



Week 8: Legal Changes Affecting Freedom of Expression in Myanmar Post- Coup

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Preliminary Points

- How do we talk about “law” in a military dictatorship? Can the junta pass laws?
- Dictators often use laws to try to legitimize or justify their regimes even though they operate outside the law
- From a legal standpoint, after a dictatorship ends, countries vary in whether they choose to retain laws from that era



Preliminary Points

- In terms of the current status of military “laws”:
 - The military regime’s legitimacy is very doubtful under Myanmar’s own constitution
 - A “law” in human rights law, for the purposes of applying the three-part test, typically means a law passed by a democratically elected body



Emergencies and international human rights law

- Emergencies cannot justify suspending human rights
- Some limited “derogations” are permitted but strict rules around this
 - Still limited to what is necessary to respond to the emergency
 - This is also under the ICCPR which Myanmar has not signed
- In any case, fairly clear cannot be justified in the Myanmar context



Restrictions on FOE

- Recall the three part test
- National security and public order are legitimate reasons for restricting FOE
- BUT only to the extent necessary to protect that interest
- Laws which restrict FOE overbroadly are not valid under human rights law



Martial Law

- The military has placed some townships under martial law
- Provides that 23 offences will be tried by military tribunal and increases the penalty to death, life imprisonment or the maximum penalty for that offence



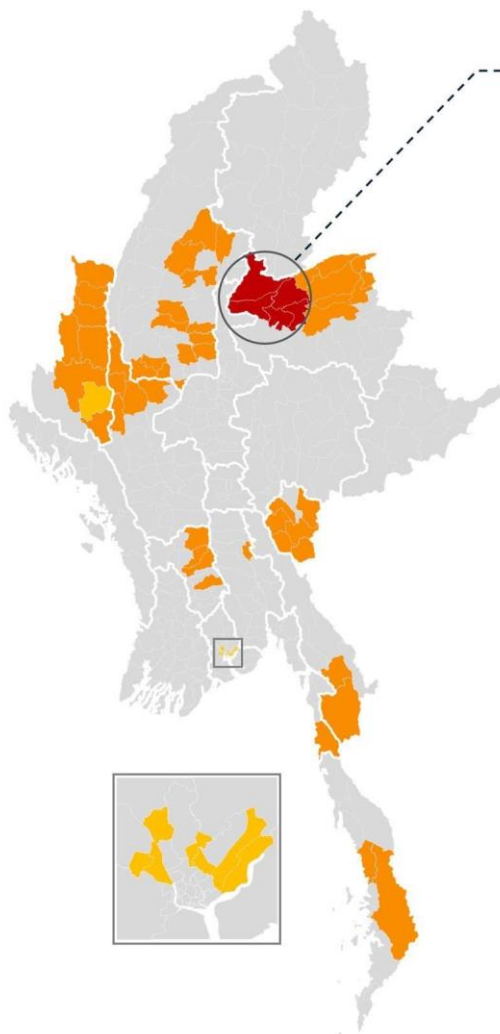
Martial Law: 23 Offences

- Many relate to freedom of expression:
 - Penal Code 122 (high treason), 124-A (sedition), C and D (hindering military/law enforcement/government employees), 505, 505-A (causing fear, spreading false news, agitating a crime against a government employee)
 - News and Media Law; Printing and Publishing Enterprises Law
 - Electronic Transactions Act
 - Unlawful Associations Act
 - Counter-Terrorism Law





Myanmar: Townships under Martial Law



On February 28, the SAC announced martial law orders for Mongmit and Mabein townships in Northern Shan and for Manton, Namhsan and Namtu townships on March 4.

The SAC announced martial law orders for
8 townships in 2021,
48 townships in 2023, and
5 townships in 2024.

As of March 4, a total of 61 townships are under martial law, with the population of more than 8.2 millions people



Discussion

- Any questions?
- Discussion point: Think about how freedom of expression has been restricted in Myanmar since the coup. What laws have been used to justify these restrictions? What, in your opinion, are the most harmful laws for freedom of expression in Myanmar?





Discussion

Penal Code Amendments

- Introduced the same month as the military coup
- Amended some crimes and created other new crimes
- Large number of political prisoners, human rights activists, protesters, etc. arrested on these grounds



Myanmar Penal Code Changes, 2021

- **Amended Section 121** —
High treason, *now* including attempts to overthrow organs of the union by unconstitutional or any other means
- **Amended Section 124(A)** —
Sedition against the government and *now*, the military
- **New Section 124(C)** —
Hindering the performance of military or law enforcement
- **New Section 124(D)** —
Hindering military or government employees in their duties
- **New Section 505(A)** —
Causing fear, spreading false news and agitating crimes
- **New Section 505(a)** —
Undermining morale of military or government employees



Myanmar's military changed the Penal Code on 14 February 2021 to add a **new section 505A, which has been used to target journalists**



Section 505A criminalises

505A(a) Causing fear among a group of citizens

505A(b) Spreading false news that one believes to be untrue

505A(c) Agitating, directly or indirectly, for the commission of a criminal offence against a government employee



Myanmar Penal Code

Changes: Section 505(A) versus 505(a)



New Section **505(A)**

Causing Fear, Spreading False News and Agitating Crimes

New Section **505(a)**

Undermining Morale of Military or Government Employees

not to be confused with the **former 505(a), now renumbered as section **505(b)**, on making statements causing mutiny*



2021 Counter-Terrorism Law Amendment

- One small amendment
- Increases penalties for “acts of exhortation, persuasion, propaganda” or recruitment to participate in terrorism
 - 3-7 years imprisonment instead of 1-3 years



Changes to the Broadcasting Law

- Amendments in 2021 and 2023
- Review from last week:
 - New Broadcasting Law adopted in 2015 but enforcement delayed
 - Provided for an independent broadcasting council although this was never established
 - Also provided a licensing procedure; special rules for community broadcasters



2021 Broadcasting Law Amendment

- Expands definition of broadcasting to potentially cover Internet content
- Adds prison sentences for several broadcasting offences, like operating without a licence
- New penalties for breaching by-laws
- Arrest without a warrant for broadcasting offences



2023 Broadcasting Law Amendment

- Changes the composition of the broadcasting council to allow SAC control until an elected government is formed



Draft Cybersecurity Law

- Draft proposed in 2021 then withdrawn and amendments to the ETA introduced instead
- New draft proposed in 2022 but again not enacted
 - Many problems: content restrictions on online speech for misinformation, disruption of unity, damage to another's social standing; data retention
 - Would criminalise VPN use
- Example of a successful pressure campaign? Or simply not necessary? (arresting anyways for VPN use; control of telecommunications)



Electronic Transactions Act Amendments 2021

- Amendments introduced some new privacy protections but not a proper data protection regime
- Also adds a crime for using or obtaining personal data without consent
- New crime for creating misinformation or disinformation with the intent to cause public panic, loss of trust or social division
- New crimes for cyber violence and cyberattacks



Printing and Publishing Enterprises Law Amendments

- March 2023
- Expands grounds for revoking or suspending a certificate
- Banning a publication no longer requires a court order; the Ministry of Information alone can publish a notice
- Publisher must also deposit copies of publications with the Ministry of Information



Myanmar Press Council

- No formal legal changes to the relevant law
- But reconstituted following the resignation of former members
- Cannot be considered an independent body in practice



2022 Organisation Registration Law (NGO Law)

- Impacts freedom of association as well as freedom of expression
- Places substantial new administrative burdens on NGOs
- Mandates that all NGOs obtain a certificate
- It also creates some new crimes, including for establishing and operating an unregistered NGO





Discussion



Exercise



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