the rights to participate in political affairs⁸ and cultural life.⁹

International law places a responsibility upon all States to respect, protect, and fulfill these rights. “Respect” means States must refrain from interfering with or curtailing protests. “Protect” means States must protect protesters. “ Fulfil” means States must take positive action to facilitate protests.

The UN and other international bodies have developed international standards to provide a benchmark for what States should do in order to fulfil their obligations. International standards are clear: protesters do not need permission, protests should always be allowed, and protests should only be stopped if there is significant violence or a real and immediate threat of significant violence.
International standards define protest as:

- Both individual or collective acts conducted anywhere and targeting any audience.
- Organised with leaders, or spontaneous without leaders. This includes protests without any clear form or duration.
- Involving stationary (sit-ins), moving (processions), or more complex acts such as Gandhi’s “civil disobedience” campaign. They can also be more contemporary acts such as “flash mobs” and “virtual sit-ins”.
- Containing verbal words, banners, pamphlets, or other forms of communication on any issue or cause.
- Potentially shocking or annoying to some people, or temporally disturbing, disruptive, or obstructive to some people.
- Non-violent. The UDHR says “peaceful assembly” but this has since been defined as non-violent because the term “peaceful” is fairly vague and protests involve shouting and physical action.

International standards are particularly concerned with States’ responsibilities in two areas. The first is the freedom to protest. International standards stipulate that protesters can choose the issue, cause, form, manner, and location of their protests, and they do not need permission in law or in practice to do so. Any notification system must be simple and voluntary.

The second is the proper management of protests. International standards say that the State’s primary responsibility is to facilitate – not control – protests. Any policing of protests should be based in law, and be necessary and proportionate. Dispersal orders should be exceptional, only made when there is an imminent threat of violence, and never justified by non-conformity to notification requirements. If there are isolated acts of violence, the State’s responsibility is to disperse the individual not the group, and any use of force should be only of last resort.

"Isolated acts of violence committed by others in the course of a protest do not deprive peaceful individuals of their rights to freedom of peaceful assembly, of expression and of association."

- UN HRC Resolution 38/11
Right to protest in Myanmar

All UN Member States including Myanmar have committed to uphold the human rights that the right to protest derives from. Myanmar in particular is committed to these rights because it was involved in the creation of the Universal Declaration of Human Rights.

The right to protest is protected in the Myanmar Constitution under Articles 6 and 354. Article 6 references "liberty", a concept with profound global political origins consisting of the social, political, and economic freedoms to which everyone is entitled - the historical basis for the more recent concept of "human rights".11

"The Union’s consistent objectives are: (e) enhancing the eternal principles of justice, liberty and equality in the Union."
- Article 6 of the Myanmar Constitution

Including liberty as a basic principle of the State is important because it means that all Myanmar’s laws, policies, and actions must enhance freedom. If they do not, then they are "unconstitutional". In a democracy, courts exist partly to check whether the State’s laws, policies, and actions are unconstitutional. For example, if a law violates the right to freedom of expression, a judge should declare it unconstitutional on the basis that it contradicts the constitutional principle of liberty.
In Myanmar, protests are regulated by multiple and often conflicting laws. The charges laid down against the 229 protesters identified by FEM between October 2016 and November 2019 fell under 16 different criminal provisions. These are listed in the below table.

**Peaceful Assembly and Peaceful Procession Law**

In 2011, the quasi-civilian government adopted a special law to regulate protest: The Peaceful Assembly and Peaceful Procession Law (PAPP Law). Although the PAPP Law was amended in 2016 following significant criticism, it still fails to conform to international democratic standards. In particular it:

- Prioritises control over rather than facilitation of protests.
- Requires protesters to overcome burdensome and bureaucratic hurdles.
- Effectively makes spontaneous protests unlawful.
- Overly restricts the content and conduct of protests, criminalising protesters.
- Gives the police vague powers – including the use of force – to stop protests based on ambiguous and merely potential risks.

