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JUSTICE, THE JUDICIARY AND

**T H E
W E A P O N I Z A T I O N
O F L A W**

TO REPRESS CIVILIANS IN BURMA



ASSISTANCE ASSOCIATION FOR
POLITICAL PRISONERS



**Justice, the Judiciary and the Weaponization of Law to Repress
Civilians in Burma**

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CONTENTS

| | |
|---|-----------|
| Abbreviations | 6 |
| Introduction | 7 |
| 1. Introduction to the Rule of Law | 10 |
| 2. Rule of Law in Burma | 12 |
| 2.1. Burma's Judicial System | |
| 2.2. Enforced Criminal Law in Burma | |
| 3. Histories of Legislative Process | 14 |
| 3.1. Colonial Period (1824-1947) | |
| 3.2. Period of Parliamentary Democracy (1948 – 1962) | |
| 3.3. Revolutionary Council and Socialist Government (1962 – 1988) | |
| 3.4. Democracy Movement and Military Rule (1988 – 2011) | |
| 3.5. Quasi-Democracy Influenced by the Military (2011 - 2020) | |
| 3.6. Repression since the Coup (from 2021 to present) | |
| 4. Laws that Violate Human Rights Standards | 20 |
| 4.1. The Enforcement of Repressive Laws | |
| 4.1.1. Penal Code | |
| 4.1.2. Counter-Terrorism Law | |
| 4.1.3. Unlawful Associations Act | |
| 4.1.4. The Arms Law | |
| 4.1.5. The Explosive Substances Act | |
| 4.1.6. Myanmar Official Secrets Act | |

CONTENTS

| | |
|---|-----------|
| 4.2. Other Enacted Laws that Violate Human Rights | 32 |
| 4.2.1. Legislation to Suppress the Media and Freedom of Expression | |
| 4.2.1.1. The Telecommunication Law | |
| 4.2.1.2. Printing and Publishing Law | |
| 4.2.1.3. The Press Law | |
| 4.2.1.4. The Broadcasting Law | |
| 4.2.1.5. Freedom of Speech, Independence of the Media and International Law | |
| 4.2.2. Legislation Enacted to Suppress Civic Space | |
| 4.2.2.1. The Law Relating to Peaceful Assembly and Peaceful Procession | |
| 4.2.2.2. The Law Relating to Registration of Associations | |
| 4.2.2.3. International Human Rights Standards on the Freedom to Assemble and Associate | |
| 4.2.3. Legislative Measures for Surveillance and Restriction on the Freedom of Movement | |
| 4.2.3.1. The Restriction of Movement and Probation of Habitual Offenders Act, 1961 | |
| 4.2.3.2. The Ward and Village Tract Administration Law | |
| 4.2.3.3. The Law for the Protection of Personal Privacy and Personal Security of Citizens | |

CONTENTS

| | |
|---|-----------|
| 4.2.3.4. Electronic Transactions Law | |
| 4.2.3.5. Contravention of International Law on Arbitrary Interference and Freedom of Movement | |
| 4.2.4. People's Military Service Law | |
| 4.2.5. Myanmar Citizenship Law | |
| 5. The Basic Principles for Repeal, Amendment, and the Provision of New Laws | 57 |
| 6. Federalism & Comparative Jurisdictions | 60 |
| 7. The Relationship between Justice and Law | 62 |
| Conclusion | 64 |
| Annexes | 65 |



Abbreviations

| | |
|--------|---|
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CRC | Convention on the Rights of the Child |
| CRPD | Convention on the Rights of Persons with Disabilities |
| CSO | Civil Society Organization |
| ECHR | European Court of Human Rights |
| ECHR | European Convention on Human Rights |
| FIR | First Information Report |
| GAD | General Administration Department |
| ICCPR | International Covenant on Political and Civil Rights |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| KHRG | Karen Human Rights Group |
| MNDAA | Myanmar National Democratic Alliance Army |
| MOHA | Ministry of Home Affairs |
| MUGO | Ministry of Union Government Office |
| NUG | National Unity Government |
| OAS | Organization of American States |
| OSCE | Organization for Security and Co-operation in Europe |
| SAC | State Administration Council |
| SLORC | State Law and Order Restoration Council |
| SOP | Standard Operation Procedure |
| SPDC | State Peace and Development Council |
| UDHR | Universal Declaration of Human Rights |
| UEC | Union Election Commission |
| UWSA | United Wa State Army |

Introduction

Following independence in 1948, Burma (Myanmar) saw a glimmer of hope as a democratic system began to emerge. Yet, from 1962 and the almost 60 years since, the people of Burma have lived under varying iterations of brutal military rule. Whilst the opposition NLD party, led by Daw Aung San Suu Kyi, won a landslide general election in 2015, once in power they then faced overpowering military influence, justified by the 2008 Constitution, which it had itself drafted in its own image and interest. Democracy was drowned out by the will of the military junta, which justified the coup with allegations of voter fraud in the 2020 general election. While the allegations were discredited by national and international monitors, the military proceeded to seize state power, arresting popularly elected NLD representatives and cabinet members and installing a State Administrative Council (SAC) to control the country. The junta declared a state of emergency based on the 2008 Constitution, despite the fact that the military's own activities and statements justifying the state of emergency arguably nullified the very constitution it had produced. Following the coup, the Commander-in-Chief claimed three kinds of state power: legislative, executive, and judicial. Ethnic groups and pro-democracy activists responded with protests across the country, and declared that the 2008 Constitution was, and has always been, null and void.¹

This report aims to highlight the ways in which the military junta in Burma weaponizes the rule of law to enable and legitimize its repression, violence and overturning of a democratic election. It does this through reliance on the 2008 Constitution, the enactment of legislation that is not human rights compliant and the annulment of legislation enacted by the NLD.

1. Progressive Voice, The Future is Federal, 2021, <https://progressivevoicemyanmar.org/2021/04/10/the-future-is-federal/> [Accessed: 15 December 2024].





Justice, the Judiciary and the Weaponization of Law

As the military increasingly loses its grip on power and the Spring Revolution gains increasing momentum, this is a critical juncture for the country, its people, and the NUG. It presents an opportunity not only to take stock of the concerning legal and legislative manoeuvres by the junta since 2021 to create a favourable legislative environment in which to operate but also to imagine and plan for the re-shaping of the country and its systems, underpinned by the mutually reinforcing principles of the rule of law, human rights and democracy.

Many liberated areas have been controlled by revolutionary groups as a result of the successes of the armed revolution. In May 2024 the NUG declared that over 60% of areas were “liberated”,² in the sense of being under the control of pro-democracy revolutionary groups. In such areas, groups are beginning to implement their own administrative procedures to ensure governance and rule of law in their respective areas of control. Most use existing laws and procedures to implement security and the rule of law, whereas some groups legally enforce their own laws in their respective areas of control. For instance, the Myanmar National Democratic Alliance Army (MNDAA) and the United Wa State Army (UWSA) use their own laws and procedures in their regions.³ Whilst this may indicate an encouraging start to the process of establishing governance systems and the rule of law mechanisms in anticipation of the junta’s defeat, it is imperative that any new laws, accountability mechanisms, and even the language and provisions of new legislation, are human rights compliant and grounded in democratic principles. Moreover, law enforcement authorities should follow good governance practices.

Under the current system, Burma has no valid constitution upon which it can base practices of arrest and detainment, and there is therefore no clear procedure at present for the separation of powers. Consequently, the implementation of new laws and procedures within the justice frameworks of opposition governments in exile, whilst promoting human rights and democracy, undoubtedly presents challenges. Most of the laws currently in place were enacted by successive military rulers with the purpose of repressing citizens' rights and enabling the military to hold their power.

2. The Diplomat, Myanmar’s Revolution Has Entered a New, More Complicated Phase, 2024, <https://thediplomat.com/2024/05/myanmars-revolution-has-entered-a-new-more-complicated-phase/> [Accessed: 15 December 2024].

3. Frontier Myanmar, Law and order, or frontier justice? Shan’s armed group judiciaries, 2023, <https://www.frontiermyanmar.net/en/shan-armed-groups-judiciaries/?tztc=1> [Accessed: 15 December 2024].

to Repress Civilians in Burma

The local resistance authorities and other revolutionary forces are operating alongside each other; armed groups are playing a vital role. It is critical that perpetrators of human rights violations, not only on the junta side but also on the revolutionary side in their respective areas, are held accountable for such violations and crimes. As is the case with many conflicts, human rights violations may occur on both 'sides' – one example being Sri Lanka's civil war, during which human rights violations were committed not just by the government but also by the insurgent group, the Liberation Tiger of Tamil Eelam and its divisions.⁴ Burma's revolutionary armed forces should take care to ensure that human rights violations do not occur, and if they do occur, these violations should be held accountable as a part of transitional justice processes.

This analysis highlights just some of the laws that are currently in place in Burma, that allow for the repression of democracy and curtail the enjoyment of human rights and fundamental freedoms for civilians across the country. By analyzing these repressive laws, AAPP makes recommendations to the opposition government and revolutionary groups on potential changes and actions it may wish to consider in the realm of the rule of law in order to ensure that Burma's justice system and legislation in the post-revolution age respects the rights of all civilians.

4. Sriram, C. 'Sri Lanka' in *Transitional Justice in the Asia – Pacific*, edited by Renee Jeffery and Hun Joon Kim, Cambridge University Press.





1. Introduction to the Rule of Law

The common understanding of laws is the body of rules set by the government or rulers that govern the relations between communities or individuals of the state, ensuring the state's fairness, justice, safety, and security. That body of rules provides the systematic binding forces between the rulers and those being ruled.⁵

The main concepts of the law are the rules, procedures, and systems that govern society, which are shaped by those in positions of power – whether legitimately or illegitimately, the latter in the case of the junta. The principle of legal certainty is particularly crucial, requiring laws to be clear, precise, and unambiguous, which ensures that individuals understand their rights and obligations within that state.⁶ Administrative mechanisms have to be implemented to enforce those laws, and will ideally protect the rights and freedoms of those they apply to, but may also infringe on or restrict such rights and freedoms, depending on how they are crafted.⁷ Society seeks justice through the law which, as this report will begin to analyze, therefore prompts critical consideration as to whether the existing laws are themselves just.

The rule of law can be understood to be,

“a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”⁸

5. United Nations, What is the Rule of Law? 2024, [https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20\(UN,and%20which%20are%20consistent%20with](https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20(UN,and%20which%20are%20consistent%20with) [Accessed: 15 December 2024]; United Nations Secretary-General, The Rule of Law & Transitional Justice in Conflict & Post-Conflict Societies, 2004, <https://digitallibrary.un.org/record/527647?ln=en&v=pdf> [Accessed: 15 December 2024]

6. Isabel Lifante-Vidal, Is Legal Certainty a Formal Value? 2020.

7. Ibid.

8. United Nations Secretary-General, The Rule of Law & Transitional Justice in Conflict & Post-Conflict Societies, 2004, Para. 6, <https://digitallibrary.un.org/record/527647?ln=en&v=pdf> [Accessed: 15 December 2024].

to Repress Civilians in Burma

To adhere to the principles of equality before the law, fairness in the application of the law, separation of powers, participation in decision-making, protection of rights, legal certainty, and procedural and legal transparency, the rule of law requires certain measures and mechanisms to be in place.⁹ It is fundamental to the functioning of a country, ensuring peace, and critically, to establishing a social contract between people and the state. Relevant measures and mechanisms exist in all three areas of state power: executive, legislative, and judicial.¹⁰ Within the executive, civil servants responsible for public administration must apply the law in accordance with the aforementioned principles, and must be held accountable to the public if they fail to do so. For the legislative arena, the legislative body must operate with procedures consistent with the preceding principles and they must produce laws that support those principles. Likewise, the judiciary must ensure that the courts must exercise procedural and substantive justice which promotes the above principles for rule of law. Inherent within all three areas of state power is the need to protect the people, not just from each other but also from the state—in essence, the rule of law limits the powers of the state to promote the powers of the people.

