

International Law: Rights of Women Journalists During Protests and Detention

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Women have equal rights to men under general international human rights law and there is a specific treaty – the *Convention on the Elimination of Discrimination against Women* – which guarantees women’s equality in terms of political, economic, social, cultural and civil rights. This includes equal rights to participate in public life and to pursue their chosen profession freely. States also have an obligation to protect women against gender-based violence and sexual harassment. Such violence is a form of discrimination against women which harms, among other things, their rights to life, health, liberty, security and freedom from torture and ill treatment.

As a party to the *Convention on the Elimination of Discrimination against Women*, public authorities in Myanmar have an international legal obligation to avoid taking action which harms the rights of women and to put in place positive measures to protect women’s equality.

Rights of Women and Women Journalists During Protests

Journalists have a right to be present at protests and demonstrations. Like everyone, they may participate in protests as part of the exercise of their own right to freedom of assembly. Journalists also have a freedom of expression right to report on protests, including by documenting and recording the actions of law enforcement officials. As observers who report on what happens at protests to the public, protecting their ability to access and document protests is part of the public’s right to receive information.

State actors, including law enforcement officials, have an obligation to allow and even to facilitate the work of journalists at protests. Obstructing the work of journalists, arresting them merely for reporting on a protest or confiscating or destroying their equipment, let alone attacking them, are serious human rights violations.

Female journalists have the same rights as male journalists to cover demonstrations, even under dangerous conditions. Law enforcement officials should respect the right of female journalists to decide for themselves when they feel unsafe, rather than taking a paternalistic approach towards ‘protecting’ them.

It is never appropriate to prevent a woman from reporting merely on account of her gender, even on alleged grounds of safety. Law enforcement officials should also not make discriminatory assumptions about whether someone is a journalist based on his or her sex. Any harassment or violence against a journalist because she is a woman is absolutely inappropriate and poses a serious risk to women's ability to achieve equality in the media sector.

Police, rather than military, should provide security at protests. Whenever security forces, whether military or police, engage with protesters, they have an obligation not to use excessive force, meaning that force should only be used to mitigate harm and it should be proportionate to the benefits in terms protecting against harm. Lethal force is acceptable only when there is no other option for protecting another life from an imminent threat.

When responding to protests, law enforcement officials have an obligation to respect the rights of women and other at risk protesters. Some of the implications of this include:

- What constitutes excessive force depends on all of the circumstances, and law enforcement officials should take this fully into account and avoid using force as far as possible when vulnerable groups, such as pregnant women, the elderly or children, are present and especially against them. Some tactics pose particular harms to these groups, such as "kettling", where police confine protesters in a specific area, and the use of tasers, tear gas and handcuffs.
- Medical personnel should never be prevented from accessing protesters and their access should be facilitated where necessary, with priority being given to those with particular health needs, such as those with injuries, or who are at higher risk in protest situations, such as pregnant women and children.
- Women often are the primary caretakers of younger children and infants. They may bring children with them to protests and public gatherings in that capacity. The use of excessive force, which will often be any force at all given the low likelihood that a mixed group of women and children will engage in violence, is particularly inappropriate.
- Law enforcement officials should only search protesters where there is a reasonable suspicion that an offence has or is about to be committed, and never just because someone has participated in a protest. Women should only be searched by a trained officer of the same sex.
- Sexual harassment of protesters is a gross abuse of their rights and any allegations that this has happened should be investigated promptly and sanctioned where upheld. Law enforcement officials should actively monitor for and control such behaviour and effective steps should be taken to prevent officers from engaging in such actions.

Rights of Detained Women and Women Journalists

Experience shows that women who are detained, and especially female journalists, activists and protesters, are more likely than others to encounter degrading treatment, harassment or other forms of abuse, including of a sexual nature, from law enforcement officials, whether in retaliation for their work or for other reasons. This is a violation of women's rights to security of the person and to equality.