80% of the charges laid down against the 229 protesters identified by FEM between October 2016 and November 2019 fell under the PAPP Law.
Penal Code

Although the PAPP Law is a specialised law with its own criminal provisions, many prosecutions use other criminal laws instead. The Penal Code is the second most commonly used.

Articles 141-143 criminalise participating in an unlawful assembly (up to 6 months imprisonment), which is defined broadly and could include legitimate protest activities. Articles 144, 146, 147, and 149 criminalise violent protests and place collective culpability on any participant regardless of whether they conducted a criminal act (2 years). Articles 145 and 151 criminalise refusal to disperse (2 years). Articles 144 and 148 criminalise carrying a weapon (3 years). Articles 150, 157, and 158 criminalise hiring protesters (6 months). Article 152 criminalises disturbing public officials. Articles 153 and 153a criminalise incitement to riot (6 months). Articles 154 to 156 criminalise land owners for permitting protests.

Although the Penal Code contains many direct provisions on protest, it is mostly the indirect provisions which are used to charge protesters (see the table below).

Local regulations

Public order regulations are used to regulate protests at the local level. For example, in 2017 the government banned all protests in 11 of Yangon’s 14 townships on the grounds that they interrupt commuter traffic, cause a nuisance to the public, and raise safety concerns. The blanket ban remains today although it is arbitrarily applied.
<table>
<thead>
<tr>
<th>Penal Code</th>
<th>Description</th>
<th>Sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>114</td>
<td>Abetment</td>
<td>Up to 7 years imprisonment + fine.</td>
</tr>
<tr>
<td>210</td>
<td>Voluntarily causing hurt to deter a public servant from his duty</td>
<td>Up to 10 years imprisonment plus a fine.</td>
</tr>
<tr>
<td>419</td>
<td>Punishment for cheating by impersonation</td>
<td>Up to 3 years imprisonment + fine.</td>
</tr>
<tr>
<td>420</td>
<td>Cheating and dishonesty inducing delivery of a property</td>
<td>Up to 7 years imprisonment plus a fine.</td>
</tr>
<tr>
<td>427</td>
<td>Mischief causing damage</td>
<td>Up to 2 years imprisonment plus a fine.</td>
</tr>
<tr>
<td>435</td>
<td>Mischief by fire or explosive substance with intent to cause damage</td>
<td>Up to 7 years imprisonment plus a fine.</td>
</tr>
<tr>
<td>447</td>
<td>Punishment for criminal trespass</td>
<td>Up to 3 months imprisonment + fine.</td>
</tr>
<tr>
<td>468</td>
<td>Forgery of purpose of cheating</td>
<td>Up to 3 years imprisonment + fine.</td>
</tr>
<tr>
<td>471</td>
<td>Using as genuine a forged document</td>
<td>Up to 3 years imprisonment plus a fine.</td>
</tr>
<tr>
<td>505(b)</td>
<td>Statements conducting to public mischief</td>
<td>Up to 2 years imprisonment + fine.</td>
</tr>
<tr>
<td>10</td>
<td>Invasion of privacy, defamation, stealing or destroying property</td>
<td>Up to 3 years imprisonment plus a fine.</td>
</tr>
</tbody>
</table>
Protests in Myanmar

There are thousands of protests happening across Myanmar every year. Between January 2019 and January 2020, the Myanmar media reported on just a small proportion of them, 450 protests. The following table summarises them.

FEM identified 229 individual protesters who had been charged between October 2016 and November 2019 for exercising their right to protest. The 229 protesters and those chosen to participate in this research reflected a range of backgrounds and experiences.

