

# Note on Myanmar Police Force Law

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Centre for Law and Democracy  
info@law-democracy.org  
+1 902 431-3688  
www.law-democracy.org

## Introduction<sup>1</sup>

On 25 March 2022, the military regime running Myanmar enacted the Myanmar Police Force Law<sup>2</sup> (Police Law), replacing several pieces of legislation previously governing Myanmar's police forces.<sup>3</sup> The Police Law institutes several organisational and structural changes to Myanmar's police forces and significantly expands police powers.

The Police Law's organisational changes to the police – notably allowing the President, in consultation with the Commander-in-Chief of the Defence Services, to appoint the Chief of Police directly;<sup>4</sup> the listing of "[t]o participate in national defence and security matters when necessary" as among the goals for the police;<sup>5</sup> the enshrinement of "national security and defence duties" for police officers;<sup>6</sup> and various provisions granting authority over the police

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<sup>2</sup> The State Administration Council Law No. (4/2022). Our analysis is based on an unofficial translation of the Police Law. We apologise for any errors in our analysis based on unclear translation.

<sup>3</sup> Section 69 of the Police Law repeals the Rangoon Police Act, 1899, (Act IV, 1899 Vol 1.), [http://www.gad.gov.mm/sites/default/files/40\\_the\\_rangoon\\_police\\_act.pdf](http://www.gad.gov.mm/sites/default/files/40_the_rangoon_police_act.pdf); The Police Act, 1945, (Act VI, 1945 Vol 1.), [https://www.burmalibrary.org/docs15/1945-Police\\_Act-en.pdf](https://www.burmalibrary.org/docs15/1945-Police_Act-en.pdf); the Karen State Act No. 2/1959 and the Kayah State Police Act 1959 (Kayah State Act No. 4/1959).

<sup>4</sup> Police Law, section 9(A).

<sup>5</sup> *Ibid.*, section 4(e).

<sup>6</sup> *Ibid.*, section 18(i).

to the military controlled-Cabinet and Ministry of Home Affairs<sup>7</sup> – have led to concerns about the further militarisation of policing.<sup>8</sup>

These structural changes to policing in Myanmar are part of a longer history of military influence over the police,<sup>9</sup> and may well have new implications for the overall human rights situation in Myanmar and the relationship of the police to citizenry. However, this note focuses on the provisions of the Police Law that relate most directly to freedom of expression and peaceful assembly and association, evaluating the consistency of these provisions with international human rights standards.

## 1. Relevant International Standards

The rights to freedom of expression and peaceful assembly are protected in the *Universal Declaration of Human Rights (UDHR)*,<sup>10</sup> which is widely recognised as a foundational source of human rights standards. Myanmar reaffirmed its commitment to the UDHR in the 2012 *ASEAN [Association of Southeast Asian Nations] Human Rights Declaration*.<sup>11</sup> These rights are also enshrined in international covenants and treaties such as the *International Covenant on Civil and Political Rights (ICCPR)*.<sup>12</sup> While Myanmar has neither signed nor ratified the ICCPR, it still reflects an important source for interpreting fundamental rights. In addition, these rights are directly and indirectly recognised in conventions that Myanmar has ratified

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<sup>7</sup> See for example, *ibid.*, section 6(A) (granting the military-controlled Cabinet in coordination with the Commander-in-Chief of the Defence Services powers to reorganise the police); section 6(B) (granting the Ministry authority to determine powers and duties of the police with consultation of the military-controlled cabinet); section 8 (granting the Ministry authority to recommend to the Military-controlled cabinet structural changes to the police); and section 68 (granting the Ministry powers to issue rules, regulations, notices, orders, directives, procedures and manuals to the police).

<sup>8</sup> See, for example, Radio Free Asia, "New law brings Myanmar police under junta control", 30 March 2022, <https://www.rfa.org/english/news/myanmar/police-03302022152802.html>; and Sa Thant Thin, "Myanmar army chief issues law sending junta police officers to war", 29 March 2022, Myanmar Now, <https://www.myanmar-now.org/en/news/myanmar-army-chief-issues-law-sending-junta-police-officers-to-war>.