9. Ibid.

10. Benwell and Gay, The Separation of Powers, 2021, <https://researchbriefings.files.parliament.uk/documents/SN06053/SN06053.pdf> [Accessed 15 December 2024].





2. Rule of Law in Burma

2.1. Burma's Judicial System

Burma's judiciary has regressed to a system of undue and unfair trials more akin to kangaroo courts. Using its illegitimate 2008 Constitution, the military exploits its judiciary system to justify the arrest and oppression of those that oppose them. The military exploits this system using vague and overly broad laws, amending them to increase this vagueness as supposed legal justification for the arrest of political prisoners. Meanwhile, the junta appoints judges who do the bidding for the junta.

The judicial system in the Myanmar Kingdom period was made up of the -

1. Yazathats (Penal Code) [King's decrees and laws promulgated by the King]
2. The Damathats or the laws of Menoo [Legal code written by Famous monks and scholars]
3. Judicial decisions [judgments made by higher offices such as the King, Parliament]

Burma's current judicial system is based on a common law system imposed by the British during its period of colonial rule in the country, initially used by the British government to control the population in which it had colonized. Since the colonial period, Burma's legal system has had two case types: civil and criminal. A civil case is a lawsuit that is a personal matter, often involving a disagreement between two parties, and is filed in the relevant court for, for instance, private damages. Criminal cases however, involve an offense, which means any act or omission made punishable by any law for the time being in force. Criminal cases target those that supposedly cause disruption to the public. In these cases, the justice system – overseen and shaped by the military junta - prosecutes on behalf of the victims to seek justice for the victim and holds the power to prosecute the person found to be responsible.

2.2. Enforced Criminal Law in Burma

There are general laws, procedures, and manuals that enforce criminal cases in Burma:

1. Penal Code

to Repress Civilians in Burma

2. Criminal Procedure Code
3. The Evidence Act
4. Special Laws

2.2.1 Penal Code

The British Empire enacted the Penal Code in 1860 to govern its colony of India with the Indian Act No. 45, which came into force on May 1, 1861. After invading Burma, the British continued to enforce and govern the country using the same Penal Code. The Penal Code consists of 33 chapters and 511 sections. It defines offenses, prescribes punishments, and outlines exceptions and was deployed by the British to assert law and order over the countries over which they ruled.

2.2.2 Criminal Procedure Code

The Criminal Procedure Code was enacted in 1898 and is a law that is based on the Penal Code (Criminal Law) enforced in 1861. It lays down the procedures to be followed in criminal trials. It promulgated the procedure for the methods of criminal courts, for example, whether an alleged offence is bailable or not, the necessity of a warrant, appeals or revisions, and type of penalties to be imposed in line with the offenses committed.

2.2.3 Evidence Act

The Evidence Act, an Indian Act, was enacted on September 1, 1872. It addresses cases provided in court and crimes triable by courts-martial which are not contrary to any military law. The Act comprises 167 sections outlining precise procedures regarding relevant and irrelevant facts, oral evidence, documents, witnesses, and proven statements.

2.2.4 Special Laws

A special law is defined in Section 41 of the general explanation in Chapter 2 of the Penal Code as “a law applicable to a particular subject”. Special laws are enacted to address certain crimes not detailed in criminal law and are thus enacted as separate provisions for those specific cases. Burma's legal department categorizes special laws based on the political, economic and social situation. Special laws are not required to comply with the jurisdiction stipulated in the Penal Code; actions are governed directly according to this special law.





3. Histories of Legislative Process

In Burma, rulers have considered preserving their authority and imposing strict measures against political opponents when drafting laws. Based on these factors, laws were primarily enacted to support the legal activation of their oppressive mechanisms. The laws that are used today are a reflection of the histories of state rule that have continued to oppress the population through these laws. Many of these laws stem from periods of British colonial rule, where laws were used to hold control of the population.

3.1. Colonial Period (1824-1947)

The British invaded and occupied Burma as a colonial territory through three wars. The Penal Code was enacted in 1860 under the India Act and enforced in 1861. On November 29, 1886, it was annexed to enforce the entire territory of Burma, except Shan State. It was intended to ensure that the people of colonial countries did not oppose their administration. In the Penal Code, chapters 6, 6-A, 7, 8, 9-A, and 10 were enacted to control the political sphere. In addition, the British drafted such as the Unlawful Associations Act of 1908 to prohibit freedom of association, aiming to oppress a politically opposed organization, and to stifle freedoms.

To prevent any movement against their colonial rule, the British enacted the Arms Act in 1878, the Shan States Arms Order, 1924 and prison-related laws such as the Prisons Act and the Prison Manual were enacted in 1894, and the Prisoners Act was passed again in 1900.

to Repress Civilians in Burma

3.2. Period of Parliamentary Democracy (1948 – 1962)

Although Burma gained its independence in 1948 and a democratic government came to state power, the laws enacted during the previous colonial era were not amended to align with the 1947 Constitution and democratic and human rights norms. They only amended terminology and terms. In addition, in the situation in Burma after gaining independence, there was a conflict among Burma's ethnic groups, based on political ideologies – it became an armed conflict against the government as well, and armed conflict emerged as some of the ethnic minorities resisted against the state for their rights. To control political differences, the ruling government not only did not amend the previously enacted laws that did not meet the standards of freedom and human rights but also enacted new laws again to suppress political disagreement. Some laws were enacted to oppress those who opposed the government in the political sphere during this period of democracy, for example Special Laws¹¹ and Chapters 6, 7 and 8 of the Penal Code that focus on treason, offenses related to the military and offenses disturbing the peace of the state.

3.3. Revolutionary Council and Socialist Government (1962 – 1988)

On March 2, 1962, Military Commander-in-Chief General Ne Win seized state power, stating the cause to be the non-disintegration of the Union. The Revolutionary Council was formed, and its guideline on the principles of the Burmese Way to Socialism was declared. During this time, previously enacted laws were used to suppress those who opposed the one-party system governed by the military. Moreover, they amended some laws, and new laws were passed to further oppress political opposition.

Some laws were passed intending to repress the population. For example the,

1. Special Criminal Office Act, 1962
2. Printers and Publishers Registration Law, 1962
3. Film Law of Union of Myanmar, 1962
4. Myanmar Citizenship Law

11. Including the Unlawful Associations Act of 1908, State Emergency Act, 1950, The Protection of the Union of Myanmar (Special Operations Plan) Act, 1956, Habitual Criminal Offenders Act, 1961





3.4. Democracy Movement and Military Rule (1988 – 2011)

From March 1988, students opposed the one-party system and demanded a democratic system. This demonstration happened across the country. The military consequently took over state power in a coup d'état, describing supposed anarchy across the country as its justification. The former junta formed the State Law and Order Restoration Council (SLORC) after the coup d'état. They allowed other political parties to run for elections, implementing a multi-party democratic system. Although the National Convention was held to draft the Constitution in 1993, the later democratic opposition boycotted it. The military drew up a constitution and forced its approval in a 2008 referendum. In 2010, a multi-party general election was held, and state power was transferred to the winning party according to the 2008 constitution in March 2011.

The junta further oppressed those who opposed them within this period, not only continuing to impose oppressive laws used in previous repression mechanisms but also amending and enacting many new laws during their rule.

Among these laws, the ones most often used to suppress political opponents were:

- Offences Against the State (High Treason) (Penal Code)
- Unlawful Associations Act
- Emergency Provisions Act, 1950
- Arms Acts
- The Printers and Publishers Registration Law of 1962 (Sections 17 and 20)
- The Law Safeguard the State Against the Dangers of Those Desiring to Cause Subversive of 1975
- Offences Affecting Life and Other Criminal Law (Penal Code)
- Offences Against the Public Tranquillity, Sections 141 to 160 (Penal Code)
- The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions of 1996.

to Repress Civilians in Burma

3.5. Quasi-Democracy Influenced by the Military (2011 - 2020)

The Union Solidarity Development Party (USDP), backed by the military, gained state power in 2011. The party changed from the Union Solidarity Development Association (USDA), which was formed by the previous military junta. Most of the party's leaders, including some civilians, were transferred from the military. Still, civilians were only those who were associated with the military. The 2010 general election, won by the military backed USDP, was accused of being rigged and fraudulent. Under the USDP, led by former president U Thein Sein, 123 laws were amended and enacted. These laws were intended to restrict democracy and the human rights of citizens, and to quash any form of dissent.

For example, the USDP government provided these laws - amended the overnight guest registration clause in the Ward and Village Tract Administration Law, the Administration of Vacant, Fallow and Virgin Lands Law, Farm Land Law, the Telecommunication Law, the Law Relating to the Monogamous System, Counter-Terrorism Law, etc. Moreover, the National Human Rights Commission Law in Burma was also drafted, which was not in line with international standards of law, as well as the Security of the Former President of the Union Law, placing impunity over the implementation through the president's term and direct protection for rulers.

In November 2015's general election, the National League for Democracy (NLD), led by Daw Aung San Suu Kyi, won by a landslide. During its term, the NLD amended and enacted 89 laws. The NLD government amended some laws, imposed by the USDP, that were not in line with human rights standards. For example, they repealed the overnight guest registration clause in the Ward and Village Tract Administration Law. In addition, they passed the Law for Protection of Personal Privacy and Personal Security of Citizens to protect civil rights on March 8, 2017. Still, due to the lack of clarity in the provision clause, it became a law that brought lawsuits among individuals. Hence, this law that continued to lack clarity was revised in 2020.

The NLD ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on October 6, 2017. The NLD government repealed the Emergency Provision Act of 1950 which allowed the previous government to easily detain political opponents. Despite repealing this law, the NLD did not impose the mass repeal or amendment of all other repressive laws. This includes the Unlawful Association Act, the Telecommunication Law, and other





Justice, the Judiciary and the Weaponization of Law

laws that do not conform to the democratic and human rights standards stipulated in the Penal Code. In addition, certain laws including that on Peaceful Assembly and Procession, the National Land Use Policy, and so forth, which were newly promulgated when the NLD were in power, were found to be controversial.

3.6. Repression Since the Coup (from 2021 to present)

The NLD party won 369 union-level representative seats in the third multi-party general election in November 2020. However, the USDP and its subordinate and alliance parties strongly rejected the election results claiming there had been voting fraud. The military claimed the government should investigate the Union Election Commission's (UEC) list of voter numbers, which they accused of real and fraudulent voting. According to the election law, one must submit a direct rejection of the election to the UEC, which shall decide in line with this law. The decision of the Commission shall be final. However, the junta ignored this provision and staged a coup on February 1, 2021, using the 2008 Constitution to justify its actions, arresting the President and State Counsellor.