The following table summarises them.
## General protest statistics in 2019

<table>
<thead>
<tr>
<th>Issue or cause?</th>
<th>Labour rights</th>
<th>Farmers rights</th>
<th>Other</th>
<th>Student rights</th>
<th>Ethnic rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>40%</td>
<td>16%</td>
<td>16%</td>
<td>14%</td>
<td>13%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Location?</th>
<th>Yangon</th>
<th>Ethnic states</th>
<th>Other</th>
<th>Mandalay</th>
<th>Sagaing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>29%</td>
<td>24%</td>
<td>22%</td>
<td>14%</td>
<td>11%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reported by?</th>
<th>Myanmar Times</th>
<th>RFA</th>
<th>DVB</th>
<th>Mizzima</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage</td>
<td>24%</td>
<td>24%</td>
<td>20%</td>
<td>16%</td>
<td>16%</td>
</tr>
</tbody>
</table>
### Statistics on the individuals charged for protesting, and participating in FEM research

#### Issue or cause?

<table>
<thead>
<tr>
<th>Issue/Concern</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-war</td>
<td>33%</td>
</tr>
<tr>
<td>Labour rights</td>
<td>21%</td>
</tr>
<tr>
<td>Ethnic rights</td>
<td>19%</td>
</tr>
<tr>
<td>Land rights</td>
<td>14%</td>
</tr>
<tr>
<td>Other</td>
<td>13%</td>
</tr>
</tbody>
</table>

#### Association?

<table>
<thead>
<tr>
<th>Political leaders or activists</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political leaders or activists</td>
<td>43%</td>
</tr>
<tr>
<td>Non-affiliated</td>
<td>28%</td>
</tr>
<tr>
<td>HRDs</td>
<td>20%</td>
</tr>
<tr>
<td>Other</td>
<td>9%</td>
</tr>
</tbody>
</table>

#### Protest experience?

<table>
<thead>
<tr>
<th>First protest</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>First protest</td>
<td>26%</td>
</tr>
<tr>
<td>Not first</td>
<td>74%</td>
</tr>
</tbody>
</table>

#### Organiser or participant?

<table>
<thead>
<tr>
<th>One of many organisers</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>One of many organisers</td>
<td>41%</td>
</tr>
<tr>
<td>Participant</td>
<td>30%</td>
</tr>
<tr>
<td>Only organiser</td>
<td>28%</td>
</tr>
</tbody>
</table>

#### Gender? (Nobody reported other)

<table>
<thead>
<tr>
<th>Gender</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>73%</td>
</tr>
<tr>
<td>Women</td>
<td>27%</td>
</tr>
</tbody>
</table>

#### Status at interview time?

<table>
<thead>
<tr>
<th>Status</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under trial</td>
<td>54%</td>
</tr>
<tr>
<td>Acquitted</td>
<td>25%</td>
</tr>
<tr>
<td>Sentenced</td>
<td>21%</td>
</tr>
</tbody>
</table>

#### Charges laid?

<table>
<thead>
<tr>
<th>Charge</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAPP Law</td>
<td>80%</td>
</tr>
<tr>
<td>Other</td>
<td>20%</td>
</tr>
</tbody>
</table>
Many of these protests were spontaneous. As well as the media and their community, to know. because they were very upset and wanted the authorities to listen and respond, and the other 51% said that the authorities listened but did nothing. Most of these protests were planned at least two days in advance.

The remaining 38% of protesters had not previously spoken with the authorities and chose to protest simply because they were very upset and wanted the authorities, as well as the media and their community, to know. Many of these protests were spontaneous.
Most protesters intend to abide by the legal framework regulating protest but have limited awareness of it and are often prevented from doing so because of the law’s defects.

84% of protesters were aware of some part of Myanmar’s legal framework. However, less than half were aware of there being criminal provisions under the Penal Code (48%).

91% of protesters intended to abide by Myanmar’s legal framework, provided that they knew what it was. 43% of protesters were unable to abide by the law either because their protests were spontaneous (and the PAPP Law effectively makes spontaneous protests unlawful) or because there was not enough time to notify the authorities in advance (1-2 days). A sizeable 7% of protest organisers were not at all aware of the need to notify the authorities when holding a protest.

Just 9% of protesters said that they were aware of Myanmar’s legal framework but chose not to abide by certain parts of it because they regarded it as violating their right to protest.
Police think protests still require permission

Although the PAPP Law was amended in 2016, most police still regard notification forms as an application for permission to protest.