<sup>9</sup> See Andrew Selth, "Police Reform in Burma (Myanmar): Aims, Obstacles, and Outcomes," Griffith Asia Institute Regional Outlook Paper No. 44 (2013, Nathan, Australia), [https://www.griffith.edu.au/data/assets/pdf\\_file/0025/118906/Regional-Outlook-Paper-44-Selth-web.pdf](https://www.griffith.edu.au/data/assets/pdf_file/0025/118906/Regional-Outlook-Paper-44-Selth-web.pdf).

<sup>10</sup> UN General Assembly Resolution 217A(III), 10 December 1948.

<sup>11</sup> 19 November 2021, <https://asean.org/asean-human-rights-declaration/>.

<sup>12</sup> UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.

relating to the rights of children, persons with disabilities and women.<sup>13</sup> International standards are therefore relevant to whether Myanmar is respecting the rights of its own people, including rights recognised in Myanmar's Constitution.

Freedom of expression is enshrined in Article 19 of the UDHR and explicitly guaranteed in Article 19 of the ICCPR, in addition to Article 13 of the *Convention on the Rights of the Child* (CRC, with respect to children) and section 354(a) of the 2008 Myanmar Constitution.<sup>14</sup>

The rights to freedom of assembly and association are enshrined in Article 20 of the UDHR and explicitly guaranteed in Articles 21 and 22 of the ICCPR, in addition to Article 15 of the CRC (with respect to children) and sections 354(b-c) of the 2008 Myanmar Constitution.

Freedom of association and assembly contain both positive and negative aspects. States should create an enabling environment in which organisations can be established and operate freely.<sup>15</sup> Any restrictions on the rights to association and assembly must be provided by law and be necessary to protect national security, public safety, public order, public health, public morals, or the rights or freedoms of others.<sup>16</sup> The requirement of necessity also incorporates a proportionality requirement.<sup>17</sup>

## 2. Criminal Offences under the Police Act

Section 60 of the Police Law authorises the police to undertake warrantless arrests in a variety of situations, while section 61 provides for penalties for conviction for the acts set out in section 60. Because of the broad and vague nature of its wording, much of section 60 does not meet the standard of legality (i.e. being 'provided by law'), which is one of the prerequisites

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<sup>13</sup> Specifically, the *Convention on the Rights of the Child*, UN General Assembly Resolution 44/25, 20 November 1989, entered into force 2 September 1990 (CRC); *Convention on the Elimination of Discrimination against Women*, UN General Assembly Resolution 34/180, 18 December 1979, entered into force 2 September 1981 (CEDAW); and the *Convention on the Rights of Persons with Disabilities*, UN General Assembly Resolution 61/106, 13 December 2006, entered into force 3 May 2008 (CRPD). Myanmar's ratification status for these and other international human rights treaties can be found at <https://indicators.ohchr.org/>.

<sup>14</sup> Myanmar 2008 Constitution (rev. 2015),

[https://constituteproject.org/constitution/Myanmar\\_2015?lang=en](https://constituteproject.org/constitution/Myanmar_2015?lang=en).

<sup>15</sup> UN Human Rights Council Resolution 24/5, 8 October 2013, p. 2, <https://undocs.org/A/HRC/RES/24/5>.

<sup>16</sup> ICCPR, Articles 13 and 22(2); and CRC, Article 15(2).

<sup>17</sup> UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, para. 36, <https://daccess-ods.un.org/tmp/3142781.25762939.html>.

for any law restricting freedom of expression or peaceful assembly.<sup>18</sup> In addition to constituting a violation of freedom of expression, any detention ordered on the basis of a provision which fails to meet the standard of legality violates the prohibition on arbitrary detention.<sup>19</sup> To meet the threshold of legality the “laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.”<sup>20</sup> In addition, many of the restrictions are not necessary to protect a legitimate interest because they target legitimate speech or are disproportionate.