Vice President Myint Swe, nominated by the commander-in-chief, became active president and called for a National Defense and Security Council meeting. According to Chapter 11, Section 417 of the 2008 constitution, the meeting declared a state of emergency and conferred sovereign power to the commander-in-chief by Section 418 of this constitution. The junta's propaganda stated that its emergency declaration and coup were in line with the constitution and the power of the state. Chapter 3, Section 71 of the 2008 constitution has detailed provisions for the impeachment and change of the President and Vice President. After the coup, Senior General Min Aung Hlaing started amending, promulgating, and repealing laws. Section 419 of the 2008 constitution provides the power to amend these laws as they like, stating,

“The Commander-in-Chief of the Defence Services to whom the sovereign power has been transferred shall have the right to exercise the powers of legislature, executive and judiciary. The Commander-in-Chief of the Defence Services may exercise the legislative power either by himself or by a body including him. The executive power and the judicial power may be transferred to and exercised by an appropriate body that has been formed or a suitable person.”

to Repress Civilians in Burma

These laws and sections repress those political leaders of the opposition. The list of the laws and sections are as follows-

- Sections in Chapter 6 (Penal Code)
- Chapter 22, Sections 505 and 505 A of (the Penal Code)
- Genocide Section in (Penal Code)
- Arms Law
- The Law Relating to Registration of Associations
- Printing and Publishing Law
- The Law for the Protection of Personal Privacy and Personal Security of Citizens
- Counter-Terrorism Law

They also re-enacted repressive laws used by previous military rulers such as the Unlawful Associations Act (1908), the Explosive Substances Act (1908) and other related murder and homicide sections.

AAPP records at least 6,060 persons have been killed, and 27,905 have been arrested from February 1, 2021 up until December 17, 2024.¹² This does not include the number who died under revolutionary forces, and the number is likely to be much higher on the ground. The large numbers of arrests made of political prisoners and their family members have been implemented and justified through the junta's repressive laws, regulations, and departmental action, through their subordinate organizations.

12. All data on arrests and killing since the February 1, 2021 military coup, unless cited to external source is attributable to Assistance Association for Political Prisoners – Burma (2024). Retrieved at the air table database and <https://coup.aappb.org/> or stored offline with info@aappb.org





4. Laws that Violate Human Rights Standards

4.1. The Enforcement of Repressive Laws

Following its coup in 2021, the military holds no legitimate authority over the population it seeks to control. Despite this, the military promulgated and amended many laws, in order to brutally repress those who oppose them. Through their intention to repress the population, it is evident that the military does not adhere to international human rights standards, breaching the requirements of necessity, legality, proportionality, and non-discrimination. The following are the key laws used to repress the population since the coup, used by the military to arrest pro-democracy activists and their families, beginning with those used most frequently since the coup, to arrest political prisoners, specifically Penal Code, Section 505 and the Counter-Terrorism Law.

In this section, the report seeks to draw comparisons between Burma's laws¹³ and the conditions within human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and cases within the European Court of Human Rights (ECHR). Although Burma has not ratified the ICCPR, there is a certain framework within the covenant that can aid domestic laws to be in line with international human rights standards. However, it is not to say that comparisons, including from other democratic countries, must be copied and placed directly into the context of Burma, but rather should be drawn from and analyzed to ensure that Burma's legal systems and institutions are in line with the needs and context of the people in Burma.

13. All Burma laws are referenced from Myanmar Law Information System, unless stated otherwise. Available at: <https://www.mlis.gov.mm/> [Accessed: 2 June 2024].

to Repress Civilians in Burma

4.1.1 Penal Code

The Penal Code was provided in Indian Act No.45 in 1860, and entered into force on 1.5.1861. This law also applied to Burma after the British annexed it. Whilst the law remains in effect, sections of the Penal Code have been amended, especially terminology, offenses, and penalties. After the coup, the junta amended sections, using broad and generalized terms and the amendments were used to impose a greater severity of repression on those who oppose their rule. See Annex 1 for the history of the Penal Code and Annex 2 for the amendments made after the 2021 coup.

Following the 2021 coup, the junta added provisions in sections 121, 124-a, 124 -c, and 124-d of Chapter 6 (high treason) of the Penal Code, adding the new term and name – “any Defense Services personnel or government employees.”¹⁴ Through broadening these laws, the junta intends to repress pro-democracy supporters; any person who disagrees with the junta or its subordinate organizations or personnel shall face severe punishment under these new sections. Especially 124-c, which is punishable with an excessive 20-year imprisonment, criminalizes sabotaging or hindering “the performance” of the Defence Services and law enforcement organizations who are engaged in preserving the stability of the state’, hereby targeting efforts like the Civil Disobedience Movement or protests.¹⁵ Together with section 124-d that follows, imposing imprisonment on those that hinder a government employee from carrying out their duties, they can dangerously encompass a broad range of activities with the inclusion of these indistinct terms.

Article 295 (a) provides that anyone who “insults or attempts to insult” the religious beliefs of a class with the “deliberate and malicious intention of outraging the religious feelings of” that class will be punished with imprisonment of up to two years, a fine, or both. This provision has been used on numerous occasions by authorities to prosecute religious minorities who denounce extremism.¹⁶ Such selective prosecution of religious minorities violates the right to freedom of religion, under article 18 of the ICCPR.

14. Article 19, Myanmar: Penal Code Amendments Portend Long-Term Repression, 2021, <https://www.article19.org/resources/myanmar-penal-code-amendments-portend-long-term-repression/> [Accessed: 15 December 2024]

15. Human Rights Watch, Post-Coup Legal Changes Erode Human Rights, 2021, <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights>. [Accessed: 15 December 2024]

16. Article 19, Myanmar Briefing Paper: Criminalisation of Free Expression, 2019, <https://www.article19.org/wp-content/uploads/2019/06/2019.06.6-A19-Criminalisation-of-Free-Expression-final.pdf> [Accessed: 13 November 2024]





Justice, the Judiciary and the Weaponization of Law

As of 17 December 2024, AAPP has recorded that at least 8,442 political prisoners arrested under the Penal Code. This includes 7,548 under Penal Code Section 505A. These numbers are those that have been verified by AAPP and the number is likely far higher.

The overly broad language in the Penal Code and its amendments means that the state wields discretion in its use, and the junta has used such discretion to prosecute political opposition. In particular, the Penal Code, with its amendments, presents terms that are overly broad, with international observers finding vague definitions and unclear language for words such as “treason,” “disloyalty,” “incitement,” “hindering,” “sabotaging,” “disruption,” “fake news,” or “agitation.”¹⁷ What’s more, Section 505A, (a) and (b) target those who ‘cause or intend to cause fear to a group of citizens or to the public’ and ‘cause or intend to spread false news, knowing or believing that it is untrue’, both are very broadly defined. This space for interpretation has been used to oppress critics of the military junta, and has served as a ‘back up’ mechanism to arrest those who are not punishable under other provisions.¹⁸ As a consequence, the Penal Code and its amendments fall short of international human rights requirements for arrests or detentions and thereby impose infringements on the right to liberty.¹⁹

With the use of overly broad terms, the Penal Code and its amendments pose a number of human rights issues involving the right to liberty, right to freedom of speech, right to access and share information, and right to assembly. To begin, the right to liberty is expressed by Article 3 of the UDHR and Article 9 of the ICCPR. UDHR Article 3 is accompanied by prohibitions against arbitrary arrest or detention in Article 9, right to a fair trial in Article 10, and right to presumption of innocence in Article 11. ICCPR Article 9 encompasses together the right to liberty, right against arbitrary arrest or detention, and a right to legal proceedings before a court. ICCPR Article 14 provides a right to a fair trial with a presumption of innocence. ICCPR Article 9 acknowledges that arrests and detentions for criminal charges are possible, but in General Comment 35 to

17. Centre for Law & Democracy, Analysis: Amendments to the Penal Code by the State Administration Council, 2021, https://www.law-democracy.org/live/wp-content/uploads/2021/05/Myanmar.Penal-Code-Analysis.FINAL_.pdf [Accessed: 13 November 2024]; Human Rights Watch, Myanmar: Post-Coup Legal Changes Erode Human Rights, 2021, <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights> [Accessed: 13 November 2024]

18. Free Expression Myanmar, 505A Act of Revenge: Review of Myanmar Coup Speech ‘Crimes’, 2021, <https://freexpressionmyanmar.org/wp-content/uploads/2022/01/505a-act-of-revenge-1.pdf>; AAPP, Towards Accountability: The Urgent Need for Renewed International Attention to Sit-Tat’s Crimes Against Humanity in Burma, 2023, <https://aappb.org/?p=24334> [Accessed: 15 November 2024]

19. International Committee of the Red Cross, Rule 101: The Principle of Legality, 2024, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule101> [Accessed: 13 November 2024]

to Repress Civilians in Burma

ICCPR Article 9, the Human Rights Committee explains that arrests and detentions must be “prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”²⁰

The issues regarding violations of the right to liberty extend to violations of the right to freedom of speech and the right to access and share information which are contained in Article 19 of the UDHR and Article 19 of the ICCPR. The ECHR reaffirmed the necessity for precision with clear terms, stating that an offense must be clearly defined in law, so that “the individual can know from the wording of the relevant provision and, if need be, with the assistance of the court’s interpretation of it, what acts and omissions will make him liable’.²¹ This is also stated by the Inter-American Court of Human Rights, stressing precise and unambiguous language that narrowly defines an offense, as part of the requirements of the principle of legality.²² Laws that take action against incitement of hatred or violence must be criminalized whilst ensuring that other forms of expression including political criticism and dissent are not. This is done through clear boundaries of when, how and against who this incitement to hatred constitutes a crime.²³

The provisions of the Penal Code and its amendments similarly infringe upon the right to assembly and right to association contained in Article 20 of the UDHR and Articles 21 & 22 in the ICCPR. For example, Sections 124 and 505 refer broadly to activities that hinder the state, cause fear, or agitate against government officials. The vagueness in language allows both provisions to impose criminal penalties against peaceful protests or group conversations critical of the military junta, and go so far as to threaten human rights defenders advocating for human rights victims, humanitarian workers aiding political opponents, and journalists attempting to disseminate political information. As a result, the Penal Code and its amendments, while directly targeting the rights of freedom of expression and freedom of information, also indirectly impact the rights to freedom of assembly and freedom of association. Because the Penal Code and its amendments are directed against expressions

20. Human Rights Committee, General Comment Number 35: Article 9 (Liberty & Security of Person), 2014, Para. 22, <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person> [Accessed: 13 November 2024]

21. European Court of Human Rights, Case of Kokkanis v. Greece (Application no. 14307/88), 1993, Para. 52, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57827%22%22%7D> [Accessed: 13 November 2024]

22. Inter-American Court of Human Rights, Castillo Petruzzi et al Case, 1999, Para 121, <https://www.refworld.org/jurisprudence/caselaw/iacthr/1999/en/37800> [Accessed: 15 December 2024]

23. Section 130 StGb, German Criminal Code





Justice, the Judiciary and the Weaponization of Law

of political dissent, they are violating the rights in UDHR Article 10 and ICCPR Article 19.²⁴

While ICCPR Article 19 can be constrained by states, they must be necessary for 1) the respect of rights of others or 2) the protection of national security, public order or public health or morals, must be proportionate to the pursuance of legitimate claims and must not impair the essence of the rights in the ICCPR. However, the scope of the Penal Code goes beyond these instructions and is disproportionate to the stipulated restrictions and impairs the essence of the ICCPR by suppressing freedom of expression and freedom of information.