72% of protesters believed that the police treated their notifications as applications for permission to protest. Just 28% of protesters believed that the police understood the amended law and the function of notification.

Women protesters were more likely than men to have experienced rude and unprofessional behaviour when notifying the police.

“We will not inform the authorities in future. We don’t trust the law. It is pointless to try to get permission from the authorities to criticise their own weaknesses.”

– Anonymous protester
Police want to dictate protest content, form, and location

The police pressured the majority of protesters to change the content, form, and location of their protests, in violation of international democratic standards.

Just 22% of protesters’ notifications were accepted upon submission.

56% of protesters were asked to amend their notifications or be rejected. The police asked: 39% to change their slogans or placards; 39% to change the location of their protest; and 22% to change the form of their protest. 11% of protesters agreed to the police’s requests. 6% of protesters agreed to some of the police’s requests but not all.

The police were more likely to ask women protesters to change their notifications compared to men protesters.

Following negotiation, 11% of protesters’ notifications were completely rejected and their protests therefore effectively banned from taking place at all. All of the protesters whose notifications were rejected continued anyway.

“They rejected my notification because it included the name of Senior General Min Aung Hlaing.”

– Anonymous protester

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<table>
<thead>
<tr>
<th>Did the police ask you to make changes?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Content</strong></td>
</tr>
<tr>
<td><strong>Form or manner</strong></td>
</tr>
<tr>
<td><strong>Location</strong></td>
</tr>
</tbody>
</table>
During protest issues

Authorities aim to shut down not facilitate protests

The authorities’ conduct indicates that their aim is to intimidate, shut down, and disperse protests rather than to facilitate them and protect the right to protest.

84% of protesters saw no evidence of the authorities facilitating their protests. 38% of protesters said that the authorities did not communicate with the protesters at all during the protest, or if they did, only gave incorrect, inaccurate or incomplete information about their crowd control measures. 43% of protesters thought that the authorities were neither polite nor professional towards the protesters. This did not indicate the authorities’ lack of organisation: 88% of protesters thought that the authorities seemed to have a clear command structure.

Women protesters were more likely than men to have experienced rude and unprofessional behaviour from the authorities at protests.

63% of protesters said that the police arrived at the protests intimidatingly dressed and with equipment intended to deal with violence. 77% of protesters said that the police arrived at non-violent protests with batons, sticks, helmets, shields, body armour, and prison vehicles. 30% of protesters said the police failed to even identify themselves and did not wear any form of identification.

Although the police were ready to deal with violence, the 11% of protesters who reported violent counter-protesters or seemingly-organised violent and threatening individuals also said that the police did nothing to protect the non-violent protesters from the violence.
Police arrangements were unnecessary and disproportionate

The police’s protest arrangements are unnecessary, disproportionate, and therefore extraordinarily expensive to the tax payer, despite nine years of experience regulating protests under the PAPP Law.

All protesters reported that the police attended their protests, even those that involved just a single protester. 41% of protesters said that there were the same number or more police officers present at their protest than protesters. A significantly high 5% of protesters said that there were 10 police officers present for every one protester.

In addition to the uniformed police presence, 61% of protesters were absolutely certain that plain-clothes security officials were among the protesters too. It was unclear whether these officials were there to monitor the protests or to act as “agent provocateurs”.

Although protesters’ attendance predictions were generally accurate (if a little over-optimistic), the police’s arrangements demonstrated poor intelligence estimations. For example, 75% of protests involving less than 10 protesters had more police officers than protesters. At the opposite end, 80% of large protests involving more than 1,000 protesters were attended by few police officers.

In addition to over-attendance, the police also over-invested in surveillance. 73% of protesters identified police officers conducting surveillance of protests by taking photos and videos, including during protests without any conceivable likelihood of criminal action.

[...]

