Summary of the Military's Changes to the Penal Code on 14 February 2021

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Main Amendments

High Treason (Amendments to Section 121): High treason now includes any attempt to overthrow the "organs of the Union" whether by unconstitutional or any other means. Previously, it was limited to using *violence* as a means to overthrow these organs.

- Penalty: the same, namely death or 20 years' imprisonment
- It is also a crime to encourage or harbour a treasonous person (20 years' imprisonment) or to fail to disclose another's treason (seven years' imprisonment)

Sedition (Amendments to Section 124A): Prohibits bringing the government, and now also explicitly the military, into contempt or disaffection, meaning disloyalty or feelings of enmity towards them.

- Penalty remains a potential maximum of 20 years' imprisonment

Hindering Performance (New Section 124C): It is now a crime to sabotage or hinder the success or performance of the military or law enforcement organisations "engaged in preserving the stability of the State".

- Penalty: up to 20 years' imprisonment and/or a fine

Hindering Employees (New Section 124D): It is now a crime to disrupt or hinder military personnel or government employees in the course of their duties:

- Penalty: up to seven years' imprisonment and/or a fine

Undermining Morale (New Section 505(a)): It is now a crime to make statements which undermine the motivation, discipline, health or conduct of military personnel or government employees or which bring their conduct into hatred or disloyalty.

- Former sections 505(a)-(c), on statements causing mutiny, fear or alarm among the public or crimes by one class of person against another have been preserved

- Penalty for all sections: up to two years' imprisonment and/or a fine

Causing Fear, Spreading False News and Agitating Crimes (New Section 505A): It is now a crime to cause fear among a group of citizens (505A(a)), spread false news that one believes to be untrue (505A(b)) or agitate, directly or indirectly, for the commission of a criminal offence against a government employee (505A(c)).

- Penalty: up to three years' imprisonment and/or a fine

Related Criminal Procedure Issues

Where normal criminal justice procedures apply:

- These offences are "non-bailable", meaning bail can normally (see below) be granted on a discretionary basis, but it is not a right.
- Bail is not allowed, even on a discretionary basis, for adult males for more serious offences, namely high treason and related offences, sedition and hindering performance (the new section 124C).
- A warrant is needed to arrest someone for all these offences except 505A. According to the Criminal Procedure Code, when someone is arrested without a warrant, they cannot be detained for more than 24 hours before being brought before a magistrate.

Areas under Martial Law: Orders adopted on 14 and 15 March 2021 placed six Yangon townships under martial law. In these townships, 23 offences, including of those outlined above, will be tried by military tribunals and, for these offences, the penalty shall be death, life imprisonment with hard labour or the maximum current penalty for that offence.