4.1.2. Counter-Terrorism Law

This law came into force on 4 June 2014, with Law No. (23/2014). The follow-up rules and regulations came into force on 11.9.2015 with Order No. (1202/2015). In 2021, the SAC amended Section 3, Sub-Section-15, adding Section 52 to escalate punishments for violations of the law. In August 2021, they increased the penalties for section 3(b)(xv) which includes acts of “exhortation persuasion, propaganda, recruitment of any person to participate in any terrorist group or activities of terrorism.” On Jan 25 2022, the junta’s newspaper stated that any citizen who creates propaganda, incites violence, takes action (shares, reshares, encourages or assists ‘terrorists’), supposedly influenced by an associated person or in any way disturbs public order, shall be sued under Section 52 of the Counter-Terrorism Law, Section 124-A and Section 505A of the Penal Code and Section 33(a) of the Electronic Transition Law, confiscating the property of those arrested under these charges. Later, in March 2023, the SAC issued an Addendum which expanded military powers against anyone identified as a ‘terrorist’. As part of such changes, the Minister of Home Affairs, Soe Htut, announced Order 239/2023 approving the application of the law by relevant ministries. AAPP data shows that at least 7,343 people have been arrested under this law from February 1, 2021 to December 17, 2024.

Collectively, the components of the Counter-Terrorism Law allow the military to conduct surveillance; cut communications; seize assets, including bank accounts; and conduct investigations and arrests for individuals and organizations tied to ‘terrorism’. The law criminalizes “acts of exhortation, persuasion, propaganda, recruitment of any person to participate in any

24. This can be seen in the other case of other laws in Burma, whereby they go against ICCPR Article 19 and foot-notes are added as such, where this applies.

to Repress Civilians in Burma

terrorist group or activities of terrorism” but provides no criteria as to what constitutes “terrorism” or a “terrorist,” leaving identification of both to the discretion of a Central Committee for Counter-Terrorism in Section 6.²⁵ This violates the legality principle under customary international law, by not precisely laying down the scope of what constitutes criminal conduct, and breaches fundamental human rights.

The junta has used the law selectively to label its political opponents as terrorists and anyone associated with them as supporters of terrorism, incurring the powers under the Counter-Terrorism Law to then prosecute them.²⁶ Following the February 2021 military coup, the military junta increased sentences to over 10 years of imprisonment under this charge and confiscated assets of suspects who were being investigated. The most common sections charged under this law are Sections 50, 51, and 52. International monitors note cases where the Counter-Terrorism Law was used against students who were taking courses provided by the pro-democratic opposition National Unity Government, as well as cases where the law was used to prosecute journalists and human rights defenders deemed sympathetic to pro-democracy forces.²⁷ Such actions indicate that the military junta is applying the law loosely, labelling anyone suspected of political dissent—including non-violent members of Burma’s civil society—as a terrorist for the purpose of facilitating prosecutions to suppress political opposition.

Additionally, the Counter-Terrorism Law criminalizes those who support or associate with groups and individuals labelled as terrorist, hereby blurring the line between direct and indirect involvement, like the Penal Code. This adds to uncertainty on what constitutes criminal conduct, but also criminalizes humanitarian support and medical assistance to those in need, as this can constitute indirect support to those perceived as terrorists by the junta.

25. Centre for Law & Democracy, Myanmar: Note on the 2021 Amendment to the Counter-Terrorism Law, 2023, <https://www.law-democracy.org/live/wp-content/uploads/2023/01/Myanmar.Counter-Terrorism-Amendment-Note.English.pdf> [Accessed: 15 December 2024]

26. International Center for Not-for-Profit Law, The Impact of Counter-Terrorism Measures in Myanmar: Submission to the UN Special Rapporteur, 2023, <https://www.icnl.org/wp-content/uploads/Myanmar-CT-assessment-final.pdf> [Accessed: 15 December 2024]

27. Asia Forum for Human Rights & Development, Submission for Call for Input–Use of Administrative Measures in Counter-Terrorism–Report to the Human Rights Council on Terrorism & Human, Rights, 2024, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjY07uHsfjJAXU2QkEAHQIsAuEQFn_oECBYQAQ&url=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fissues%2FTerrorism%2Fcfis%2Fadmin-measures%2Fsubm-use-administrative-measures-civi-soci-acto-asian-forum-hr-develop-pment.docx&usq=AOvVaw2VdYg3OTaryFJX7wmgCJYJ&opi=8997844; Radio Free Asia, Amendment Grants Myanmar Junta Sweeping New Powers Under Anti-Terrorism Law, 2023, <https://www.rfa.org/english/news/myanmar/amendment-03152023170207.html> [Accessed: 15 December 2024]





Justice, the Judiciary and the Weaponization of Law

Obstructing aid can be seen as a violation of International Humanitarian Law (IHL), for example considering Common Article 3 of the Geneva Convention or Rules 55 and 56 of Customary IHL, as they stipulate that parties must not impede medical aid and humanitarian relief.²⁸ Human Rights Law also protects the right to health (Art 11, ICCPR), right to food (Art 12, ICCPR) and right to an adequate standard of living (Art 25, UDHR), which can be violated through obstructing and criminalizing relief efforts by using legal weapons.

In using the Counter-Terrorism Law to target political dissent, the law impairs human rights contained in the UDHR and the ICCPR. Specifically, in enabling surveillance and closure of communications, it is violating the rights to privacy expressed in Article 12 of the UDHR and Article 17 of the ICCPR and the right to access information contained in Article 19 of the UDHR and Article 19 of the ICCPR.²⁹ In enabling seizure of assets, conduct of investigations, and exercise of arrests to suppress the activities of individuals and organizations resisting the military, it is violating rights of freedom of opinion and freedom of expression contained in Articles 18 and 19 of the UDHR and Articles 18 and 19 of the ICCPR. By facilitating the military junta's stifling of organizations, it is violating rights of freedom of assembly and association articulated by Article 20 of the UDHR and Articles 21 and 22 of the ICCPR.

The term terrorism must be defined narrowly, criminalizing participation in terrorist organizations, but requiring clear evidence of intent and planning, targeting actions that disrupt public peace while safeguarding peaceful activism or association.³⁰ Meanwhile, it is important that sanctions are proportional, under the principle of proportionality, which means that the severity of the punishment needs to match the seriousness of the offense. Increasing sentencing to 10 years of imprisonment for political opposition does not fulfill this requirement in its current application.³¹ Meanwhile, confiscation of belongings during arrest violates Article 17, UDHR, which provides for the right to own property and prohibits arbitrary deprivation of it.³²

28. ICRC, Rule 55 – Access For Humanitarian Relief to Civilians in Need, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55> [Accessed: 15 December 2024]

29. As is the case for the Penal Code, human rights are not absolute and ICCPR Article 19 for example, can be constrained by states. However, they must be necessary for 1) the respect of rights of others or 2) the protection of national security, public order or public health or morals, must be proportionate to the pursuance of legitimate claims and must not impair the essence of the rights in the ICCPR. However, the scope of the Counter-Terrorism Law goes beyond these instructions and is disproportionate to the stipulated restrictions and impairs the essence of the ICCPR by suppressing freedom of expression and freedom of information.

30. See for example, Section 129a StGB, German Criminal Code

31. See for example, Section 129a(1) StGB, German Criminal Code, where sentencing remains proportional.

32. Art 17, Universal Declaration of Human Rights (UDHR), 1948

to Repress Civilians in Burma

4.1.3. Unlawful Associations Act

This law was enforced in 1908 under colonial rule by the British government, applied by the colonial government to crush opposing political activists and hold control over the population. Following the 2021 coup, the SAC re-enforced and arrested political activists under Section 17 (1) and (2) of this law. Section 17(1) punishes anyone who is a member of an association declared unlawful, as well as those who assist or contribute to any such association with two to three years' imprisonment.³³ According to AAPP reporting, there are at least 460 detainees under this law from the 2021 coup, as of December 17, 2024.

International monitors have observed that the Unlawful Associations Act has been used to prosecute political activists and members of Burma's ethnic minorities for exercising their rights to freedom of expression.³⁴ Following the February 2021 military coup, the military junta has used the law to prosecute opposing political parties, ethnic armed organizations, journalists, and anyone who came in contact with the aforementioned groups.³⁵

The Unlawful Associations Act, through its application to suppress political opposition to the military junta, is enabling violations of the rights to freedom of assembly, freedom of association, freedom of expression, freedom of belief, and freedom of opinion contained in Articles 18, 19, and 20 of the UDHR, Article 8 of the ICESCR, and Articles 18, 19, 21, and 22 of the ICCPR.³⁶

Much like the laws previously analyzed, the broad language of the Unlawful Associations Act lacks precision and its application has suppressed democratic activism. The Unlawful Association Act also struggles with respect to international human rights principles regarding expectations for law.

33. Article 19, Myanmar Briefing Paper: Criminalisation of Free Expression, 2019, <https://www.article19.org/wp-content/uploads/2019/06/2019.06.6-A19-Criminalisation-of-Free-Expression-final.pdf> [Accessed 28 September 2024]

34. Human Rights Council, Resolution Adopted by the Human Rights Council on 24 March 2017(A/HRC/RES/34/22), 2017, <https://documents.un.org/doc/undoc/gen/g17/081/98/pdf/g1708198.pdf>; see also Burma Campaign UK, Burma's Repressive Laws: Unlawful Associations Act (1908), 2024, <https://burmacampaign.org.uk/media/Unlawful-Associations-Act.pdf> [Accessed: 15 December 2024]

35. Human Rights Watch, Myanmar: Elected Lawmaker Group Declared Illegal, 2021, <https://www.hrw.org/news/2021/03/25/myanmar-elected-lawmaker-group-declared-illegal> [Accessed: 15 December 2024]

36. Human rights are not absolute and ICCPR Article 19 for example, can be constrained by states. However, they must be necessary for 1) the respect of rights of others or 2) the protection of national security, public order or public health or morals, must be proportionate to the pursuit of legitimate claims and must not impair the essence of the rights in the ICCPR. However, the scope of the Penal Code goes beyond these instructions and is disproportionate to the stipulated restrictions and impairs the essence of the ICCPR by suppressing freedom of expression and freedom of information.





Justice, the Judiciary and the Weaponization of Law

Restrictions must have a legal basis in terms of language that is accessible and precise and that is necessary for a democratic society.³⁷ As a consequence, the law falls short of the requirements for laws regarding associations.

The use of ambiguous terms is a reoccurring problem in Burma's codes, where broad concepts as 'unlawful association' are not specified and thus do not comply with the legality principle. Instead of criminalizing association as such, proportional and necessary boundaries to the fundamental right of association must be set, defined clearly for example, through associations that contravene criminal law, against a constitutional order, where the constitution has legitimacy, or the association is against the concept of international understandings of peaceful association.³⁸

4.1.4. The Arms Law

On 11.5.2023, the SAC repealed all five laws relating to the Arms Act and enacted the new Arms Law. It states that a person who has purchased or is in possession of a weapon with an intent to commit treason – meaning fighting junta forces – can be sentenced to five to ten years in prison. It also states that stealing, destroying, selling, or transferring state-owned weapons or the ammunition of 'government' / military personnel is punishable by 10 years to life imprisonment or a maximum penalty of a death sentence. As mentioned before, sanctions must adhere to the principle of proportionality, which means that the severity of the punishment must match the offense's seriousness. The penalty mentioned above to life imprisonment or the death penalty appears to be disproportional. Depending on the context, heavier sentences can occur when there is an offense causing mass casualties, such as through what is deemed to be terrorism. However, the Arms Law in Burma fails to address any specificities, leaving the death penalty as an option for all acts concerning military ammunition, open for abuse by the military regime against the armed resistance.