No permission to protest - Page 28
Police use of force was unnecessary and disproportionate

The police used force in almost half of all protests despite virtually all protests being non-violent. Protesters witnessed significant use of unlawful crowd control measures.

98% of protesters said that their protests were entirely non-violent. 20% of protests were simple and quiet sit-ins. 59% featured just light-hearted singing and shouting. 20% featured more forceful shouting. No protesters witnessed throwing of objects and just 2% witnessed some smashing or breaking of something.

Despite this, 40% of protesters witnessed the police using what the protester regarded as disproportionately forceful crowd control measures against protesters. 5% of witnesses saw the police using inappropriate verbal abuse or threats of violence. 47% witnessed the police using excessive and disproportionate physical abuse (for example, using shields against peaceful protesters). 47% witnessed the police allegedly using unlawful physical abuse in which police officers were allegedly intending to injure protesters (for example, beating random protesters with sticks).

Protesters witnessed the police use a comparatively narrow range of forceful crowd control measures. 57% of protesters who witnessed use of force said police officers used their hands or feet to punch, slap, or kick the protesters. 14% of protesters witnessed the police using batons and sticks. Two protesters witnessed the use of rubber bullets, although many saw the police carrying guns and readying live ammunition. 33% of protesters who witnessed the police using force believed that the force was used intentionally randomly without control or direction.
No permission to protest

<table>
<thead>
<tr>
<th>Did protesters or police use or threaten to use violence?</th>
<th>protesters</th>
<th>police</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Threat of violence</td>
<td>78%</td>
<td>60%</td>
</tr>
<tr>
<td>Non-violent</td>
<td>2%</td>
<td>4%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If police used force, what level of force did they use?</th>
<th></th>
<th>18%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excessive force - physical abuse where MSP were using disproportionate physical force (for example, using shields against peaceful protesters)</td>
<td>18%</td>
<td>18%</td>
</tr>
<tr>
<td>Unlawful force - physical abuse where MSP were clearly intending to injure protesters (for example, beating random protesters with sticks)</td>
<td>18%</td>
<td>18%</td>
</tr>
</tbody>
</table>
Police tactics injure protesters but neglect the injured

The police’s choice of forceful crowd control measures results in high levels of injuries, but the police fail in their duty to support the injured.

36% of protesters allegedly witnessed the police injuring protesters. 24% of protesters witnessed the police injuring just a few, but 11% witnessed the police injuring many protesters. In almost all cases, witnesses alleged that the police appeared to deliberately cause the injuries (94%).

31% of witnesses reported that the injuries were serious and required immediate professional medical assistance. However, in 73% of these cases there was no professional medical assistance available, and in the other 27% the police did not permit the injured to access any form of available assistance. No witnesses reported seeing the police helping the injured. 13% of protesters alleged that the police actually refused to allow the injured to go to a clinic or hospital for treatment.
Police arrest protesters and shut down protests without reason

The police often use force to detain protesters, shut down non-violent protests, and disperse protesters, without clear reason or justification for doing so.

57% of protesters said that the police did not allow them to complete their protest but instead were told to shut down and disperse. Almost all of the protests were non-violent. 39% of protesters said that the police used force to disperse the protesters. 50% of protesters said that they received absolutely no clear reason or warning prior to the police shutting down the protest and dispersing the protesters.

48% of protesters said that protesters were detained or arrested. A large minority of protesters reported that many protesters were detained or arrested during their protests (28%). Just 11% of protesters said that detained and arrested protesters were read their rights. Instead 84% said that they were taken straight to a police station without knowing their rights. 22% of detained and arrested protesters alleged that they were treated badly in the process, with 11% experiencing verbal abuse and 11% experiencing some form of physical abuse.
Some police target journalists

Journalists attend most protests but as public watchdogs are sometimes the targets of violence by police.

Almost all protesters reported that journalists attended their protests (93%). Protesters alleged that a minority of police sometimes appeared to target use of force against journalists despite knowing that they are journalists. Some protesters witnessed the police detaining journalists and forcing them to delete captured photos and videos of the protests.
Protesters face surveillance after protesting

A significantly high number of protesters believe that after protesting they are subject to surveillance by authorities.