## 2.1 Criminalisation of Failing to Provide 'Valid' Answers

Under section 60(D) and its corresponding sentencing provision, section 61(C), anyone who is unable to provide a “valid reason/answer” when found “between sunset and sunrise” when questioned by a police officer at a “market, street, back street or in a yard” or “walking/moving to and fro either wearing a mask or disguised” may be subjected to a warrantless arrest and then be punished with imprisonment of one to six months and/or a fine of between 30,000 to 100,000 kyats [approximately USD 16 to 53]. “Suspect” is not defined in the legislation and no guidance is given as to how the validity of the reasons provided by the suspect are to be assessed, making it virtually impossible for individuals to predict what might constitute a satisfactory justification. Due to the prevalence of wearing masks in public places since the onset of the COVID-19 pandemic and the wide geographic scope covered by the categories of markets, streets, back streets and yards, the Police Law grants police officers virtually unfettered discretion to detain and authorities to prosecute individuals found in many public settings after dark, particularly as individuals can be expected to travel on streets to reach any other location not specifically enumerated in the legislation. In addition to failing to meet the requirement of legality due its vagueness, these

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<sup>18</sup> ICCPR, Articles 19(3) and 21. Article 21 uses the phrase “imposed in conformity with the law”, which has been understood as akin to the requirement of being “provided by law” or “prescribed by law” found in Articles 19(3) and 22(2). See UN Human Rights Committee, General comment No. 37, para 39. Identical language (i.e. “provided by law” and “imposed in conformity with the law”) are found in Articles 13 and 15 of the CRC, which Myanmar has ratified.

<sup>19</sup> Article 9(1) of the ICCPR states: “... No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” For an application of this principle to a vague restriction on freedom of expression see, for example, Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 75/2021 concerning Ros Sokhet (Cambodia), 27 January 2022, A/HRC/WGAD/2021/75, paras. 54-61, [https://www.ohchr.org/sites/default/files/2022-03/A\\_HRC\\_WGAD\\_75\\_2021\\_Cambodia\\_AEV.pdf](https://www.ohchr.org/sites/default/files/2022-03/A_HRC_WGAD_75_2021_Cambodia_AEV.pdf).

<sup>20</sup> UN Human Rights Committee, General comment No. 37, note 17, para. 39.

provisions are clearly disproportionate and unnecessary because it is unclear why individuals should need to justify their movements in most public places after dark. This is especially the case for yards, streets and backstreets, which, unlike markets, do not normally have closing times.

The Police Law also provides for the same arrest powers and punishments in relation to a “suspect” who fails to provide a “valid reason/answer” when found and questioned “[w]ithin the premises of any residential or building or any vessel or vehicle”.<sup>21</sup> This provision does not contain the temporal scope qualifier of “between sunset and sunrise” and therefore applies at any time of the day or night.

Section 60(G) of the Police Law authorises warrantless arrests of “anyone who fails to provide a valid answer about whether he/she possesses or transports something suspected of being stolen” during police questioning. Those guilty of failing to provide a “valid” answer may be “punished with imprisonment for a minimum of three months and a maximum of one year”.<sup>22</sup> By failing to define what constitutes a “valid” answer and allowing questioning on mere suspicion that an object may be stolen, the Police Law grants unjustifiable and overly discretionary powers to the authorities which could well be abused to target legitimate speech or peaceful assembly.

Certain of the provisions in section 60 appear to be inspired by problematic, wide-ranging provisions found in the previous police laws the current Police Law replaced. These provisions, colloquially referred to as “shadows laws” or “darkness laws”, were often abused by police to target certain groups, notably members of the LGBT community.<sup>23</sup> Section 60(D)(3) is an example of this which, in conjunction with section 61(C) and as noted above, criminalises “walking/moving to and fro either wearing a mask or disguised”. This mirrors the rules found in section 35(c) of the 1945 Police Act and section 30(c) of the Rangoon Police Act of 1899, while providing for lengthier prison sentences of three to six months instead of up to three months, as was the case with these two earlier laws.<sup>24</sup>

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<sup>21</sup> Section 60(D)(2). The punishment is found in section 61(C).

<sup>22</sup> Section 61(E).

<sup>23</sup> Gender Equality Network, “In the Shadows: Systemic injustice based on sexual orientation and gender identity/expression in Myanmar,” November 2019, pp. 29ff, <https://www.icj.org/wp-content/uploads/2019/11/Myanmar-In-The-Shadows-Advocacy-Report-2019-ENG.pdf>.

