

## FEM submission on social movements to the UN Special Rapporteur on the rights to peaceful assembly and association

8 June 2022

Free Expression Myanmar (FEM) is a national human rights organisation based in Myanmar. FEM's vision is a Myanmar where decision-makers, particularly the State, are influenced and accountable to the people most affected by their decisions.

FEM is an independent, non-partisan, non-profit civil society organisation (CSO). FEM is a registered human rights organisation in the country, although since the coup the status of all civil society registrations has been cloaked in secrecy.

FEM's submission to the UN Special Rapporteur's call encapsulates the offline and online experiences of the latest mass social movement in Myanmar, which started in February 2021 following the military's coup and has both grown and become more sustained since.

FEM's submission builds upon several investigations into human rights violations against protesters in Myanmar. In a 2022 report, "[505A Act of Revenge](#)", FEM analysed thousands of legal cases brought against protesters since the coup began in February 2021. In a 2019 report, "[No Permission to Protest](#)" FEM surveyed 50 individual defendants charged for protesting. Both reports revealed systematic violations of a range of human rights.

FEM's submission refers to "State" throughout because the UN Special Rapporteur will be addressing his report to all UN Member States through the UN Human Rights Council. The use of "State" in no way legitimises the military's ongoing coup and its unlawful capture of some parts of the Myanmar State.

### Social movement definition

A social movement is a large number of people acting together to achieve a shared objective. Social movements include a diversity of different members, both individuals and organisations, that may conduct a wide range of collective acts. Social movements like those in Myanmar often represent the public's attempt to exercise their right to take part in the conduct of public affairs and are often the result of prior exclusion and failures in such decision-making processes.

Social movements may be temporary or longer-term, depending on whether the members' shared objective is achieved, or the movement is repressed. Stalemates are common if neither the movement nor the opposing power can win majority control. In Myanmar, the social movement has successfully obstructed the military preventing it from completing its coup. However, the social movement has not been able to overcome the military, and the military has violently repressed parts of the social movement, leading to a hostile stalemate.

## Recommendations

- Define “social movements” in the broadest scope to offer the greatest human rights protection to the widest breadth of individuals and groups exercising their rights, including the rights to freedom of assembly, association, and expression among others
- Encourage States to recognise that “democracy” is more than periodic voting, but also requires empowering the public and enabling them to participate in decision-making processes
- Encourage States to respect, protect, and fulfil the rights exercised in social movements, particularly the rights to freedom of assembly, association, expression, and to participate in public affairs.

## Social movement objectives

Social movements always start with a shared objective to carry out, resist, or undo a change that affects the public. The shared objective is likely to be simpler and more universal at the beginning of the movement, and then become more specific and detailed later on, with potentially divergent sub-objectives taken forward by different parts of the movement. Those involved in the movement will share the common objective but also have other objectives not necessarily shared by others involved. Myanmar’s recent social movement started as a visceral rejection of the military’s coup but has evolved into a profound, generational, and detailed demand for widespread reform of the country’s political, social, security, and economic system.

In most cases, social movements share a progressive objective in favour of more equal, free, and sustainable societies, such as the example of Myanmar’s anti-coup movement. But in a minority of cases, a movement’s objective may be regressive and threaten human rights. Social movements promoting regressive objectives are often smaller and supported openly or covertly by actors wishing to defend their traditional power. For example, in Myanmar, after the start of the democratic transition in 2012, traditionally powerful sources began offering political, financial, and operational backing to a comparatively small social movement that demanded discriminatory measures against religious and gender minorities, feeding into atrocity crimes against the Rohingya.

Encouraging States to prevent or shut down social movements with regressive objectives is often counterproductive because, once established, States will likely use the same laws, policies, and practices to prevent or shut down progressive social movements. In Myanmar, a number of laws have been enacted over the past decade purportedly to defend the rights of members of the public, but have since been used to prosecute individuals and defend the State itself.

