ARTICLE 19

Myanmar: The Decree on the Right to Peaceful Assembly and Peaceful Procession

2012

Legal analysis

Executive summary

In July 2012, ARTICLE 19 analysed the Decree on the Right to Peaceful Assembly and Peaceful Procession of Myanmar, adopted by the Government of the Republic of the Union of Myanmar on 5 July 2012.

The provisions of the Decree were examined for their compliance with international standards on human rights. Myanmar has neither signed nor ratified the International Covenant on Civil and Political Rights or other principal human rights treaties. Nevertheless, ARTICLE 19 suggests that guarantees to the right to freedom of expression and freedom of assembly, as provided by Article 364 of the Constitution of Myanmar, allow a wide scope for interpretation and that international standards regarding these rights should provide guidance to such an interpretation.

In the analysis, ARTICLE 19 appreciates the Decree's recognition of the state duty to protect assembly participants. However, the requirement for permission to hold an assembly, the grounds for denying permission, the lack of a court appeal and the absence of guarantees for media access to assemblies are problematic and must be urgently revised. ARTICLE 19 also calls on the Government of Myanmar – in consultation with civil society - to review other legislative measures in light of international standards and to make them compliant with these standards.

Recommendations

ARTICLE 19 calls on the Government of Myanmar:

- To sign and ratify the International Covenant on Civil and Political Rights;
- To invite the UN special rapporteur on freedom of peaceful assembly and association and the special rapporteur on freedom of opinion and expression to visit Myanmar;
- To ensure that the right to peaceful assembly and the right to freedom of expression are safeguarded in line with international standards;
- To revise the Decree on the Right to Peaceful Assembly and Peaceful Procession in accordance with international standards on freedom of expression and freedom of assembly, as recommended by ARTICLE 19;
- To initiate public discussion about the current legal framework on peaceful assemblies and engage in consultation with civil society representatives on how to improve the relevant legislation.

ARTICLE 19 calls on civil society in Myanmar:

- To engage in public debates and consultation with the government on how to improve the domestic legislation on peaceful assembly;
- To form coalitions between civil society organisations and launch public education campaigns on the right to peaceful assembly and the right to freedom of expression;
- To draft legislative proposals and advocate for specific changes in domestic legislation aiming at the improvement of the protection of the right to peaceful assembly and the right to freedom of expression;
- To seek partnerships with international organisations in a specific mandate on the right to freedom of expression and the right to peaceful assembly.

Table of Contents

About the ARTICLE 19 Law Programme 4

Introduction 5

International Standards on the Right to Freedom of Expression and the Right to Peaceful Assembly 6

Analysis of the Decree on Peaceful Assemblies in Myanmar 9

Positive aspects of the Decree 9

Negative aspect of the Decree 9

Permission rather than notification for assemblies 9

Overbroad exceptions 10

Unduly formalistic regulation 11

No court appeals against refusals to permit assembly 12

No safeguards against failure of the authorities to respond to requests for permission to hold an assembly 12

Lengthy terms of obtaining permission 13

Inability to hold spontaneous assemblies 13

No rules on simultaneous holdings on two assemblies 13

Insufficient regulation on policing assemblies 14

Overbroad scope of liability of organisers 14

No guarantees for media access and protection of assembly monitors 15

Annex: Decree on the Right to Peaceful Assembly and Peaceful Procession 16

About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression and develops policy papers and other documents. This work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation.

All materials developed by the Law Programme are available at http://www.article19.org/resources.php/legal/.

If you would like to discuss this document further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

For more information about this document, please contact Barbora Bukovska, Senior Director for Law and Policy of ARTICLE 19 at barbora@article19.org or +44 20 7324 2500. For more information about the work of ARTICLE 19 in Burma, please contact Oliver Spencer, Senior Advocacy Officer at oliver@article19.org.