<sup>24</sup> However, while the new Police Law allows for lengthier terms of imprisonment, section 35(c) of the 1945 Police Act and section 30(c) Rangoon Police Act of 1899 did not provide for the possibility of imposing fines in lieu of imprisonment.

## 2.2 Nuisance Provisions

The Police Law fails to conform to international standards for law enforcement practices vis-à-vis disruptions caused by peaceful assemblies. Section 60(A) and its corresponding sentencing provision, section 61(A), subject those who are “deliberately causing roadblocks or disturbing the law and order at public places, such as roads and streets, where the religious ceremonies, social ceremonies, or parties, are being held” to warrantless arrests and punishments of imprisonment for one to three months and/or a fine of 10,000 to 50,000 kyats [approximately USD 5 to 27]. The Police Law fails to define “disturbing the law and order”, which could potentially encompass peaceful demonstrations which coincided with or were aimed at ceremonies or parties.

Sections 60(C)(5) and its corresponding sentencing provision, section 61(B), subject individuals who are “[d]isturbing the public by placing any goods on the road, dirt road, etc. beyond the time allowed for loading and unloading” in order “to disturb, to hold a grudge, to harm, to worry or to cause loss to persons or passengers in public places or on the streets” to warrantless arrests and punishments of one to six months’ imprisonment and/or fines of 30,000 to 100,000 kyats [approximately USD 16 to 53].<sup>25</sup>

Of further concern is section 60(E) and its corresponding sentencing provision, section 61(D), which criminalise engaging in a variety of activities "on the streets or in public places to disturb the public". The activities include making a non-permitted "public nuisance, such as playing a band/drum, beating gong, or blowing wind instruments, including a Shankha (conch shell) and whistles, or beating utensils or other objects made of brass or metal, or knocking on pots and pans", “[p]laying football, flying kites, and other sports" or "soliciting or receiving fraudulent donations".<sup>26</sup> The penalty for engaging in these activities is imprisonment of one to three months and/or a fine of 10,000 to 50,000 kyats [approximately USD 5 to 27].<sup>27</sup> Pursuant to sections 60(F) and 61(D) of the Police Law, "[a]cting either inside or outside the building, either by voice or by any other means to grudge or disturb the public" is also criminalised and subject to the same punishment.

The Police Law’s overly rigid approach to traffic disturbances is inconsistent with international standards on the relative tolerance needed to ensure respect for the right to peaceful assembly. The Grand Chamber of the European Court of Human Rights has

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<sup>25</sup> Section 61(B).

<sup>26</sup> Sections 60(E)(2-4).

<sup>27</sup> Section 61(D).

highlighted the need for authorities to show tolerance in the absence of violence at demonstrations to avoid the guarantee of freedom of assembly losing all substance.<sup>28</sup> Even in the case of 'unlawful' demonstrations, the European Court of Human Rights has noted that the "limits of tolerance expected towards an unlawful assembly depend on the specific circumstances, including the duration and the extent of public disturbance caused by it, and whether its participants had been given sufficient opportunity to manifest their views".<sup>29</sup>

Likewise, the UN Human Rights Committee has noted:

States parties should not rely on a vague definition of "public order" to justify overbroad restrictions on the right of peaceful assembly. Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.<sup>30</sup>

The Committee has also noted: "An assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is 'serious and sustained'".<sup>31</sup>

In a similar vein, the African Commission on Human and Peoples' Rights stated: "Assembly shall be recognized as a right, and its exercise recognized as of no less value than other uses of public space, including commercial activity and the free flow of traffic."<sup>32</sup> Any sanctions "in the context of laws governing assemblies...shall be strictly proportionate to the gravity of the misconduct in question."<sup>33</sup>

Direct or indirect attempts to criminalise peaceful political gatherings are of particular concern from a human rights perspective. The UN Human Rights Committee has underscored that "given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and

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<sup>28</sup> *Kudrevičius and Others v. Lithuania*, 15 October 2015, Application No. 37553/05, para. 150, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-158200%22%5D%7D>.