62% of protesters had reason to believe that they had been placed under surveillance after protesting. 48% had identified unknown persons watching or following them in the street after the protest. 14% had identified signs that they were under electronic surveillance via their phones or online presence.

Women protesters were three times more likely than men to have identified signs of online surveillance.
Protesters charged for exercising democratic rights

Most charges laid against protesters criminalise the protesters’ legitimate exercise of fundamental human rights to freedom of expression and freedom of assembly.

87% of protesters arrested and charged with a crime were charged for actions that as described were clearly within their democratic rights. 62% of defendants were charged for failing to notify the authorities prior to the protest, even if their notifications were rejected by the authorities. 15% were charged with doing, saying, or writing something that was not included in the original notification. 5% of protesters believed that they were charged for making allegations against the military. 5% believed that they were charged simply for participating in a protest.

“I was charged with a crime because we changed the title of the protest from the title we used in the notification.”
– Anonymous protester

“I was charged with a crime because we refused to change the title of the protest to the title that the authorities wanted.”
– Anonymous protester
Charges infer unlawful collective culpability

Most of the charges brought against protesters inferred collective culpability, guilt by association, and collective punishment, contradicting basic rule-of-law principles and potentially breaching international law.\(^7\)

78% of protesters stated that the charges brought against them failed to stipulate any act that they were individually culpable for. 65% of charged protesters said that the charges merely stated the allegedly criminal acts that the protest group carried out, and allocated culpability to the individual protester because they were present. The remaining 13% of protesters said that their charges included no clear criminal act at all.

Women protesters were more likely than men to face charges based on collective culpability and lacking any allegations of individual culpability for specific criminal acts.
Trials are slow and costly, with 100% conviction rate

Criminal trials are generally slow, often delayed, expensive (including to the tax payer who is funding the inefficient system), and have a 100% conviction rate.

At the time of writing, each charged protester had sat through 11 trial dates on average. However, those protesters who had been charged earlier had sat through far more: 18% had sat through more than 20 trial dates, 10% had sat through over 30, and 3% had sat through over 40. Some protesters reported that complainants and witnesses often fail to turn up, and trials often start after long delays.

44% of charged protesters believed that the trials had been excessively expensive and time-consuming. 30% thought that the trials were being handled badly and 9% believed that the trials were intended to harass, irritate, and exasperate protesters. 21% of charged protesters believed that they were in legal limbo because they were not aware of the status of their trial or what would happen next.

Men protesters were more likely than women to find the trials to be expensive and time-consuming, and more likely to think that trials were intended to harass, irritate, and exasperate protesters.

Of the trials that had concluded at the time of writing, all protesters had been found guilty. No protesters had been found not guilty - a 100% conviction rate. 41% of convicted protesters had been sentenced to prison and 59% had been given a fine. 89% of prison sentences were up to three months in duration, and 11% longer than six months. 17% of those imprisoned alleged that they were badly treated in prison with physical abuse.
Charged protesters lack support

Most protesters lack legal and financial support after they are charged.

44% of charged protesters said that they do not have access to a lawyer. An additional 17% have had access to a lawyer, but only after being charged. A large minority of charged protesters do not understand the charges that have been laid against them (20%). 84% of charged protesters had to wholly or partially pay for their own legal representation. 34% had to wholly pay because they could not find any support whatsoever.

Men protesters were less likely to have access to a lawyer but more likely to understand their charges than women protesters. Men protesters were more likely than women protesters to have to fund their own legal defence.

At the same time, although 20% of charged protesters thought that the police used unlawful force when managing protests, 0% of protesters were aware of any examples of police facing disciplinary or legal consequences.
Conclusion

Unfortunately, despite recent political reforms, this report shows that the right to protest is still not respected, protected, or fulfilled in Myanmar. Indeed, people protesting in 2020 are largely treated as protesters were one hundred years ago during Myanmar’s first major protests against the colonial government. People who bravely or innocently try to exercise their right to protest face both violence and criminalisation.