Moreover, this law also permits those "loyal to the state" to own firearms. The junta has used the Arms Law to allow permits for firearms to pro-military supporters and deny permits for firearms to political opponents. In essence, the

37. As indicated by in a 2012 report to the UN Human Rights Council, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, connected General Comment 31 to associations, and added that restrictions must have legal basis. See Human Rights Council Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, Maina Kiai, 2012, Para. 16, <https://digitallibrary.un.org/record/730881?ln=en&v=pdf> [Accessed: 15 December 2024]

38. See for example, Art 9(1) of basic laws in Germany.

to Repress Civilians in Burma

military junta is applying the Arms Law selectively to discriminate against political dissent. Such discrimination violates the right to non-discrimination contained in Article 26 of the ICCPR. As a result, while there is no human right to firearms, the Arms Law still contravenes international human rights principles of non-discrimination. The Arms Law is being used to suppress armed opposition and for the junta to win over the revolutionary forces, using legal weapons against the resistance.³⁹ The junta has consequently used various arms laws to continuously arrest those that oppose them. At least 656 persons were imprisoned under various arms laws, as of December 17, 2024.

4.1.5. The Explosive Substances Act

This law was enacted in 1908 by the British colonial government and has been a binding force in Burma for more than hundred years without any amendments. The law causes severe punishment against the opposition. The Act includes the statement, “Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion”. The junta has charged 512 people with this law, between February 1, 2021 to December 17, 2024, with those charged facing between 5- and 20-year imprisonment.

There is no human right to explosive substances, but the application of the Explosive Substances Act still contravenes international human rights principles of non-discrimination. The problematic aspects of this law are similar to the concerns about the Arms Act. The military junta is using the Explosive Substances Act against its political opponents but not against pro-military supporters. Hence, the military junta is applying the Explosive Substances Act in a manner that discriminates based on political disposition, again violating the right to non-discrimination contained in Article 26 of the ICCPR.

The Explosive Substances Act also poses problems through the use of broad terms that are not further specified. According to AAPP data, the junta uses sections 3 to 5 to arrest political prisoners under this law. These sections all include similar vague terms, which are not further defined, such as ‘lawful object’, ‘reasonable suspicion’, or ‘any explosion’, with a low bar for prosecuting individuals with high sentences in respect to such crimes. To illustrate, the German Explosive Substances Act (Sprengstoffgesetz) consists

39. Radio Free Asia, Myanmar enacts Weapons Law aimed at keeping guns away from resistance, 2023, <https://www.rfa.org/english/news/myanmar/junta-weapons-law-05182023164647.html> [Accessed: 15 December 2024]





Justice, the Judiciary and the Weaponization of Law

of 53 articles in 10 parts, through which it explains and clarifies the legal terms and boundaries in its provisions. This is compared to the one-page and seven-section short Explosive Substances Act in Burma, which has not been amended since 1908, and lacks clear terminology.

4.1.6. Myanmar Official Secrets Act

This law was enacted in 1923 by the British colonial government. Under Section 3 of this law, prosecution can be launched against those ‘entering a ‘prohibited place’; making sketches, plans, models or notes that may be ‘useful to an enemy’; and obtaining, collecting, recording, publishing or communicating ‘any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy.’ In addition, if a form of communication or piece of information received includes any military information, including information regarding any factory, dockyard, ship or aircraft or any other place so belonging or occupied by the military, it shall be punished with 14 years’ imprisonment. Other offenses under this law shall face three years’ imprisonment. Further, under Section 3(2), prosecutors do not have to prove that a defendant is acting against the state, effectively removing the burden from the prosecutor of showing that the defendant was harming the state. As seen in other Burmese laws, this Act uses simple terms, failing to clarify definitions including what is considered useful to an enemy.

The military junta has used the law to prosecute Sean Turnell, economic policy advisor of State Counsellor, Daw Aung San Suu Kyi, U Soe Win (Minister of Finance and Revenue), U Sett Aung (Deputy Minister of Finance and Revenue), and U Kyaw Win (former Minister of Finance and Revenue) under this law. The military junta has also used the law to imprison journalists Wa Lone and Kyaw Soe Oo. In effect, the military junta has applied the law to remove its political opponents and suppress reporting of its political activities.

These broad definitions allow authorities to charge individuals through this law, violating international principles of the right to a fair trial and right to presumption of innocence in Articles 10 and 11 of the UDHR and Article 14 of the ICCPR. In addition, in its application against political dissent and media reporting, the law is violating the rights to freedom of expression, including the rights to “seek, receive, and impart information and ideas,” in Article 19 of the UDHR and Article 19 of the ICCPR.⁴⁰ In its General Comment Number 34 to

to Repress Civilians in Burma

the ICCPR, the Human Rights Committee recognizes the human rights are not absolute and that a state can restrict human rights, but the committee limits state power to do so by requiring that a state must show that the restriction is 1) published in a law with language that is not ambiguous, vague, or overly broad; 2) related to a legitimate purpose such as national security, public order, or public health or morals; and 3) necessary and proportionate to the legitimate purpose.⁴¹ The Official Secrets Act violates each of the aforementioned requirements, because the absence of clear definition means that the law is vague and overbroad; the absence of proof by the prosecution showing harm to the state means that the law does not establish a relation to a legitimate purpose; and the criminal punishments for possession of communications means that the law is disproportionate in its sentencing. Further, the Human Rights Committee continues to clarify that state restrictions on the rights in ICCPR Article 19 cannot be used “for the muzzling of any advocacy of multi-party democracy, democratic tenets, and human rights.”⁴² The committee specifically emphasizes such protections for journalists and “persons who engage in the gathering and analysis of information on human rights situations.”⁴³ In using the Official Secrets Act against dissent and critique, the military junta is violating international human rights principles.

While the protection of state secrets is an important role of the executive, it should not infringe upon freedom of expression and the freedom of the press. There is no just legal basis for the surveillance of journalists and journalists have a right to protect their sources, no matter the national security concern.⁴⁴ Surveillance of the press, even in the case of state secrets, must be legally justifiable and involve appropriate safeguards. The Burmese Official Secrets Act is therefore inconsistent with international practices.

40. Art 19, International Covenant on Civil and Political Rights (ICCPR), 1966

41. Human Rights Committee, General Comment Number 34, 2011, Para. 22, <https://documents.un.org/doc/undoc/gen/g11/453/31/pdf/g1145331.pdf> [Accessed: 15 December 2024]

42. Ibid, Para. 23.

43. Ibid.

44. Human Rights Law Centre, Forcing journalists to reveal sources would have “chilling effect” on freedom of expression, 2012 <https://www.hrlc.org.au/human-rights-case-summaries/forcing-journalists-to-reveal-sources-would-have-chilling-effect-on-freedom-of-expression> [Accessed: 15 December 2024]





4.2. Other Enacted Laws that Violate Human Rights

The previously mentioned laws are those that have been used most frequently by the military junta since the 2021 coup to arrest political prisoners and great attention must be placed. However, there are a lot of existing laws that are also seen to be violating democracy and human rights norms and without amendment, they are, and continue to be used as a repressive tool. These laws must also be recognized and consequently amended. The prominent laws among them are as follows.

4.2.1. Legislation to Suppress the Media and Freedom of Expression

Primarily through its Telecommunication Law, Printing and Publishing Law, the Press Law and The Broadcasting Law, the military junta seeks to control the media and suppress any form of independent expression that speaks against them. The Telecommunication Law seeks to suppress any form of dissenting expression, while the latter three laws seek to take control of the press and media.

4.2.1.1. The Telecommunication Law

The Telecommunication Law is a special law enacted in 2013 and amended in 2017. According to the provision in Section 66, whoever commits any of the following acts, “extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person by using any telecommunications networks” as stated in Section 66, Subsection (d), Chapter (XVIII), Offences and Penalties, will be punished with imprisonment for a term not exceeding three years, a fine or both. Furthermore, according to Section 80 (A), police can arrest the person who committed this offense without a warrant because it is considered a cognizable offence. The law does not allow for the right to bail after the arrest of a person accused of committing this offense. Hence, the bail provision depends on the decision of the relevant judge.

Section 68(a) of the law prohibits “communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation”. Similar to section 66(d), the law’s broad phrasing enables

to Repress Civilians in Burma

exploitation by authorities to punish those who are critical of the junta.⁴⁵

Section 80(b) states, “In prosecution any offense under this law, prior approval of the ministry shall be obtained,” but the original law does not define who can be prosecuted for this offense, allowing for arbitrary reasoning to arrest different personnel. After its enforcement in 2013, the law's weakness was used to prosecute many media persons and activists. In 2017, lawmakers amended the law, stating that no action shall be taken if it is not a complaint by the victim himself or the representative of that person. They also repealed some terms including coercing, “restraining wrongfully”, and “causing undue influence”. However, the provision containing “extorting, defaming, disturbing, and threatening” continues to be in place and remains undefined.

4.2.1.2. Printing and Publishing Law

Under the amended Printing and Publishing Law in 2023, any printed document that is deemed illegal under this law could lead to punishment not only for the author but also for the printer. Section 6 was amended to use general undefined terms, stating that certificates that allow for printing can be confiscated if certificates are supposedly obtained in a “dishonest way or a contorted manner.”

The Printing and Publishing Law, a notorious tool of oppression during the SLORC and SPDC ruling periods, was used to silence dissenting voices. This law was repealed, and a new provision was enacted in 2014. However, after the military coup d'état in 2021, the State Administration Council amended it on 3 June 2023, weakening the already inadequate law, set to regulate media and limit freedom of expression. Sections 6, 9 and 10 were amended under this law.

The previous law stated in Section (9) that the relevant court has to decide whether the document is illegal. However, the amendment of this law in 2023 set to abolish this section allowing the Minister of Information to make final decisions, based on arbitrary reasoning. Section 9 was amended to state, “The Ministry can announce the notification that the publication complicated with any point of disciplines in Section 8 was an illegal publication in the State Gazette.” The Minister of Information has the power to ban publications, based on broad restrictions found in the law.

45. Article 19, Myanmar Briefing Paper: Criminalisation of Free Expression, 2019, <https://www.article19.org/wp-content/uploads/2019/06/2019.06.6-A19-Criminalisation-of-Free-Expression-final.pdf> [Accessed 28 September 2024]





Justice, the Judiciary and the Weaponization of Law

According to that additional provision, publishers and printers are no longer fully guaranteed the independent legal right to defend allegations against them. Section 10 states that once such an announcement is made, a police officer or any person authorized by the ministry can seize the publication through this law according to the Criminal Procedure Code, frequently suing under arbitrary charges including for instance sections of the Penal Code and special laws, in order to indict the individual.

4.2.1.3. The Press Law

The Press Law was signed by Former President, U Thein Sein on 14 March 2014 by Union Hluttaw Law No. 12. It was announced by Order No. 45/2015 on 17 June 2015.

