



# **Freedom of Expression, International Law and the Practice in Myanmar**

## **Week 1: Introduction**

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# International Law

- Freedom of expression is guaranteed under international law
- Created by States so a limit but also benefit
- Several types, two main: treaties, customary international law
- Also soft law: declarations, statements, etc.

# Human Rights as Part of International Law

- International law was traditionally between States and did not apply to individuals
- More recently: humanitarian law did apply to individuals but was formally owed to States
- Human rights as such only became part of international law after World War II
- First time international law vests rights directly in individuals
  - Major change in understanding of State sovereignty

# Human Rights as Part of International Law, cont'd

- Some general features of human rights:
  - Only what States have agreed (but they did agree to it)
  - Primarily binds States, not private actors
  - Covers all actors which are part of the State, understood broadly
  - Corporations also have human rights “responsibilities”; increasingly important in the modern world (e.g. Facebook)

# Human Rights as Part of International Law, cont'd

- Human rights obligations legally binding but:
  - Only what is actually guaranteed (easy to make claims but not always correct; same for States – may claim not covered when it is)
  - Complex enforcement mechanisms which again depend on what each State has signed up for
    - E.g. Myanmar is not subject to the ICCPR and its mechanisms, let alone the individual complaints part
  - And even the full package has limited power to really enforce
    - Some of the regional systems are more muscular



# Discussion

- Thoughts and views on this?
- Does it surprise you?
- How do international human rights look from a Myanmar perspective?

# Freedom of Expression

- Main guarantees:
  - Universal Declaration of Human Rights (UDHR) – Article 19
    - Not a treaty but a General Assembly resolution, but generally agreed to be CIL
  - International Covenant on Civil and Political Rights (ICCPR): also Article 19
    - Binding treaty but not ratified by Myanmar
  - Regional treaties
  - Interpretation of treaties by courts/oversight bodies
  - Soft law: Joint Declarations, General Comment No. 34, UNESCO Declarations, civil society standards

# Freedom of Expression

- Article 19(2) of the ICCPR:

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.

- Not just right to speak; idea of maximising free flow of information in society



# Discussion

- Is this what you thought freedom of expression meant?
- What would you say are its main characteristics?

# Key Attributes of FoE

## 1) **Negative** and **positive** aspects:

- Negative: State cannot interfere
- E.g. defamation law must not go too far
- Positive: State must sometimes do something to ensure respect
- E.g. must regulate broadcasters or there will be chaos, RTI laws, protection against attacks

# Key Attributes of FoE

## 2) Belongs to **everyone**:

- Foreigners, prisoners and children
- May not apply in exactly the same way
- I am a foreigner when abroad but I still have rights

## 3) Applies **regardless of frontiers**:

- You have the right to receive information from and send it abroad (i.e. to use the Internet or to import books or newspapers from abroad)
- Seems obvious today but less so in 1948 when the UDHR was adopted

# Key Attributes of FoE

4) Goes beyond the right to speak and includes the rights to **seek and receive**

- Mainly think of right to “impart” (speak)
- Also includes right to “seek” and “receive”
- Equally or even more important: think, e.g., about elections, planning your life, understanding the world
- If government closes down a newspaper, it interferes with the journalists’ right to speak, but also the right of readers of the newspaper to seek and receive information; *Mavlonov and Sa’di v. Uzbekistan*

# Key Attributes of FoE

5) Covers **all kinds of information and ideas**:

- Not limited to statements people are comfortable hearing but also includes “offensive” ideas

6) Covers the **dissemination** of expressive content in any way:

- newspapers, magazines, pamphlets, radio, television, internet, mobile telephones, public meetings, house-to-house canvassing, paintings, sculptures, cartoons, smoke signals, Morse code, face-to-face conversations
- What about colour of house?

# Key Attributes of FoE

7) Covers **direct and indirect** interferences:

- special taxes on expressive content that do not apply more generally
- the government refuses to place advertising in a newspaper that is critical of it

Content

Criminal

Civil

Administrative

Online  
Content

Media  
Regulation

Independence of Regulatory Bodies

Journalists

Print  
Media

Broadcasting

Digital Space

Public Service  
Broadcasters

# Content

*\*Always subject to three part test*

## Criminal:

- Hate Speech
- Security/Public Order
- Obscenity
- Judiciary

Others never legitimate,  
like fake news

## Online Content:

- No special online content restrictions
- Only if specific to online harms
- Filtering/Blocking
- No strict liability for intermediaries

## Civil/Administrative:

- Defamation
- Privacy

- Right to information law

# Media Regulation

\*Media Freedom, Independence, Diversity

## Journalists:

- No licensing / registration
- Protection of sources
- Accreditation
- Protection from attacks

## Print Media

- No licensing; technical registration
- Complaints (press council)
- Right of reply

## Private Broadcasters:

- Licensing
- Code of conduct

Other issues:  
competition  
rules; media  
sustainability

## Public Service Broadcasters:

- Independence
- Mandate
- Funding

# Digital Space

## Online Content:

- No special online content restrictions
- Only if specific to online harms

## Other issues:

- Content filtering
- Blocking orders
- No strict liability for intermediaries

## Online Media:

- No licensing

## Internet access:

- Promoting access
- No Internet shutdowns
- Net neutrality

## Privacy Protections:

- Data protection
- Limits on surveillance

# Discussion

- Will be covering some of this in more detail later on.
- Any comments or questions?

# Importance of FoE

- A number of rationales are commonly put forward for why foe is important
  - 1) Inherent part of **human dignity**:
    - Everyone likes to talk
    - Just look at a baby
  - 2) Best way to discover the **truth**:
    - Idea is that in battle of ideas, truth will win
    - But does that still hold today with social media?

# Importance of FoE

## 3) Key to democratic functions and **participation**:

- Need for to be able to hold elections: both for speaker (candidates and parties but also media discussing their ideas and platforms) and listener (voter)
- Goes far beyond elections: need freedom of expression to participate at every level

## 4) Holding powerful actors, including government, **to account**:

- Need for to find out what government is doing
- And also need it to expose wrongdoing, incompetence when that is discovered

# Idea of Restrictions

- Not an absolute right: security, reputation, privacy
- International law: start with broad protection, allow limits
- Not impose restrictions – allows States to do so
- Be covered in next lecture

# Exercise

- Scope of freedom of expression
- Go into breakout groups
- Appoint one person as rapporteur to be ready to report back to the group

# Thank you

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