<sup>29</sup> *Frumkin v. Russia*, 5 January 2016, Application No. 74568/12, para. 97, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22frumkin%22%5D%2C%22itemid%22:%5B%22001-159762%22%5D%7D>.

<sup>30</sup> General comment No. 37, note 17, para. 44.

<sup>31</sup> *Ibid.*, para. 85.

<sup>32</sup> *Guidelines on Freedom of Association and Assembly in Africa*, May 2017, p. 27, para. 86, [https://www.achpr.org/public/Document/file/English/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf).

<sup>33</sup> *Ibid.*, para. 100. See also the Fundamental Principle viii, p. 8 of the Guidelines: "Sanctions imposed by states in the context of associations and assemblies shall be strictly proportionate to the gravity of the harm in question and applied only as a matter of last resort and to the least extent necessary."

protection".<sup>34</sup> Moreover, any detentions undertaken to punish the legitimate exercise of rights, including those of freedom of assembly and association, are a form of arbitrary detention, which is also prohibited under international human rights law.<sup>35</sup>

It is especially difficult to understand how certain sports activities enumerated in section 60(E) of the Police Law, most glaringly the largely silent and minimally disruptive activity of "flying kites", could possibly necessitate the laying of criminal charges potentially leading to the deprivation of liberty. Of perhaps particular relevance to the issue of freedom of peaceful assembly and association is the targeting of noise produced by a variety of musical instruments and objects such as pots and pans. The prominent use of musical instruments and pots and pans (to make noise) in demonstrations in Myanmar<sup>36</sup> suggests that these provisions may be a response to certain protest tactics rather than the need to protect a legitimate interest such as is necessary for any restriction on freedom of expression or association to be legitimate. This is indeed how some observers have understood these provisions.<sup>37</sup>

Even if the restrictions in fact targeted the legitimate interests of preserving public order or the rights or freedoms of others, blanket criminalisation of using instruments and pots and pans and making public disturbances is not a necessary or proportionate means of achieving these ends. Furthermore, the deprivation of liberty through custodial sentences is a significant sanction that will often be disproportionate, itself a breach the rights freedom of expression and assembly. For example, the UN Human Rights Committee has found that holding an individual in custody for five days for failure to pay a fine for giving a public address without a permit when the address was not "threatening, unduly disruptive or

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<sup>34</sup> UN Human Rights Committee, General comment No. 37, note 17, para. 32.

<sup>35</sup> UN Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 17, <https://undocs.org/Home/Mobile?FinalSymbol=CCPR%2FC%2F35&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>36</sup> See for example, The Interpreter, "The importance of Myanmar's pots and pans protests", 11 February 2021, <https://www.lowyinstitute.org/the-interpreter/importance-myanmar-s-pots-and-pans-protests>; and The Straits Times, "From classical musicians to breakdancers: Myanmar youth sound off against military coup", 17 February 2021, <https://www.straitstimes.com/asia/se-asia/from-classical-orchestra-to-breakdancing-myanmar-youth-sound-off-against-military-coup>.

<sup>37</sup> Radio Free Asia, "New law brings Myanmar police under junta control", 30 March 2022, <https://www.rfa.org/english/news/myanmar/police-03302022152802.html>: "Another provision of the law allows the arrest of any person for playing drums or banging pots and pans at times not permitted by the police, with observers calling the move a bid to restrict public protests like many seen last year".



otherwise likely to jeopardise public order" amounted to a disproportionate restriction on his freedom of expression.<sup>38</sup>

The Police Law's sweeping approach to criminalising noise is likewise not in keeping with an appropriately tolerant and contextual rights-based approach to disturbances caused by assemblies, particularly in view of the overall importance of sound to peaceful demonstrations. As noted by the Organisation for Security and Cooperation in Europe's Guidelines on Freedom of Peaceful Assembly:

Given that there are often a limited number of ways to effectively communicate a particular message, the scope of any restrictions must be precisely defined. In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should always aim to facilitate the assembly within "sight and sound" of its object or target audience.<sup>39</sup>

Similarly, the UN Human Rights Committee has commented:

As far as restrictions on the manner of peaceful assemblies are concerned, participants should be left to determine whether they want to use equipment such as posters, megaphones, musical instruments or other technical means, such as projection equipment, to convey their message. Assemblies may entail the temporary erection of structures, including sound systems, to reach their audience or otherwise achieve their purpose.<sup>40</sup>

### 2.3 Restrictions on Fundraising

Under section 60(E)(4) and its corresponding sentencing provision, section 61(D), people "on the streets or in public places to disturb the public" who engage in "soliciting or receiving fraudulent donations" are subject to warrantless arrests and one to three months' imprisonment and/or fines ranging from 10,000 to 50,000 kyats [approximately USD 5 to 27]. These provisions raise further concerns about restrictions on financing of civil society organisations. The term "fraudulent donations" is not defined in the Police Law and it is not readily apparent what it means. This gives rise to concerns about how the authorities will determine if a donation is considered to be "fraudulent" and that this provision may be used to unduly restrict financing of civil society organisations on political grounds or be used as a pretext to target peaceful assemblies at which donations are solicited or volunteered.

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<sup>38</sup> *Coleman v Australia*, 17 July 2006, CCPR/C/87D/1157/2003, para. 7.3, <https://digitallibrary.un.org/record/583176>.

<sup>39</sup> 2<sup>nd</sup> Edition (2010, Warsaw), para. 101, <https://www.osce.org/files/f/documents/4/0/73405.pdf>.

<sup>40</sup> General comment No. 37, note 17, para. 58.

## 2.4 Restrictions on Advertising and Expressions on Public Property

Section 60(H) of the Police Law authorises the warrantless arrest of anyone:

Promoting/Posting advertisements or writing, drawing, and transforming in form or appearance with chalk, paint, or other means on a common property public, private building, wall, fence/courtyard or any object without the permission of the person in charge or without the consent of the owner or current occupant.

Those found guilty of this offence may be punished with one to three months' imprisonment and/or fines of 10,000 to 50,000 kyats [approximately USD 5 to 27].<sup>41</sup>

States may, of course, protect private and public property, as well as social interests, particularly of children, through proportionate advertising limits. With respect to public property, States may legitimately place certain restrictions on posting flyers or other materials in such locations, especially for commercial advertising.<sup>42</sup> Such restrictions may serve a variety of functions, including limiting aesthetic blight, litter, traffic accidents and risks to repair people, such as in the context of utility poles.<sup>43</sup> These are goals that may advance the legitimate interests of public order and health. National courts have, however, taken different approaches to assessing the legitimacy of generalised prohibitions on posting advertising on public property. For example, the US Supreme Court upheld the constitutionality of a municipal bylaw prohibiting posting all advertising on public property,<sup>44</sup> whereas the Supreme Court of Canada found a similar bylaw to be an unjustifiable limitation on freedom of expression after finding it to be overbroad and disproportionate.<sup>45</sup> Even if one were to accept that a general, content-neutral ban on posting all advertising on public property were legitimate, the Police Law's provision for criminal sentences, including custodial sentences, for posting such materials is clearly disproportionate and goes far beyond what is necessary to protect any legitimate interest.

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<sup>41</sup> Section 61(F).

<sup>42</sup> *Mouvement Raëlien Suisse v. Switzerland*, 13 July 2012, Application No. 16354/06, paras. 64-65 (European Court of Human Rights, Grand Chamber), <https://hudoc.echr.int/eng#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-112165%22%5D%7D>].

<sup>43</sup> See, for example, *Ramsden v. Peterborough (City)*, [1993] 2 SCR 1084 (Supreme Court of Canada), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1038/index.do>.

<sup>44</sup> *City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984) (US Supreme Court), <https://supreme.justia.com/cases/federal/us/466/789/>.

<sup>45</sup> *Ramsden v. Peterborough (City)*, note 43.

Of further concern is the provision's criminalisation of "promoting" advertisements on public property which, due to its vagueness, fails to meet the criterion of legality. Because "advertisements" are undefined, it is unclear whether this provision is limited to commercial advertisements or whether it could also apply to advertisements for political or social causes. "Promoting" is likewise undefined and could presumably be interpreted as encompassing handing out leaflets, holding banners or canvassing in favour of a good, service or cause. A general ban on such expressions on all public property would represent an entirely unjustifiable restriction on legitimate speech. The vagueness of the provision and harshness of the punishments, which include custodial sentences, raises significant concerns as to its susceptibility to abuse.