The military junta amended its ruling on 9 January 2022. The amendment enacted allows for ease of action against the media. If holding evidence, the aggrieved department or organization can complain to the Media Council when any media person breaks the rule of Chapter (11), Negotiation and Punishment, Section 9 and can complain to the relevant court in relation to Section 25, Sub-Section a or b when this law is violated under Sub-Section (b, d, f, g) of Section 9 from the Press Law.

In addition, if committed under Section 9, Sub-Section (h), an individual will be charged under all existing laws. However, the definition of Section 9, Sub-Sections (f and h) in relevant law and rule is unclear.

If a department, organization or an individual does not satisfy the description of a media person, the military can alternatively prosecute under Section 66 (d) or Section 68 of the Communications Act, or under Section 505 (a) (b) (c) or 505A of the Penal Code, accused of public damage.

Those associated with the accused can also be charged jointly under the same charges, often without bail and allows the military or organizations under the military to arrest and detain journalists arbitrarily, and in many cases, as a result of speaking against the junta.

4.2.1.4. The Broadcasting Law

In 2023, the Broadcasting Law was amended, bringing the supervising, monitoring and managing of broadcasts of the Television and Radio Broadcasting Council, under the military's direct control. Under the new law,

to Repress Civilians in Burma

nine members including the chairman and secretary are selected by the military to supervise, monitor and manage television and radio broadcasting measures mentioned in the law. The military council amended the law to include that a council member must be appointed directly from the military. In the original law, in Section (10) to establish the Broadcasting Council, the President, the Speaker of the People's Assembly, and the Speaker of the National Assembly would propose six members each. Due to Section (11), the list of the eighteen members proposed under Section (10) must have been announced 30 days in advance. The public was invited to give public opinions on the proposed members' abilities, ethics, and skills.

4.2.1.5. Freedom of Speech, Independence of the Media and International Law

A free, pluralistic and independent media is at the foundation of a true democratic society. The press, television, radio and other forms of publishing and spaces of free expression are considered critical for disseminating information on public issues.⁴⁶ However, by 1) making all forms of what the junta considers to be defamation, a criminal offense, and; 2) enabling the junta's control over all forms of media, the junta's laws in the above cases, are in contravention of international human rights standards.

Firstly, multiple human rights sources have identified the criminalization of defamation as being an infringement on rights to freedom of speech, freedom of the press, and freedom of opinion. Specifically, the Human Rights Committee for the International Covenant on Civil and Political Rights (ICCPR) has issued General Comment 34, which declares that criminal penalties for defamation are a violation of ICCPR Article 19 and UDHR Article 19, and states, "States parties should consider the decriminalization of defamation and...imprisonment is never an appropriate penalty."⁴⁷ In addition, in a joint statement, the UN Special Rapporteur on Freedom of Opinion and Expression, the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of Media, and the Organisation of American States (OAS) Special Rapporteur on Freedom of Expression collectively stated that

46. General Comment 34, 2011, Para. 13, see also General Comment 34, the Human Rights Committee General Comment 25; see also OHCHR, Joint Declaration on Media Freedom and Democracy, 2023, <https://www.ohchr.org/sites/default/files/documents/issues/expression/activities/2023-JD-Media-Freedom-and-Democracy.pdf> [Accessed 15 December 2024].

47. Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34), 201, Para 47, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> [hereinafter cited as General Comment 34, 2011]





Justice, the Judiciary and the Weaponization of Law

“Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”⁴⁸

The Telecommunication Law in Burma goes beyond the restrictions on criminal law given by the European Court of Human Rights (ECHR) on defamation. ECHR has not expressly forbidden the criminalization of defamation, but it has limited its reach by stating that 1) convictions for defamation require prosecutorial proof beyond a reasonable doubt that the alleged defamatory statements were known to be false; 2) the punishment for defamation cannot involve imprisonment; and 3) criminal law should not be used against defamation when civil law is available.⁴⁹ In all three cases, the Telecommunication Law is in contravention.

Secondly, by placing the media and other forms of information under the control of the military junta, these laws also contravene international law. In particular, in its General Comment 34 to the ICCPR, the Human Rights Committee states that under Article 19 of the ICCPR a “free, uncensored, and unhindered press or other media is essential in any society to freedom of opinion and expression.”⁵⁰ The committee adds that it is critical to have free communication of information and ideas about public and political issues, and that such communication “implies a free press and other media able to comment on public issues without censorship or restraint.”⁵¹ Moreover, the committee also states that “the public has a corresponding right to receive media output.”⁵²

The Human Rights Committee recognises that Article 19 of the ICCPR allows for restrictions when necessary to protect the rights of others or protect national security, public order, or public health or morals.⁵³ However, General Comment 34 notes that the restrictions should not be aimed at “the destruction of any of the rights or freedoms” in the ICCPR.⁵⁴ General Comment 34 also declares that the restrictions “may never be invoked as a justification for the

48. Organisation of American States, International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion & Expression, the OSCE Representative on Freedom of the Media, & the OAS Special Rapporteur on Freedom of Expression, 2002, <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=87&IID=1> [Accessed: 15 December 2024]

49. International Press Institute, Freedom of Expression, Media Law, & Defamation: Reference & Training Manual for Europe, 2015, https://issuu.com/internationalpressinstitute/docs/foe-medialaw-defamation_eng/1 [Accessed: 15 December 2024]

50. General Comment 34, 2011, Para. 13

51. Ibid.

52. Ibid.

to Repress Civilians in Burma

muzzling of any advocacy or multi-party democracy, democratic tenets, and human rights.”⁵⁵ Further, in General Comment 25 to the ICCPR, the Human Rights Committee asserts that the freedom of expression is important to the conduct of public affairs and the exercise of the right to vote. As part of both of those purposes, a free press, as well as free media in other forms, must be able to comment on public issues and inform public opinion.⁵⁶ In addition, publishers must be able to produce political material and advertise political ideas.⁵⁷

This was reaffirmed by the Joint Declaration on Media Freedom and Democracy⁵⁸ which recognizes a “free, pluralistic, and independent media” to be critical in the functions of democratic society and institutions.⁵⁹ The declaration states that “media freedom” encompasses production, publication, and dissemination of content across all mediums and platforms; “media pluralism” involves multiple actors with diverse and inclusive content; and “media independence” requires editorial independence from political interference and economic capture, such that media is under self-regulation or independent regulatory agencies.⁶⁰

The Printing and Publishing Law, as well as the Broadcasting Law and the Press Law enables the military junta to control media publications on public and political issues, and so contravenes the expectations set by the Human Rights Committee for protection of political publications from the media. In giving power to the military to censor and restrain publications whilst banning information that is deemed defamation by the military junta, these laws directly violate calls from international bodies and conventions, by banning military control that eliminates political expression, media independence, threatens media pluralism, and limits media freedom.

53. Art 19, International Covenant on Civil and Political Rights (ICCPR), 1966

54. General Comment 34, 2011, Para. 21

55. General Comment 34, 2011, Para. 23

56. Human Rights Committee, General Comment No. 25 (CCPR/C/21/Rev.1/Add.7), 1996, Para. 25, <https://digitallibrary.un.org/record/221930?ln=en&v=pdf>, [Accessed 15 December 2024] [hereinafter cited as General Comment 25, 1996]

57. *Ibid.*

58. The Joint Declaration was issued on 2 May 2024 by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media; the Organization of American States (OAS) Special Rapporteur on Freedom of Expression; and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa.

59. Human Rights Committee, General Comment No. 25 (CCPR/C/21/Rev.1/Add.7), 1996, Para. 25, <https://digitallibrary.un.org/record/221930?ln=en&v=pdf> [Accessed 15 December 2024] [hereinafter cited as General Comment 25, 1996]

60. *Ibid.*





Justice, the Judiciary and the Weaponization of Law

4.2.2. Legislation Enacted to Suppress Civic Space

Along with the previously mentioned Unlawful Associations Act, through the use of the Law Relating to Peaceful Assembly and Peaceful Procession and the Law Relating to Registration of Associations, the junta seeks to suppress civic space, suppressing freedom of assembly, freedom of association, freedom of expression, freedom of belief, and freedom of opinion and forcing many pro-democracy activists to continue their work underground or in exile.

4.2.2.1. The Law Relating to Peaceful Assembly and Peaceful Procession

The Law Relating to Peaceful Assembly and Peaceful Procession was enacted by Union Law No. 15 on 2 December 2011. It is based on Section 354, Chapter VIII, Citizen, Fundamental Rights and Duties of the Citizens of the 2008 Constitution. However, many provisions limit citizens' right to freely assemble, express their will, and take action if violated. It was strongly opposed by citizens and democracy and human rights activists because it did not align with democracy and human rights norms, prohibiting them from their right to protest.

During the coup, particularly in 2021 during times of mass protest, the law was used again unjustly to arrest individuals for protesting, in which the vague terms allowed police to stop protestors based on ambiguous reasons. Section IV, Sub-Sections (a) to (f) prescribe that information documents must show the name and detailed address of the applicant, leader, and speaker, and also present the issue in question.

Sub-Section (f) states that responsible persons or organizations will negotiate to reach an agreement regarding the terms of this law and the terms specified by local requirements. Present information and a pre-negotiated agreement with relevant officials are required.

Chapter V (Conditions), Section 10, Sub-sections (a, b, d, e, h, i) are not clearly defined, and Sub-Sections (g and k) of that section restrict freedom of speech.

According to Sections 14, 15, and 16 of that law, if the sub-inspector police officer or those above them deem an individual as breaking the initial agreement with the local authority, peaceful assembly and peaceful procession will be prohibited at any time. Due to the provisions under this law, peaceful assembly can be prohibited without the accused providing any form of defense.

to Repress Civilians in Burma

The law prioritises control rather than facilitation of protests, making it impossible for protestors to get permission to protest following the coup, without the risk of being arrested.

4.2.2.2. The Law Relating to Registration of Associations

In 2022, the SAC repealed the previous Law Relating to Registration of Associations (Union Hluttaw law No.31/2014) and enforced a newly enacted law. In this newly enacted law, in order for an organization to be registered, the applicant organization must get recommendation letters from relevant ‘government’ offices regarding their activities and objectives, their social welfare activities, and their commitment to follow the existing provisions of the law. If an international organization wants to register under this law, it must get recommendations from three ministries and respective departments related to its program activities. The registered organizations must report to the township general administrative department every three months. The law requires that registered organizations disclose their funding sources, identify their locations of operation, and provide quarterly activity reports. In addition, the law forbids registered organizations from activities that interfere with the internal affairs or political affairs of the state, or hold objectives and work processes outside those specified in the ‘government’ recommendation letters.

According to this law, no one can participate in or support any organization without registration. This law is not related to religious and economic organizations or political parties, but only social and civil society-based organizations. The provision is unclear and grants authorities wide discretionary power. If an organization fails to register they shall face criminal penalties of 3 years’ imprisonment, and the participant shall be fined a MMK 500,000 fine or 2 years’ imprisonment.

Any association with a registration certificate must not directly or indirectly contact or support any of the following organizations or individuals: those that are taking up arms against the state, those designated by the state as committing an act of terrorism, and those that are unlawful associations and their members. Further, any association with a registration certificate must not directly or indirectly harm the sovereignty, law and order, security, and ethnic unity of the state. Those that do shall be sentenced with criminal penalties of imprisonment for 5 years or a fine of MMK 5,000,000 or both. Moreover, that association shall be liquidated, and its money and property shall be confiscated as national property.