Introduction

In this brief, ARTICLE 19 reviewed the newly adopted Decree on the Right to Peaceful Assembly and Peaceful Procession ("Decree"),[1] adopted by the Ministry of Home Affairs and approved by the Government of Republic of the Union of Myanmar on 5 July 2012. The Decree contains 27 provisions dealing with the application for permission for assemblies, the grounds for denial of permission, appeal procedures against denials as well as rules for holding assemblies.

The Decree is a bylaw which regulates in details the legal regime for public assemblies, as set out by the Law Relating to Peaceful Assembly and Peaceful Procession, adopted on 2 December 2011. The Decree makes the provisions of the Law operational.

The analysis is informed by international human rights law, in particular key provisions of the International Covenant on Civil and Political Rights ("ICCPR") on the right to freedom of expression as well as on freedom of assembly. It is also based on ARTICLE 19's extensive experience of working towards legal and policy reform in many countries on matters concerning the protection of freedom of expression and the right to information. Although Myanmar has neither signed nor ratified the International Covenant on Civil and Political Rights and other main human rights treaties, ARTICLE 19 suggests that guarantees to the right to freedom of expression and freedom of assembly, as provided by Article 364 of the Constitution of Myanmar, allow a wide scope for interpretation and international standards on these rights should provide guidance in such an interpretation.

In the analysis, ARTICLE 19 appreciates the Decree's recognition of the state duty to protect participants in assemblies. However the assembly permission regime, the grounds for denying permission, the lack of court appeals and the lack of guarantees for media access to assemblies are problematic and must be revised urgently.

ARTICLE 19 also calls on the Government of Myanmar to review other legislation in the light of the international standards and – in consultation with civil society – to make them compliant with these standards.

[1] This analysis is based on the unofficial translation of the Decree from Burmese to English in July 2012. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation. A copy of the Decree in English is reproduced in the Appendix to this analysis.

International Standards on the Right to Freedom of Expression and Right to Peaceful Assembly

Right to freedom of expression and right to peaceful assembly

One of the most important conditions for the existence of a democratic society is respect for fundamental rights and freedoms. Among these freedoms, freedom of expression is considered to be one of the most important: it enables people to voice opinions and judgement on government action, and thus ensures that they are properly and democratically governed. Participatory debate and the exchange of ideas also require free and open access to all available policies and information. The right to peaceful assembly protects a range of activities including meetings, mass actions, demonstrations and rallies. This right shares many characteristics with the right to freedom of expression and has a similar purpose – the expression of views. Both rights have fundamental importance for personal development as well as the progress and welfare of society. Both rights are regarded as foundations of a functioning democracy.[2]

Article 19 of the Universal Declaration of Human Rights ("UDHR") protects freedom of expression and states:

> 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.

Moreover, Article 20 of the UDHR guarantees the right to peaceful assembly as follows:

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

The UDHR, as a UN General Assembly Resolution, is not directly binding on states. However, since its adoption in 1948, parts of the UDHR, including Article 19, are widely regarded as having acquired legal force as customary international law.[3]

The International Covenant on Civil and Political Rights ("the ICCPR") elaborates upon and gives legal force to many of the rights articulated in the UDHR, including the right to freedom of expression and information in Article 19 of the ICCPR:

1. Everyone shall have the right to hold opinions without interference.

---

[2] *Handyside v United Kingdom* (1976) in EHRR 737 at para. 49 and Supreme Court of Zimbabwe, in *Retrofit (PVT) v PTC & ANOR*, 1995 (2) ZLR 199 (S) 210H-211A. See also Feltoe, G., 'Just How Precious is Freedom of Expression?' in *Legal Forum* (Vol. 9 No. 3, 1997) 23-32, 23.

[3] *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Moreover, Article 21 of the ICCPR stipulates that

> The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right 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 (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others

Relationship between the right to freedom of expression and the right to peaceful assembly

ARTICLE 19 points out that freedom of expression consists of two elements. The first is the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers and the second is the right to choose the means to do so. Thus, the right to freedom of expression protects not only the substance of ideas and information, but also their form, their carriers and the means of transmission and reception.