Regarding the criminalisation of "writing, drawing, and transforming in form or appearance [of property] with chalk, paint, or other means", States may legitimately take certain measures to counter harm to private or public property, such as through rules about graffiti, as long as the punishments are proportionate. However, this provision is not limited to cases where property has in fact been damaged, since chalk and some forms of paint (and potentially other media encompassed under the umbrella category of "other means", like pencils and charcoal) wash off easily and thus do not cause lasting damage to property. The sanction of imprisonment of between one and three months is again also significantly disproportionate.

## 2.5 Criminalising Offending and Threatening the Police

Section 60(I) criminalises "threatening, obstructing, harassing, offending, resisting or blocking in any way through the use of force or abuses of power to a member of the police force, who is performing or striving to perform his/her duties in accordance with the law". Those engaging in any of these acts are subject to warrantless arrests and "imprisonment for a minimum of six months and a maximum of two years".<sup>46</sup> This provision criminalises not only physical acts but also certain forms of expression, namely "threatening" and "offending" members of a police force. While it is legitimate to proscribe certain actions that legitimately inhibit the police's ability to discharge their law enforcement duties, including certain forms of expression like directly inciting people to attack or obstruct the police, the extension of this to simply "offending" a member of the police, along with a lack of any definition of what this constitutes, is problematic. Even threatening language could, for example, be interpreted as encompassing not only threats to inflict legal wrongs but also "threats" to engage in lawful

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<sup>46</sup> Sections 60(I) and 60(G).

actions. For example, a bystander witnessing police abuses could issue a “threat” to inform the media or human rights organisations about this. Indeed, even the filming from afar of an abusive arrest could be misinterpreted as a form of “threat” to an officer’s reputation, whereas such actions should not be proscribed but rather tolerated or even encouraged as an accountability measure. What constitutes “offending” a member of the police is not only subjective but, even in the normal meaning of this term is not sufficiently linked to hindering law enforcement operations to be legitimately proscribed.

### 3. Enhanced Police Powers

The Police Law grants police other broad powers that raise significant human rights concerns, including in respect of freedom of expression and peaceful assembly. Because of the sweeping and vague nature of many of these powers, they do not meet the threshold of legality (i.e. being 'provided by law'), which is one of the prerequisites for any law restricting freedom of expression or peaceful assembly, in addition to being unnecessary to protect any legitimate interest.

Section 19(b) grants the police “the right to inspect public places and gatherings for public enjoyment while performing their duties”. Neither “public places” nor “gathering for public enjoyment” are defined, and no threshold reason or justification for undertaking such an inspection is provided. This provision may thus be interpreted overly broadly by police and then used to justify illegitimate searches of peaceful gatherings of civil society organisations.

Section 20 allows certain police officers to inspect “any house, building, yard, premises and vehicle required for inspection for security, the Prevalence of Law and Order and the Prevention of Crime”. The terms “security”, “Law and Order” and “Prevention of Crime” are not defined. Furthermore, this provision does not require any judicial authorisation. As such, contrary to international standards, this section grants sweeping and unchecked powers to certain police officers to engage in warrantless searches to protect completely undefined security and public order goals.

Section 22 of the Police Law states: "The police force must take precautionary measures against any matter that may cause public nuisance or harm or any matter that may endanger the community peace and tranquility and the prevalence of law and order, as well as equal protection of the law." This provision does not define the kinds of “precautionary measures” that are authorised, opening the door for potentially abusive, largely unchecked and disproportionate policing measures. One could imagine these measures including, for

example, prior restraints on publication, which are a very significant restriction on freedom of expression which is rarely, if ever, justified.<sup>47</sup> In addition, the kinds of situations that would justify employing these “precautionary measures” are not defined in a sufficiently precise manner to meet the requirement of legality or to ensure that only legitimate interests are pursued. Terms such as “public nuisance”, “harm”, “law and order” and “equal protection of the law” cover a vast range of situations and are open to varying interpretations. Moreover, the Police Law does not specify how the police are to ascertain whether a matter would cause the harms or endanger the interests listed. In addition, the evidentiary standard to be met – namely “may cause” or “may engage” – is very low. Such wide-ranging police powers are susceptible to abuses, including in ways that would unjustifiably restrict freedom of expression and peaceful assembly and association.