Justice, the Judiciary and the Weaponization of Law

The section does not provide definitive terms and places severe limits on the activities of CSOs who are registered in Burma. Others who cannot register according to this law have moved to operate underground or in exile, and many in the country have been arrested for their work. Based on the bias of authorities, an organization's activity can be prohibited at any time. Independent monitors have found that the law is selectively applied, with the military junta exercising the terms of the law to target human rights organizations and political opposition for increased surveillance, harassment, and denial or delay of registrations.⁶¹ The result has been a chilling effect, with aid organizations reducing their activities and outreach to civil society.⁶² As a consequence, the law has caused the shrinking of civic space in Burma, as organizations must sign agreements with the military if they want to be registered.

4.2.2.3. International Human Rights Standards on the Freedom to Assemble and Associate

The Law Relating to Peaceful Assembly and Peaceful Procession and the Law Relating to Registration of Associations violates international human rights standards. Specifically, by inhibiting the activities of organizations and activists, and the ability to assemble freely based on political belief, it is violating to freedom of assembly, freedom of association, freedom of expression, freedom of belief, and freedom of opinion contained in Articles 18, 19, and 20 of the UDHR, Article 8 of the ICESCR, and Articles 18, 19, 21, and 22 of the ICCPR.

In the case of the Law Relating to Registration of Associations, while it may be legitimate to make legal registration necessary for organizations and for restrictions on assembly for the purposes of national security, public safety, public order, public health or morals, or protection of the rights of others,⁶³ it is disproportionate to have criminal penalties for transgressions of the registration law. What's more, the use of these laws to target human rights organization and political opposition is disproportionate to the purpose of legal registration.⁶⁴ The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has made clear that a restriction on a right should be an exception rather than a rule.⁶⁵

61. International Center for Not-for-Profit Law, Preliminary Impact Assessment: Myanmar's New Registration Law, 2023, <https://www.icnl.org/post/news/the-impact-of-counterterrorism-measures-in-myanmar>; International Commission of Jurists, Myanmar State Administration Council Registration Law 2022: Legal Briefing, 2022, <https://www.icj.org/wp-content/uploads/2022/11/Myanmar-ORL-final.pdf> [Accessed: 15 December 2024]

62. Ibid.

to Repress Civilians in Burma

Any restrictions on the right to assembly and associate as an organization “must be necessary and proportionate in the context of society based on democracy, the rule of law, political pluralism, and human rights, as opposed to being merely reasonable or expedient.”⁶⁶ The Human Rights Committee, in General Comment No. 37, asserts that “any restrictions should be guided by the objective of facilitating the right” and that “restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.”⁶⁷ The committee continues to state that restrictions on peaceful assemblies must “not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority,...or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or state organs.”⁶⁸ The Law Relating to Peaceful Assembly and Peaceful Procession and Law Relating to Registration of Associations, in failing to facilitate the right to peaceful assembly and in its use to stifle political opposition, contradicts the expectations of the Human Rights Committee.

For comparative purposes, the European Convention on Human Rights Article 11 provides for the freedom of peaceful assembly, with similar restrictions for interests of national security, public safety, prevention of disorder or crime, protection of health or morals, or protection of rights and freedoms of others.⁶⁹ The European Court of Human Rights has given more detail to Article 11, identifying it as a fundamental right alongside the right to freedom of expression.⁷⁰ The court observes that a government “should not have the power to ban a demonstration because they consider the demonstrators’ ‘message’ is wrong”⁷¹ and that “ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly.”⁷² In

63. Art 21, International Covenant on Civil and Political Rights (ICCPR), 1966; Art 20, Universal Declaration of Human Rights (UDHR), 1948.

64. In General Comment 31 to the ICCPR, the Human Rights Committee acknowledges that states can have laws that limit the scope of rights in the ICCPR, but states that in order to do so a state party must show that the law is necessary, proportionate to the pursuit of legitimate aims, and does not impair the essence of human rights in the ICCPR.

65. Human Rights Council Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, Maina Kiai (A/HRC/20/27), 2012, Para. 16, <https://digitallibrary.un.org/record/730881?ln=en&v=pdf> [Accessed: 15 December 2024]

66. Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21) (CCPR/C/GC/37), 2020, Para. 40, <https://www.ohchr.org/en/calls-for-input/call-comment-no-37-article-21-international-covenant-civil-and-political-rights> [Accessed: 15 December 2024]

67. *Ibid.*, Para. 36

68. *Ibid.*, Para. 49





Justice, the Judiciary and the Weaponization of Law

addition, restrictions are not appropriate if they serve to have a chilling effect on peaceful assembly.⁷³ The Law Relating to Peaceful Assembly and Peaceful Procession was applied against pro-democracy protesters, and hence diverges from the European Court of Human Rights and the European Convention on Human Rights.

To comply with international human rights principles, groups must hold a right to associate and requirements to submit membership lists to the state should be banned if it is likely to result in discrimination against members of the organization. The rights and freedoms of political and civil groups to gather & protest should not be infringed but embedded into national law, and such groups should not receive differential or criminal treatment.

4.2.3. Legislative Measures for Surveillance and Restriction on the Freedom of Movement

Among its expanse of laws, revisions to the Restriction of Movement and Probation of Habitual Offenders Act, 1961, the Ward and Village Tract Administration Law, the Law for the Protection of Personal Privacy and Personal Security of Citizens and the Electronic Transactions Law, among others, have granted the regime sweeping new authorities to monitor and restrict the movement of civilians, expanding its surveillance capabilities under the guise of national security. By legalizing intrusive surveillance practices and imposing severe restrictions on freedom of movement, the junta aims to further stifle opposition, limit public dissent, and maintain control over a population increasingly resistant to its rule.

69. Art. 11, European Convention on Human Rights (ECHR), 2010

70. European Court of Human Rights, Guide on Article 11 of the European Convention on Human Rights: Freedom of Assembly and Association, 2024, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_11_eng [hereinafter cited as ECHR 2024]; [Accessed: 15 December 2024]; *Djavit An v. Turkey* (2003)

71. ECHR 2024: Para. 72

72. *Ibid.*: Para. 73

73. *Ibid.*: Paras. 79-81

to Repress Civilians in Burma

4.2.3.1. The Restriction of Movement and Probation of Habitual Offenders Act, 1961

This law was enacted as Act No. 12/1961 and amended with Union Law No.6 in 2015. This law enables a person who has previously served their sentence, to be prosecuted for an alleged offence, simply because they have previous convictions of a similar nature. Those charged under this act include any persons with criminal histories underlined in Chapter 8 of the criminal law, which mainly provides offenses relating to crimes and penalties for illegal association.

This law states it is a cognizable offense, so the accused can be arrested without warrant. It also carries a 15-day remand from the judge. If required, as per the law, travel can be restricted for habitual offenders. Yet, it violates freedom of association and right to freedom of expression. According to a joint report on the facts around Human Rights violations in Burma, “This 1961 act was intended to be applied only to monitor and restrict habitual criminals and not to limit, monitor and control political activity.”⁷⁴ However, with this law, the military has been intentionally controlling released political prisoners through re-arrest and prosecution. With the risk of re-arrest being so high, particularly for political prisoners, this law ensures that political prisoners are not really free, but their re-arrest is justified by the use of this law.

The act breaches binding international obligations under the ICCPR, ICERD and International Customary Law. The act criminalizes individuals based on a status, and not specific criminal offenses, in violation of article 15 of the ICCPR. Moreover, the enactment of this law has increased stigmatization and surveillance of those previously convicted, relating to cruel, inhuman and degrading treatment, prohibited under article 7 of the ICCPR. The restriction on movement, as applied across various laws, also contravenes international human rights standards, as will be explained later.

Furthermore, Article 14(2) of the ICCPR ensures the right to be presumed innocent until proven guilty. By allowing for prosecution based on a previous conviction, this is violated and puts those who have served their sentence on a ‘permanent probation’.⁷⁵ Article 14(1) also entitles everyone to a fair trial, however, this Act bypasses judicial oversight –such as a mandatory arrest warrant– based on past record.

74. Human Rights Documentation Unit of the NCGUB, Burma Human Rights Yearbook 2003, 2003, <https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/HRDU2003-04/Freedom%20of%20Movement.htm> [Accessed 21 November 2024]





Justice, the Judiciary and the Weaponization of Law

Laws that are in line with international human rights standards must prohibit individuals from being prosecuted more than once for the same offending and should be enshrined in the countries constitution.⁷⁶ This tenet is premised on the view that punishment should be proportionate to the offending and not oppressive. Re-punishing offenders for already served sentences reduces trust in the legal system and the efficacy of punishment as a form of deterrence.

4.2.3.2. The Ward and Village Tract Administration Law

This law concerns the administration of the geographic subdivisions of wards and village tracts in Burma, where a village tract is taken to be a collection of neighbouring villages. The law includes provisions relating to the formation of such wards or village tracts, and the appointment, qualifications, functions and duties of administrators.

In 2016, Section 13 (g) of the Ward and Village Tract Administration Law that enforces overnight guest registration and allows for inspection procedures, was repealed in a third amendment, whilst the country was under the NLD government. What's more, since 2018, up until the 2021 coup, the ward and village tract administration officers were under the management of the Ministry of Union Government Office (MUGO), allowing for democratically elected officials to manage local administrators. However, following the coup, the junta re-enforced the overnight guest registration law under Section 17, and the Department of General Administration was also re-transferred back to being under Ministry of Home Affairs (MOHA) providing the junta with full and centralized control and management of ward and village tract administrators.

Since the 2021 military coup, local administrators have often done the bidding for the military junta's policies, carrying out surveillance on houses, in order to arrest political prisoners. According to the amendment made following the coup, the house owner must register and inform the ward and village administration office about overnight guest visitors. If an individual fails to inform local administration of the visit, the individual will face 7 days imprisonment or a fine of 10,000 kyats. Ward and village administration officers now hold the power to inspect private premises at any time, through Section 13 G of this law.

75. Ibid.

76. See the case of Australia and the United States for instance whereby there are rules against this, defined as double jeopardy.

to Repress Civilians in Burma

4.2.3.3. The Law for the Protection of Personal Privacy and Personal Security of Citizens

This law was enacted by Union Hluttaw Law No. 5 on 8 March 2017 and amended on 28 August 2020. It defines personal privacy as the right to freedom of movement, freedom of residence and freedom of speech of a citizen in accordance with law, and personal security means the security of personal affairs of a citizen. In the provision, the security of residence, or compound and building in the compound, property, correspondence and other communication of a citizen are included.

Prior to 2021, according to its provisions, the Home Affairs Ministry, along with relevant 'governmental' departments, organizations, and administrative authorities, were required to protect citizens' personal privacy and security, except as required by existing laws. When authorities legally enter and search a residence, room, or compound of a person, section 5 clearly states how to practice according to the law.

Section 5

(a) protects any person not to deprive of personal privacy or personal security other than it is by existing laws;

(b) if they desire to enter a residence and a room used as a residence, a building or compound, and buildings in a compound of a person to search and seize something, or to search and arrest any person therein under any existing laws, carry out it with at least two witnesses including any person who is an administrator, village headmen, hundred-household head or ten-household head of the respective ward or village-tract;





Justice, the Judiciary and the Weaponization of Law

The provisions of Chapter (IV), Sections 7 and 8, specifically prohibited any authority person from violating the privacy and security of citizens.

IV. Prohibition

7. No one shall be detained in custody without permission of court for more than 24 hours except a case permitted under any existing laws.