The right to peaceful assembly protects a range of activities including meetings, mass actions, demonstrations and rallies. As noted above, pursuant to Article 19(2) of ICCPR, ideas and information may be received or transmitted "either orally, in writing or in print, in the form of art, *or through any other media.*" The list, therefore, is not exhaustive. The choice of the means for the communication of ideas depends on several factors, including the nature of the ideas to be communicated and the level of technological advancement in a given society. In developed countries, the principal communication media are television, radio, print and electronic mail. In parts of the developing world like Myanmar, some means of communication are still unavailable to the majority of the population. The principal method of transmitting information and ideas may therefore be oral communication, in most cases unaided by any technological devices. For people to communicate in this way they must be able to come together and it is for this reason that the enjoyment of freedom of expression in Myanmar is dependent on the extent to which freedoms of assembly and association are guaranteed.

Therefore, the rights to freedom of assembly and association have been described as being not only cognate to freedom of expression, but as another essential element of any democratic system.

The relationship between freedom of expression and freedoms of association and assembly is one of interdependence, in that the exercise of the latter set of freedoms may be seriously affected by the extent to which the former freedom is guaranteed.

Limitations to the right to freedom of expression and the right to peaceful assembly

Both the right to freedom of expression and the right to peaceful assembly are not absolute and can be limited under narrowly construed circumstances.

In particular, the restriction must meet a strict three-part test:

1. It must be provided by law
2. It must pursue a legitimate aim recognised under international law
3. It must be necessary for the protection and promotion of the legitimate aim.

While freedom of expression and freedom of assembly may be restricted for public order reasons, any such restriction can only be justified if it is proportionate to the aim pursued. If a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied. Further, any such measure should be as narrowly drawn as possible to avoid any undue restriction on freedom of expression.

It is also important to note that states are obliged not only to refrain from interfering with the rights to freedom of expression and peaceful assembly: they have a corresponding positive duty to actively protect these rights. This duty should be recognised explicitly by domestic law, which should require that states facilitate the holding of peaceful assemblies and protect their participants from any persons who disturb them in any way.

Importance of international human rights standards for Myanmar

ARTICLE 19 is aware that Myanmar has neither signed nor ratified the International Covenant on Civil and Political Rights and other main human rights treaties. As such, the standard developed under Article 19 of the ICCPR as well as comparative jurisprudence and authoritative statements from international and bodies presented in this Analysis are not formally binding on Myanmar.

However, ARTICLE 19 suggests that guarantees to the rights to freedom of expression and freedom assembly in Article 364 of the Constitution of Myanmar allow a wide scope for interpretation. Given the fundamental importance of the right to freedom of expression, and its recognition in the Myanmar Constitution, it is of the utmost importance that every effort is made to ensure that domestic legislation is interpreted, to the fullest extent possible, in a manner that respects freedom of expression. Jurisprudence from international and regional human rights bodies, as well as non-binding standard-setting documents, such as authoritative international declarations and statements, illustrate the manner in which leading judges and other experts have interpreted international and constitutional guarantees of freedom of expression. As such, they represent authoritative evidence of generally accepted understandings of the scope and nature of all international guarantees of freedom of expression. They also provide strong guidance regarding interpretation of the guarantees of freedom of expression and freedom of assembly found in the Constitution of Myanmar.

The following sections of this Analysis analyse the provisions of the Decree in the light of these international standards.

Analysis of the Decree on Peaceful Assemblies in Myanmar

Positive aspects of the Decree

The Decree can be praised for the recognition of the state duty to protect participants of peaceful assemblies. Article 24 states that during peaceful assembly and peaceful procession the attendees are to be given the protection of an officer with a rank of at least police lieutenant and a sufficient number of police, depending on the number of attendees at the assembly and procession. The Decree can be also commended for identifying the bodies responsible for giving permission for assemblies and protection for the participants.