This report has demonstrated that the old authoritarian predisposition to view protests as a threat to public order is very much alive in today’s Myanmar. This is most clearly seen in the unnecessary and disproportionate use of intimidation and violence to shut down and disperse overwhelmingly non-violent protests.

The legal framework reflects this predisposition. The “notification” system established in the PAPP Law is in practice treated as a request for permission and enables the State to interfere and effectively order protesters to change the substance of their protests.

Myanmar’s legal framework and its application fall far short of any international democratic standards. This report has uncovered practices that are not only anti-democratic in principle, but also potential breaches of both national and international law. Just as protests should serve as an early warning signal to correct public grievances, so too should these findings compel the government to urgently make reforms to protect the right to protest.

FEM’s next report will focus on the international democratic standards that Myanmar must fulfil.


4 FEM wishes to thank the Assistance Association for Political Prisoners (AAPP) which contributed 120 of the 229 cases that FEM identified: [https://aappb.org/2019/02/2019-political-prisoners-list/](https://aappb.org/2019/02/2019-political-prisoners-list/)

5 Decision of the Federal Constitutional Court of Germany (First Senate), 14 May 1985, 1 BvR 233, 341/81.

6 Article 19 and Article 20 of the Universal Declaration of Human Rights.

7 Article 8 of the International Covenant for Economic, Social, and Cultural Rights.

8 Article 21 of the Universal Declaration of Human Rights.

9 Article 27 of the Universal Declaration of Human Rights. a27, Article 15(1)(a) of the International Covenant for Economic, Social, and Cultural Rights.

10 For further information on the international standards on policing, please see the UN Code of Conduct for Law Enforcement Officials.


12 For information on the location and frequency of protests, see for example ACLED: Raleigh, Clionadh, Andrew Linke, Håvard Hegre and Joakim Karlsen. (2010). "Introducing ACLED—Armed Conflict Location and Event Data." Journal of Peace Research 47(5) 651-660. See: "Armed Conflict Location & Event Data Project" (ACLED); [www.acleddata.com](http://www.acleddata.com)

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16 Thankfully the police do not yet use equipment increasingly used by authoritarian governments in other countries, such as: Kinetic Impact Projectiles (KIPs) - rubber bullets, plastic bullets; Chemical irritants - tear gas, pepper spray; Water cannons; Disorientation devices - flash-bangs, stun grenades, bright lights/loud noises; Acoustic weapons – speakers; Small arms/light weapons - pistols, rifles, shotguns, light machine guns; Electroshock equipment - stun guns, shock batons, tasers.

17 For further information, see: Fletcher, George (January 2004). "Collective Guilt and Collective Punishment". Theoretical Inquiries in Law 5, No. 1: 163–178. Edwards, James (2018), "Theories of Criminal Law", in Zalta, Edward N. (ed.), The Stanford Encyclopedia of Philosophy (Fall 2018 ed.), Metaphysics Research Lab, Stanford University. One of the earliest provisions of international law was that no person may be punished for acts that they did not commit. This means that collective punishment for a group of persons for a crime committed by an individual is also forbidden. This is one of the fundamental guarantees established by the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 50, 18 October 1907, and the 1949 Geneva Conventions and their 1977 Additional Protocols (GCIV Art. 33).
2020 marks the hundred-year anniversary of the first major protests in Myanmar’s modern history. Protests have launched political leaders, political parties, new constitutions and elections. As a result, the State has historically viewed protesters with suspicion and clamped down on the rights to freedom of expression and assembly at every opportunity. Even today, the media continues to report regular harassment and intimidation of protesters. In 2019, almost 100 protesters were charged for protesting.

To mark the centenary, FEM has conducted one of the most in-depth, technical, and qualitative surveys of protesters, analysing their experiences and measuring Myanmar against international democratic standards on the right to protest.