## Recommendations

- By default consider all social movements to be legitimate democratic acts protected under international human rights law, and offer them the full protection of international human rights standards
- Encourage States to counter, or support the countering of regressive social movements, through substantive human rights measures such as promoting tolerance, supporting media diversity, and protecting minorities
- Discourage States from preventing or shutting down any social movements, including regressive ones, unless prevention is in accordance with international human rights standards, including that any steps taken are lawful, intended to achieve a legitimate aim, necessary, and proportionate

- Encourage multilateral and intergovernmental organisations to offer greater support to social movements with objectives that correspond with those organisations.

## Social movement structures

Social movements involve many people and organisations, comparative to the size of their international, national, or local communities. They can have a variety of structures, from a single centralised leadership hierarchy, to a diverse, decentralised, and organic group of emerging leaders, to a completely flat structure with almost no leadership whatsoever. Leaders' authority may be earned previously or through the movement itself. Structures and leadership likely become more formal and centralised over time.

In Myanmar, the anti-coup movement began organically as a flat structure without clear leaders, then later local leaders sprang up across the country, followed by the emergence of small informal organisations, which then combined into larger and more formal organisations with clear hierarchies. However, even when social movements take on some form of structure, members retain high levels of self-determination.

### Recommendations

- Encourage States to facilitate social movements and address them through political solutions
- Encourage States to fully protect the right to association, removing all barriers to establishing and joining formal and informal groups, and empowering a diverse and pluralistic civil society.

## Non-peaceful social movements

Social movements involve various forms of action that seriously disrupt power balances. In the case of Myanmar, these actions include protest marches, vigils, direct actions, strikes, civil disobedience, occupations, and establishing alternative governance institutions. The State often tries to portray some of these actions as not “peaceful” because they are inherently inconvenient and threatening to those in power.

Some actions are indeed not “peaceful” because they are purposefully intended to disrupt the “peace” or status quo felt by those in power. “Peace” is often subjectively defined in the interests of those in power. In Myanmar, for example, some members of the anti-coup social movement have purposefully impeded traffic flows in order to disrupt transport. Occasionally, actions also involve the use of force, although this is almost always just a small part of the overall actions carried out by members of a social movement. For Myanmar, the use of force includes the destruction of military property, including telecommunications towers. Such actions may be non-peaceful but should not necessarily be regarded as violent, given the low threshold of harm without violence against individuals.

States often portray social movements as threats to public order. States use the occurrence of some non-peaceful actions to label an entire social movement as a public order breakdown. Such labels enable States to justify repressive responses, including the indiscriminate use of force. In Myanmar, the military has not only labeled the anti-coup social movement as a public order breakdown, but also a threat to national security. Although international human rights law allows for States to limit certain human rights in order to protect national security, FEM has been unable

to identify any example of a social movement in Myanmar that reaches anywhere near to the threshold of creating an existential threat to the nation. In each and every case, the threat was only to the State leadership and the military.

## Recommendations

- Counter any attempt by States to only give protection or legitimisation to “peaceful” social movements
- Discourage States from regarding social movements as threats to national security
- Discourage States from taking disproportionate or untargeted measures against social movements.

## Social movement security

Social movements rarely if ever receive any form of protection and security from the State but instead usually face repression and insecurity. Such repression is often accompanied by impunity for those in power and members of the security services in particular.

As a result, social movements may seek, welcome, or tolerate some form of protection, including online protection and armed protection. Deciding whether to reject or accept protection, or control it once in place, is challenging for social movements as they lack formal structures and decision-making hierarchies. Myanmar’s anti-coup social movement broadly welcomed offers of protection because of the extreme violence used by the military. Protection first emerged in the form of street militias patrolling their neighbourhoods, and then later grew into a variety of “People’s Defence Forces” nationwide, some of which subjugate themselves to other leaders of the social movement, and others that remain independent.