Negative aspect of the Decree

ARTICLE19 identifies the following negative aspects of the Decree:

Permission rather than notification for assemblies
One of the major problems with the Decree is the requirement in Chapter 2 for every person who wants to exercise his/her right to peaceful assembly to apply for permission at least five days in advance.

Firstly, ARTICLE 19 notes that the requirement to file an application to *participate* in the assembly or procession is a blatant violation of international law. As a fundamental right, freedom of peaceful assembly should be enjoyed without an obligation to seek permission for the exercise of this right. Secondly, Chapter 2 provisions are also impracticable given the large number of potential participants, which may run to hundreds or thousands of people. In these cases it will take time and resources for the police to process all applications. ARTICLE 19 recommends that this requirement is removed in its entirety and that only organisers of assemblies are obliged to notify the authorities about the public assembly.

According to international law, there should be no requirement for advance authorisation for holding an assembly, let alone a requirement for permission to do so. Prior permission and authorisation both serve as a restriction on freedom of assembly and therefore must meet the three-part test, as indicated above.

The notification process should not be onerous or bureaucratic, as this will undermine the right to freedom of assembly by discouraging those who might wish to hold an assembly. For example, the Organization for Security and Co-operation in Europe (OSCE)/ Office for Democratic Institutions and Human Rights (ODIHR) Venice Commission Guidelines on Freedom of Assembly crystallise the position of international law on freedom of assembly with regard to the requirement for prior authorisation. The Guidelines state:

> [I]n an open society, many types of assembly do not warrant any form of official regulation. Prior notification should only therefore be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of

> assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require an assembly organiser to submit a notice of intent rather than a request for permission.
>
> The notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time prior to the notified date of the assembly for the relevant State authorities to plan and prepare for the event in satisfaction of their positive obligations, and for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged.
>
> If the authorities do not promptly present any objections to a notification, the organisers of a public assembly should be able proceed with their activities according to the terms notified and without restriction.[4]

Hence, the provisions of Chapter 2 of the Decree must be amended. ARTICLE 19 recommends that the authorities are notified of, rather than requested to authorise, assemblies.

Recommendations:

- **The permission regime for participation in assemblies must be abolished.**
- **The regime for the authorisation of assemblies, organisers of assemblies and processions in the Decree must be replaced with a notification regime.**

Overbroad exceptions

In Chapter 3, paragraph 6, the Decree provides that an application to hold an assembly may be denied if "the security of the State, rule of law, public tranquillity and the existing laws protecting the public are to be breached."

ARTICLE 19 considers that the exception regime established by the Decree is not in compliance with international law. The right to freedom of assembly can be restricted only for achieving the following legitimate aims listed in Article 21 of the ICCPR: public order, public safety, protection of health and morals, protection of the rights and freedoms of others, and national security. Therefore, most of the interests protected by the Decree do not correspond to the aims recognised by international law.

ARTICLE 19 notes that restrictions of the rights to freedom of expression and the right to peaceful assembly on the basis of protecting national security should be interpreted narrowly. We note that according to the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*,[5] a set of principles developed by international experts and ARTICLE 19, the following examples of expression should *not* be regarded as constituting a threat to national security:

---

[4] See OSCE ODIHR/Venice Commission, Guidelines on Peaceful Assembly CDL-AD(2010)020 2nd edition, adopted by the Venice Commission at its plenary 4 June 2010, p. 9; available at http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf.

[5] The Johannesburg Principles on National Security, Freedom of Expression and Access toInformation, Freedom of Expression and Access to Information, ARTICLE 19, November 1996; available at http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf.

- It is recalled that it is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is organised.[6] Hence, a mere advocacy of change of government policy, or of the government itself, where that advocacy does not incite immediate and substantial violation of the law or create a serious and imminent threat that a substantial violation of the law will actually occur.

- Criticism of the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials. The restrictions on assemblies that promote views considered to be unconstitutional are a form of content regulation and thus an unjustifiable incursion on freedom of peaceful assembly.