Section 23 of the Police Law provides: “The police must develop and implement plans for public participation in crime prevention and crime reduction processes for the community peace and tranquillity and the prevalence of law and order.” It is difficult to assess the precise human rights implications of this provision due to its extremely general and unclear wording. Although fostering engagement between the police and individuals through community policing practices or encouraging community-led neighbourhood watch schemes can be a positive feature of policing, the Myanmar Military has a long history of using irregular forces “to crack down on protesters and political opponents”,<sup>48</sup> which raises concerns about potential abuses of this provision.

The Law contains certain provisions that restrict the right to a remedy for victims of police misconduct. Section 41 of the Law maintains the validity of the 1995 Police Force Maintenance of Discipline Law, which allows for police to be prosecuted in police courts instead of civilian courts.<sup>49</sup> Under international law, special courts are subject to the same fair trial standards as

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<sup>47</sup> *Francisco Martorell v. Chile*, 3 May 1996, Informe No. 11/96, para. 74 (Inter-American Commission on Human Rights), available in Spanish at: <https://www.cidh.oas.org/annualrep/96span/Chile11230.htm> (finding prior censorship to be illegitimate); and *Observer and Guardian v. United Kingdom*, 26 November 1991, Application No. 13585/88, para. 60 (European Court of Human Rights), <http://hudoc.echr.coe.int/eng?i=001-57705> (finding that, while prior censorship is not always illegitimate, “the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court”).

<sup>48</sup> International Crisis Group, *Resisting the Resistance: Myanmar’s Pro-military Pyusawhti Militias* (6 April 2022, Yangon/Bangkok/Brussels), p. 2, <https://d2071andvip0wj.cloudfront.net/b171-myanmar-resisting-the-resistance.pdf>.

<sup>49</sup> The Myanmar Police Force Maintenance of Discipline Law, The State Law and Order Restoration Council Law No. 4/95, April 1995, <https://shwe.net/law/111/>.

civilian courts, including the requirements of independence and impartiality,<sup>50</sup> which courts established under the 1995 Police Force Maintenance of Discipline Law do not meet.<sup>51</sup>

Section 42 of the Law requires the authorisation of the Chief of Police to initiate lawsuits, arrests and prosecutions of police under existing laws, and section 43(B) provides: “No member of the police force may be prosecuted in any court for any harm relating to the performance of his or her duties without giving 30 days’ prior notice to the officer in charge.” It is unclear why these would be necessary conditions for initiating legal actions against members of a police force who have engaged in criminal activity, something which others suspected of criminal behaviour certainly do not benefit from. They are therefore unjustifiable obstacles to pursuing remedies for rights violations.

## Recommendations

CLD usually makes detailed recommendations based on each specific critique it has made of a law or draft law. However, in view of the numerous problematic provisions of the Police Law and the illegitimate means by which it was enacted, CLD recommends that the Police Law be repealed until such a time as democracy is reinstated and proper consultative and legislative processes can be followed. This recommendation should not be misconstrued as an endorsement of the previously in force police laws, the provisions of many of which needed significant reforms to meet international standards.

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<sup>50</sup> UN Human Rights Committee, *General Comment No 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, 23 August 2007, CCPR/C/GC/32, para. 22, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en); *United Nations Basic Principles on the Independence of the Judiciary*, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principles 5 and 6, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>; Human Rights Council Resolution, *Integrity of the judicial system*, 18 April 2012, UN Doc. A/HRC/RES/19/31, paras. 3-4, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/131/01/PDF/G1213101.pdf?OpenElement>.

<sup>51</sup> See for example, The Myanmar Police Force Maintenance of Discipline Law, note 49, section 30, which allows the Police Director General to form the court; section 31, which provides that the Police Court “shall consist of three Gazetted officers”; and section 32(c), which authorises the Police Director to dissolve the Police Court.