Given the aforementioned lack of control, a social movement should not be held accountable for acts of violence carried out by those offering protection. Social movements that are primarily non-violent should not be regarded as violent as a whole just because part of the movement involves violence.

## Recommendations

- Encourage States to adequately protect the security of those participating in social movements
- Recognise that the emergence of violent non-State actors protecting social movements can only be addressed by States properly protecting social movements, and not through the use of force
- Encourage States to hold authorities accountable for violations of the rights of members of social movements
- Discourage States from using collective responsibility to punish social movements for the actions of specific individuals within the movement.

## Online social movements

Although social movements remain primarily physical and offline, the online space is becoming far more important for furthering the objectives of any movement and for helping organise it. In some cases, social movements are becoming entirely online due to human rights violations offline. In Myanmar, the anti-coup social movement started as predominantly offline acts including mass protests and civil disobedience, backed up by strong online organising

and vibrant support. When the military responded with extreme violence, parts of the offline social movement were repressed but shifted more online.

Although the State is usually the main repressor of human rights, the shift online means that businesses, including social media platforms, are becoming increasingly important. In Myanmar, the decision by social media platforms and other tech businesses to ban parts of social movements will have contributed to the military's overall repression.

## Recommendations

- Encourage tech businesses, particularly social media platforms, to make decisions about their services based on international human rights standards and robust due diligence
- Encourage tech businesses to invest in improving public consultation, better content moderation, and greater transparency.

## Civil society in social movements

The role of civil society and human rights organisations like FEM is to defend the rights of those involved in the social movement, ensuring that any perpetrators of human rights violations can be held accountable. A civil society organisation may also participate in the social movement itself if the movement's objectives align with the organisation's. Civil society organisations should also hold the social movement accountable to ensure that it protects human rights.

## Recommendations

- Encourage donors to be more flexible in supporting civil society under threat during social movements.

## Background on social movements in Myanmar

Although leaders of the anti-coup social movement have abolished Myanmar's constitution, and the military is clearly ignoring it, it still retains *de jure* power. The right to protest is protected in the 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". Article 354 of the Myanmar Constitution is more specifically concerned with specific rights. Article 354(a) provides for the liberty to express and publish. Article 354(b) provides for the liberty to assemble and hold processions. However, both are weakened by vague references to "security", "national solidarity", and "tranquillity".

In Myanmar, social movements are regulated by multiple and often conflicting laws. For example, the charges laid down against the 229 protesters identified by FEM in its report "[No Permission to Protest](#)" between October 2016 and November 2019 fell under 16 different criminal provisions. Since the coup began in February 2021, FEM's report "[505A Act of Revenge](#)" into thousands of criminal cases found that most charges against members of social movements have been laid under Article 505A of the unlawfully amended Penal Code.

FEM's research also identified and documented the following trends common to social movements in Myanmar:

- Myanmar people take part in social movements either because the authorities act or fail to act

- Myanmar people are unaware of the law relating to social movements, and since the coup no longer acknowledge their legitimacy
- Security services personnel thought (prior to the coup) that protests required permission
- Security services personnel wanted (prior to the coup) to dictate protest content, form, and location
- Security services personnel aim to shut down not facilitate social movements
- Security services personnel arrangements are always unnecessary and disproportionate, including indiscriminate use of force, and extrajudicial, summary, and arbitrary executions
- Security services personnel's use of force is always unnecessary and disproportionate
- Security services personnel's tactics injure protesters but neglect the injured
- Security services personnel arrest protesters and shut down social movements without reason
- Security services personnel target journalists (especially after the coup began)
- Myanmar people face surveillance after participating in social movements
- Myanmar people are charged for exercising democratic rights
- Charges laid against individuals infer unlawful collective culpability
- Trials are slow and costly, with a 100% conviction rate.

## Further information

For further information on any of the research or analysis presented here, please contact FEM at [coordinator@freexpressionmyanmar.org](mailto:coordinator@freexpressionmyanmar.org)