- Concerns relating to territorial integrity must pass a high threshold in order to justify restrictions on national-security grounds.

- The transmission of information issued by or about an organization that a government has declared threatens national security or a related interest, or the expression of views in a particular language, especially the language of a national minority.

Another problem with the Decree as drafted is the possible imposition of excessive restrictions. In contrast to international law - which requires that any restrictions imposed on freedom of expression must be proportionate to the identified aim - the Decree does not contain such a requirement. Therefore, the authorities are not obliged to choose the least intrusive means of achieving the legitimate objective.

It is recommended that the Decree prescribes that any restrictions on the right to freedom of expression should pursue one of the following interests: public order, public safety, protection of health and morals, protection of the rights and freedoms of others, and national security, and that they are proportionate to the aim they pursue.

Recommendations:

- **The Decree should be amended so that the restrictions on the right to peaceful assembly meet three-part test of international law.**

Unduly formalistic regulation

The Decree sets out various procedures and encloses several forms to be completed in accordance with these procedures, which create an unduly formal regulation regime. In some cases – for example when assemblies will take place in more than one township area – the administrative burdens increase because several permissions are required.

Noting that excessive administrative requirements are obstacles for the exercise of the rights to freedom of expression and freedom of assembly, ARTICLE 19 is concerned that the

[6] See the decision of the European Court of Human Rights, *Freedom and Democracy Party (Ozdep) v. Turkey* 1999.

authorities may restrict the holding of assemblies by abusing the numerous administrative rules. In this regard we are also worried that the Decree gives no chance for the correction of incomplete applications. In cases of incomplete applications, individuals must reapply for permission and the procedure starts from the very beginning. This regulation will result in unnecessary delays or will make the holding of assemblies impractical.

Consequently, ARTICLE 19 recommends that the regulation regime is simplified in terms of procedures and forms. The Decree should allow for the correction of incomplete notifications.

Recommendations:

- **Requirements for the notification on the assembly and procedures and forms should be simplified. Correction of incomplete notifications should be permitted.**

No court appeals against refusals to permit assembly

The Decree provides that individuals can apply only to superior police officers in cases of refusals to permit assemblies.

We note that the administrative control over the legality of administrative decisions is often ineffective, especially if the refusals are pursuant to orders by the superior police officers who also examine and rule upon the appeals.

ARTICLE 19, therefore, recommends that organisers of assemblies are given a right to appeal the refusal of permission to hold an assembly – or to challenge failures by the authorities to act in accordance with the law – before a court. Courts should be able to assess the proportionality of the imposed restrictions on the right to freedom of expression and the right to freedom of assembly.

Recommendations:

- **Organisers of assemblies should permitted to request a court appeal against a refusal to hold an assembly or a court review of failures of the authorities to act in accordance with the Decree**

No safeguards against the authorities failing to respond to requests for permission to hold an assembly

Although the permission regime established by the Decree is problematic *per se*, it is even more troublesome that the Decree does not specify time limits for responses to requests to hold an assembly. We note that sometimes public bodies do not deal promptly with individuals' requests. Often, a delay can make a public assembly impracticable.

Therefore, it is recommended that the Decree states that if the authorities fail to respond to a request within 24 hours the organisers can proceed with the planned activity in accordance with the terms notified and without restriction. The official receiving the notification should be obliged to issue a receipt confirming that the organisers have notified the authorities about the assembly.

Recommendations:

- **The Decree should stipulate that the authorities have an obligation to respond to notification on assembly within 24 hours, and in the absence of a response, the**

organisers can proceed with the planned activity in accordance with the terms notified and without restriction.

- **The Decree should stipulate that the official receiving the notification must issue a receipt confirming that the organisers have notified the authorities about the assembly.**

Lengthy terms of obtaining permission

The Decree requires that persons apply for permission to participate in an assembly five days in advance. This period is lengthy. ARTICLE 19 comments that there is no need for a five day advance notice, particularly if only the organisers of assemblies (as opposed to all participants) are required to notify the authorities about the event.