These sorts of abuses are more likely to occur in the period immediately after arrest and during initial interrogation, although the risk is also elevated during pre-trial detention. Women detainees should always be overseen by women officers and appropriate safeguards should be in place for their privacy and protection. Women should also be segregated from male detainees from the very beginning of any period of detention.

Pre-trial detention should generally be avoided, for both men and women, because it essentially pre-judges and imposes sanctions on someone who may ultimately be found to be innocent. It should, therefore, be used only when it is specifically justified, such as for particularly serious crimes or where there is evidence that an accused person may go into hiding, flee the country or intimidate a witness. Even to mitigate these risks, bail should be the preferred option, unless there are reasons to believe it will not be effective. The COVID-19 pandemic provides an additional reason to limit pre-trial detention.

In the case of women, if proper gender-segregated facilities are not available, they should be released. Similarly, release should be prioritised for women who are the primary or sole caregivers of children, given the serious risk of harm that detention poses to the wellbeing of children.

Release on bail is one alternative to pre-trial detention. In employing this approach, decision-makers should take into account the fact that women are often less able than men to pay bail, given gender economic inequality, which may mean that property is not listed under a woman's name or she may have trouble accessing cash quickly due to unequal access to financial services. Thus gender, as well as other personal circumstances, should be taken into account when setting bail amounts and conditions.

Special concerns arise in the context of the detention of women who are accompanied by children. Detaining women with their children poses serious risks to the wellbeing of children and should be avoided. If detaining a woman with an infant or small child is absolutely unavoidable, the "best interests of the child" should be taken into account in decisions around whether the child remains with the woman in detention and the appropriate resources to be provided to the child, who should never be treated as a prisoner.

Other international standards for the treatment of detained women are as follows:

- Women should be allowed to contact relatives regularly and be supported to make appropriate care arrangements for any dependent children.
- Women's detention facilities should provide free access to personal hygiene needs, such as water and sanitary towels, and appropriate conditions for care of children, including breastfeeding.
- Women should have access to gender-specific health care, including female doctors and nurses where they do not want to be looked after by a male health care worker.
- Any searches of women should be conducted by trained female staff and in a manner that respects dignity and privacy. Invasive body searches should be avoided whenever possible.
- Women who report abuse by law enforcement officials or prison staff should be given immediate protection, including from retaliation, and prompt action should be taken to have the incident investigated and sanctioned by an independent authority. Monitors should be allowed to visit facilities and monitoring teams should include women.

- The distinct needs of women from minority backgrounds should be met, with respect being shown for diverse cultural and religious practices.

Sources and Additional Reading

- Convention on the Elimination of All Forms of Discrimination against Women: <https://bit.ly/2PkK1jN>
- Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 on Violence against Women (<https://bit.ly/3u59eNW>) and General Recommendation No. 23: Political and Public Life (<https://bit.ly/3w8tosl>)
- United Nations Human Rights Committee, General Common No. 37 on the right to peaceful assembly: <https://undocs.org/CCPR/C/GC/37>
- Report of the United Nations Special Rapporteur on freedom of peaceful assembly and association on celebrating women in activism and civil society: <https://undocs.org/A/75/184>
- United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (“the Bangkok Rules”): <https://bit.ly/2Pofxxc>
- Committee on the Elimination of Discrimination against Women, *Inga Abramova v. Belarus*, Communication No. 23/2009: <https://bit.ly/3cCn9VP>
- General Assembly Resolution No. 72/175: <https://undocs.org/en/A/RES/72/175>
- European Commission for Democracy through Law and OSCE Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly: <https://bit.ly/2PjUnR0>
- Inter-American Commission on Human Rights, Protest and Human Rights: <https://bit.ly/39qTug8>
- United Nations Office on Drugs and Crime and Office of the High Commissioner for Human Rights, Resource Book on the Use of Force and Firearms in Law Enforcement: <https://bit.ly/3fpGfAb>