A notification no more than a few days in advance is more appropriate.

Recommendations:

- **The Decree should require no more than two days advance notification of an assembly.**

Inability to hold spontaneous assemblies

ARTICLE 19 notes with concern that the Decree might be used to prevent spontaneous assemblies: the Decree lacks any provisions on exceptions to the requirement for advance notification where it is impossible or impractical to give notice a few days in advance. For example, people may want to hold a demonstration to express their concerns about the nominations of certain people for ministerial positions. The postponement of the event will make their protest meaningless if the election takes place the following day.

We note that an ability to respond peacefully, immediately and spontaneously to some issues by congregating in a public space is an essential element of freedom of assembly. Spontaneous events should be regarded as an expected (rather than exceptional) feature of a healthy democracy.

Hence, ARTICLE 19 recommends that the Decree provides for an exception to the requirement of several days advance notice where such a notice period is impracticable. As a rule, organisers of spontaneous assemblies should be exempted from notification to the authorities prior to the event. The police should protect spontaneous assemblies as long as they are peaceful. Organisers of spontaneous assemblies who have not given notice in accordance with the law should not be sanctioned for failure to act in accordance with law. It is recommended that the Decree provides a defence for participants charged with taking part in an unlawful assembly if they were unaware of the unlawful nature of the event.

Recommendations:

- **The Decree should provide exceptions for cases of spontaneous assemblies and should stipulate that the authorities must always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.**

No rules on simultaneous assemblies

The Decree contains no rule regulating situations when notifications are made about two or more assemblies at the same time and place or when people wish to hold counter-assemblies at the same time and space. At present, the Decree can be used in an arbitrary fashion to choose between two notifications (in this case applications) or to reject both.

ARTICLE 19 observes that under international law, all persons and groups have an equal right to be present in public places to express their views. Thus, persons have a right to assemble as counter-demonstrators to express their disagreement with the views expressed by another public assembly. A prohibition on conducting public events at the same place and time can be a disproportionate response. Moreover, any such prohibition should be based on the law.

ARTICLE 19 recommends that where notification is given for two or more assemblies at the same place and time, each should be facilitated as best as possible. In the absence of such a provision, a "first come, first served" rule should be adopted, according to which the venue will be provided for the assembly whose organisers first filed a notification.

Recommendations:

- **The Decree should stipulate that where notification is given for two or more assemblies at the same place and time, they should both be facilitated as best as possible.**

Insufficient regulation on policing assemblies

The Decree contains several provisions concerning the policing of assemblies. Although it is positive that the police have an obligation to protect assembly participants, the Decree fails to regulate the security measures which police officers are allowed to use. The lack of safeguards against the excessive use of force is an impediment to the exercise of the right to freedom of assembly.

Furthermore, the Decree does not require consultations between the police and organisers regarding the preparation and holding of assemblies. We note that normally organisers steward assemblies by employing participants to facilitate the assembly and to help ensure compliance with law.

It is recommended that the Decree establishes the circumstances justifying the use of force by the police. Any use of force should be strictly necessary and proportionate. In addition, the law should explicitly provide a presumption in favour of the use of non-lethal incapacitating weapons. Police officers should be held liable for the unjustified or disproportionate use of force or for failing to intervene when necessary to prevent a violation of a person's rights.

The Decree should require coordination between the police and organisers for ensuring the security of the participants. Organisers should be responsible for coordinating the stewarding of an assembly with the police and for ensuring that the stewards are properly trained, clearly identifiable during the assembly and appropriately briefed in advance of the assembly.

Recommendations:

- **Provisions of the Decree on policing assemblies must be revised to establish the circumstances justifying the use of force; provide for a presumption in favour of the use of non-lethal force; provide for the liability of police officers, where appropriate; and require effective coordination between the police and the organisers of assemblies.**

Overbroad scope of liability of organisers

The Decree states that organisers of assemblies take responsibility that all attendees act in accordance with the law.

ARTICLE 19 notes that the scope of the organisers' liability is overbroad because organisers are responsible not only for the actions of all participants but also of non-participants. Liability should be individual; each participant should be responsible for his/her own behaviour, violations of the law and failures to perform orders by police officers. An overbroad liability imposed on organisers is likely to deter people from organising assemblies, given the risk of personal liability for the actions of others, over whom they do not exercise any real control. Mindful of the practice of some governments to disturb assemblies by sending *agent provocateurs*, ARTICLE 19 is concerned that the current regulation shifts the responsibility - even for these state-sponsored individuals - unfairly and unduly onto assembly organisers.

Therefore, it is recommended that organisers are responsible only for their own actions.

Recommendations:

- **Provisions of the Decree on the liability of organisers must be amended: organisers should not be liable for the actions of individual participants.**

No guarantees for media access and protection of assembly monitors

The Decree contains no provisions relating to the access of the media to assemblies.

ARTICLE 19 notes that international law requires that states protect, promote, and respect the right to freedom of expression and media freedom at all times, including during assemblies. Journalists and the media play an important role in informing the public about assemblies. In addition, a media presence – akin to the presence of people monitoring the assembly - acts as a safeguard for the rights of the participants to freedom of assembly and expression.

It is recommended that police officers are obliged to give to journalists and assembly-monitors from domestic and international organisations as much access as possible to public assemblies.

Recommendations:

- **The Decree should stipulate that the media and national and international monitors have access to assemblies and the policing operations facilitating the assemblies.**

Annex: Decree on the Right to Peaceful Assembly and Peaceful Procession

Decree on the Right to Peaceful Assembly and Peaceful Procession
Government of the Republic of the Union of Myanmar

Ministry of Home Affairs

Announced Order No. 364/2012

Nay Pyi Daw, 2nd Waning of First Waso 1374.

(2012. July 5)

By exercising the power given by the Article 24, the Section (A) of the Right to Peaceful Assembly and Peaceful Procession Act, the Ministry of Home Affairs hereby issues these by-laws approved by the Union Government.

Chapter 1
Title and Definition

1. These By-Laws shall be cited as the Regulations relating to the Right to Peaceful Assembly and Peaceful Procession.
2. The Terms mentioned in these By-Laws must follow the same definitions as in the Right to Peaceful Assembly and Peaceful Procession Act and the terms mentioned below must be defined as follows:
    (a) The term Act refers to the Right to Peaceful Assembly and Peaceful Procession Act.
    (b) The term Governor refers to the Head of the General Administration Department.
    (c) The term Form refers to the designated form in accordance with these by-laws.

Chapter 2
The Application for Permission

1. The person who wants to exercise either the right to peaceful assembly or the right to procession or the right to peaceful assembly and peaceful procession must apply for the permission at least 5 days in advance; by using the designated form either 1 or 2 or 3; to the concerned commander of Township Police Force.
2. If the person, who wants to exercise either the right to peaceful assembly or the right to procession or the right to peaceful assembly and peaceful procession, is intending to carry out the activity in further than one township area, the permissions must be obtained from all concerned townships in accordance with the article 3 of these by-laws.
3. The particulars of the applicant, the leader and the speaker are to be filled in the designated form 4 and it must be attached when the application for permission is made in accordance with the article 3 or 4.
4. The application is to be received by the Commander of Township Police Force. In the absence of the commander, the duty officer shall receive the application and must inform rapidly to the commander.
5. If the application is not complete with the necessary information, it shall be returned promptly to the applicant with a full explanation provided by the commander or the assigned officer.

6. If the incomplete application is returned in accordance with the article 7 of these by-laws, the applicant can reapply by submitting the completed form. This reapplication is still required to make at least five days in advance before the activity day.
7. The Commander of Township Police Force must present the application to the Governor of Township by providing the personal remarks and opinions. In the absence of the Governor of Township, one of the officials shall receive the application. The Governor of Township or the assigned official must make the hasty decision whether or not the application is granted.
8. If the Governor of Township decided to deny the application, the refusal reasons must be sent to the Commander of Township Police Force.

Chapter 3
Issuing the permission, permission dismissed and the appeal application

1. If the Governor granted the application, the Commander of Township Police Force must notify the applicant by issuing the designated forms, either Form 5 for Peaceful Assembly or For 6 for Peaceful Procession or Form 7 for Peaceful Assembly and Peaceful Procession.
2. If there are any restrictions due to the necessity of the local area in accordance with the article 8, section (e) of the Act, these restrictions must be mentioned in the notice of grant which is to be issued in accordance with the article 11.
3. In order to establish the restrictions in the grant due to the necessity of the local area in accordance with the article 8 section (e) of the Act, the Commander of Township Police Force must prepare to draw up the restrictions in advance by seeking the opinions from the Governor of Township and present the suggested restrictions to the Divisional or State-level Police Commander through the District-level Police Commander.
4. When the Divisional or State-level Police Commander receives the suggested restrictions in accordance with the article 13 of the by-laws, the approval must be obtained from Divisional or State-level Governor and the Commander of Township Police Force concerned must be informed.
5. If the application for, either, peaceful assembly or peaceful procession or peaceful assembly and procession is denied, the refusal notice must be used the designated form number 8 and the concrete reason of refusal must be offered.
6. The application should not be denied unless the security of the State, rule of law, public tranquillity and the existing laws protecting the public are to be breached.
7. The applicant who is not granted the permission is given the right to appeal and the appeal must be submitted to the Divisional or State-level Police Commander concerned within 7 days from the receiving the refusal notice.
8. When the Divisional or State-level Police Commander receives the appeal application form, the decision whether the refusal notice issued by the Commander of Township Police Force is granted or dismissed is to be determined after obtaining the approval from the Divisional or State-level Governor.
9. If the appeal is granted, the applicant must be notified by the designated form 9 and if the appeal is dismissed, the applicant must be notified by the designated form 10.
10. When the designated form 9 is issued, the applicant shall inform the Commander of Township Police Force which day the activity, either, peaceful assembly or peaceful procession or peaceful assembly and peaceful assembly and procession is intending to carry out.
11. The permission notice must mention the complete address if the permitted place is inside the building and the notice must mention the detailed description of the area if the permitted place is outside the building.
12. The precise route for peaceful procession must be described in permission notice in which the conditions to be followed also must be mentioned such as not to obstruct the traffic and the private and business properties located along the route.
13. If the permission is granted for peaceful assembly and peaceful procession, the notice must mention permitted place and route in accordance with the article 20 and 21.

Chapter 4
General

1. During the peaceful assembly and peaceful procession, the attendees are to be given the protection by the officer with a rank of no less than police lieutenant and the sufficient number of police must be used depending on the number of the attendees at the assembly and procession.
2. The leader must be carrying the permission notice during, either, the peaceful assembly or peaceful procession or the peaceful assembly and peaceful procession and the notice must be presented and checked at the request of authorized personnel.
3. The Commander of Township Police Force shall announce verbally the revocation of the permission to the leader of the activity if the warning given in accordance with the article 14 section (a) of the Act is failed to follow during, either, the peaceful assembly or peaceful procession or the peaceful assembly and peaceful procession and the written notice must include the information mentioned below.
    (a) The disciplinary conditions which were failed to follow.
    (b) The revocation announcement due to the failure to follow the warning.
    (c) The revocation date and time.
4. The main applicant or organisation must take the responsibilities of all attendees during, either, the peaceful assembly or peaceful procession or the peaceful assembly and peaceful procession is carrying out in accordance with the permission grated.

Signed by

Lieutenant General Ko Ko
Union Minister
Ministry of Home Affairs