8. No one, without any permit, permission or warrant in accordance with existing laws or without any permission of the President or the Union Government, shall:

- (a) enter a residence, a room used as a residence, a building or compound and a building within a compound of a citizen to search and seize something or arrest any person therein;
- (b) keep surveillance on, spy on and investigate about citizens which may invade personal privacy and threat personal security or affect human dignity;
- (c) intercept the communication of people by any telecommunications devices or disturb in any way;
- (d) demand and pass any personal information on telephone and electronic communications data from telecommunication operators;
- (e) open, search, seize, destroy or damage any correspondence, envelope, package or parcel which are delivered for other's private purpose.
- (f) forcibly interfere in personal and family matters of a citizen or act in any way to slander or affect dignity and reputation of a person;
- (g) forcibly seize the lawfully-owned moveable property or immovable property of a citizen or intentionally destroy or damage it either directly or indirectly.

Section (9) also described the duty of police officers working to maintain peace and security in the community and how they must take action. Due to this provision, they must take the information by writing a record from the informant. The informant must sign every First Information Record (FIR) sheet to confirm.

to Repress Civilians in Burma

Section (9) Any police officer-in-charge shall take action in accordance with section 154 of the Code of Criminal Procedure if any complaint or any information to be actionable under this Law has been received.

The law clearly described how to punish when committing any offense according to the relevant section of the law in chapter V.

V. Penalties

Section 10. Whoever violates any prohibition in section 7 or section 8 shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of six months to a maximum of three years and also with a fine from a minimum of three hundred thousand kyats to a maximum of one million and five hundred thousand kyats.

Section 11. Whoever fails to perform the duty in section 9 without any reason shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of one year to a maximum of five years and also with a fine which may extend from a minimum of five hundred thousand kyats to a maximum of two million and five hundred thousand kyats.

Section 12. Whoever attempts, assigns, instructs to commit any offence in this Law, conspires and abets in the commission of any offence shall be liable to the punishment as provided in this Law for such offence.

Section 13 of this law states, “Notwithstanding anything contained in any existing laws, it shall be taken action only under this Law in so far as they are applicable to the provisions of this Law.”

Previously, the law protected citizens from surveillance, telecommunications interception, and forced interference in personal and family matters. However, due to terminology like "anyone," responsible authorities or citizens were able to file lawsuits under subsection (f) of Section 8 if they felt insulted or criticized. In particular, it caused lawsuits to be posted on social media and complaint letters to authorities.

Therefore, in 2020, legislators amended the law in order to change its core objective, based on the suggestion that citizens were supposedly misunderstanding the objectives of the law. The legislators changed the terminology in the basic clause of Section 8 to “No one, without any permit, permission or warrant under existing laws or without any permission of the President or the Union Government.” This amendment aims to reiterate its objective of protecting the privacy and security of military personnel against





Justice, the Judiciary and the Weaponization of Law

unlawful interference, bullying, restriction, arrest, and prosecution by members of security forces, military officials, and authorities.

The junta amended this law on 13 February 2021 after seizing state power in 2021, according to Section 419 of the 2008 Constitution. Sections 5, 7, and 8 of this law were suspended during the period of the State Administration Council. As per the amendment, every authority is given official permission to act arbitrarily and unlawfully, as citizens lose the right to file lawsuits against the military. This has resulted in authorities entering and searching residents, without a warrant, to arrest people as well as looting and seizing property.

The military uses Section 420 of the 2008 Constitution to justify these actions, which state that “The Commander-in-Chief of the Defence Service may, during the duration of the declaration of a state of emergency, restrict or suspend as required, one or more fundamental rights of the citizens in the required area.” This clearly violates international standards of citizen rights, as per the UDHR, including Article 3 which states that everyone has the right to life, liberty and security of person.

The amendments by the military junta to remove Sections 5, 7, and 8 enable military officials and law enforcement to engage in arbitrary and unlawful actions. By the terms of the Law for the Protection of Personal Privacy and Personal Security of Citizens, such actions would allow military officials and law enforcement to violate the privacy and security of people—in effect, empowering the military junta to do the opposite of what is in the law’s title.

to Repress Civilians in Burma

4.2.3.4. Electronic Transactions Law

This law was amended on 15 February 2021, with the amendments allowing the military and law enforcement agencies to access users' personal information under the guise of national security and criminalising the spread of information online that is critical of the junta.⁷⁷ The sharing of information that may relate to activism or whistleblowing is also criminalised under this law. “[O]btaining, disclosing, using, destroying, modifying, disseminating, or sending someone’s personal data to anyone else without approval” is an offence under section 38B with a consequence of between one to three years’ imprisonment.⁷⁸ “Personal data” is given an overly broad definition, meaning the sharing of information relating to activism or human rights could be potentially deemed illegal. Along with the ability for the junta to increase surveillance under this law, the amendments restrict freedom of expression and individuals’ right to privacy. Section 33 of the law criminalises a number of acts done through the use of “electronic transactions technology” including acts “detrimental to the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture”.⁷⁹ These concepts are again vaguely defined and overly broad, effectively allowing for any behaviour to be penalised under one of these banners.

In addition, the Cybersecurity Law that was newly enacted on January 1, 2025, represents another potential threat to the freedoms and livelihood of people in Burma. This newly enacted law includes provisions banning virtual private networks and mandating that online service providers remove criticism of the junta. The law will impact search engines, social media services, communications services and other online service providers and inhibit the functioning of such businesses. Failure to cooperate with the law would result in a range of penalties, possibly including imprisonment for individuals and the loss of business’ operating licences.⁸⁰ The newly enacted law represents a further attempt at censoring public opinion and discourse, again inhibiting freedom of expression and opinion.

77. Human Rights Watch, Myanmar: Post-Coup Legal Changes Erode Human Rights, 2021, <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights> [Accessed 21 November 2024]

78. Ibid.

79. Article 19, Myanmar Briefing Paper: Criminalisation of Free Expression, 2019, <https://www.article19.org/wp-content/uploads/2019/06/2019.06.6-A19-Criminalisation-of-Free-Expression-final.pdf> [Accessed 21 November 2024]

80. Human Rights Watch, Myanmar: Scrap Draconian Cybersecurity Bill, 2022, <https://www.hrw.org/news/2022/02/15/myanmar-scrap-draconian-cybersecurity-bill> [Accessed 21 November 2024]





Justice, the Judiciary and the Weaponization of Law

Together, the Electronic Transactions Law and the Cybersecurity Law expand the powers of the military, including law enforcement, for surveillance of political resistance that enables suppressive measures against political opponents. The criminalisation of information critical to the junta denies the right to freedom of speech and the right to freedom of opinion contained in Article 19 of the ICCPR. In addition, the access to personal data of users threatens the right to privacy contained in Article 12 of the UDHR and Article 17 of the ICCPR.⁸¹ The United Nations Human Rights Council has recognized that governments may interfere with the right to privacy in cyberspace for issues of public security or terrorism, it has emphasized that governments must observe international human rights obligations and adhere to principles of legality, necessity, and proportionality.⁸² The Electronic Transactions Law and the Cybersecurity Law omit mention of legal requirements, such as warrants for probable cause, to justify government actions to access personal data. As a result, the laws do not address the Human Rights Council expectations for legality or necessity, and their use of criminal penalties raises questions about their proportionality. As a consequence, both the Electronic Transactions Law and the Cybersecurity Law are problematic under international human rights standards.

There must be clear processes and policies relating to the retention of data - such that these actions are proportionate and necessary.⁸³ Interference into personal data, can be required only for the purposes of addressing a “serious crime” (as opposed to merely a “crime”)⁸⁴ and access to the data should be subject to judicial or administrative review.⁸⁵ Intrusion into the private data of individuals, and particularly, its use to bring criminal charges, should require independent authorisation and must meet the high proportionality and necessity standards to be defensible.

81. Office of the High Commissioner for Human Rights (OHCHR), International Standards: OHCHR & Privacy in the Digital Age, 2024, <https://www.ohchr.org/en/privacy-in-the-digital-age/international-standards> [Accessed 21 November 2024]

82. Human Rights Council, Resolution Adopted by the Human Rights Council on 26 September 2019 (A/HREC/RES/42/15), 2019, <https://documents.un.org/doc/undoc/gen/g19/297/52/pdf/g1929752.pdf> [Accessed 21 November 2024]

to Repress Civilians in Burma

4.2.3.5. Contravention of International Law on Arbitrary Interference and Freedom of Movement

The amendments made following the coup, in the case of these laws, enforces “arbitrary interference”, contravening the right to privacy and movement and committing “arbitrary and unlawful interference”, according to Article 17 of the ICCPR.⁸⁶ On these terms, so-called government actions must be justified by law and the prohibition on “arbitrary” interference requires that actions—even those that are lawful—must be reasonable and in accordance with the content of the ICCPR.⁸⁷ The use of the Ward and Village Tract Administration Law, the Law for the Protection of Personal Privacy and Personal Security of Citizens, the Electronic Transactions Law, the Cyber Security Law and the Restriction of Movement and Probation of Habitual Offenders Act provides legal justification for military surveillance of house owners and guest visitors, individual data and private information. But the presence of surveillance by the junta seeking to suppress what is considered ‘political opposition’ threatens the exercise of other rights in the ICCPR, such as rights of freedom of speech, freedom of conscience, freedom of opinion, and freedom of assembly. Hence, these laws contradict international human rights principles regarding privacy.

In particular, the Ward and Village Tract Administration Law, and the Restriction of Movement and Probation of Habitual Offenders Act prohibits the right to movement. Therefore, the junta is in contravention of Article 12 of the ICCPR, which states that everyone lawfully within a state has “the right to liberty of movement and freedom to choose his residence.”⁸⁸ General Comment 27 to the ICCPR recognizes that the relevant authority may restrict

83. Human Rights Law Centre, European Court of Human Rights holds UK's "Extremism Database" falls foul of privacy and data retention laws, 2019, <https://www.hrlc.org.au/human-rights-case-summaries/2019/7/23/european-court-of-human-rights-holds-uks-extremism-database-falls-foul-of-privacy-and-data-retention-laws> [Accessed 21 November 2024]

84. See in the instance of EU law, Human Rights Law Centre, European Court of Human Rights holds UK's "Extremism Database" falls foul of privacy and data retention laws, 2019,; <https://www.hrlc.org.au/human-rights-case-summaries/2019/7/23/european-court-of-human-rights-holds-uks-extremism-database-falls-foul-of-privacy-and-data-retention-laws> [Accessed 15 December 2024]

85. See for example UK jurisdictions, whereby there is recognition and upholding of the right to privacy in relation to personal data online. Human Rights Law Centre, UK Surveillance Regime Violates Human Rights to Privacy and Free Speech, European Court of Human Rights holds, 2018, <https://www.hrlc.org.au/human-rights-case-summaries/2019/4/25/uk-surveillance-regime-violates-rights-to-privacy-and-free-speech> [Accessed 21 November 2024]

86. Art 12, Universal Declaration of Human Rights (UDHR), 1948; Art 17, International Covenant on Civil and Political Rights (ICCPR), 1966.

87. Committee on Civil and Political Rights (CCPR), CCPR General Comment Number 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home, & Correspondence, & Protection of Honour & Reputation (HRI/GEN/1/Rev.9), 1988, Paras. 3 & 4, <https://ccprcentre.org/ccpr-general-comments> [Accessed 21 November 2024].





Justice, the Judiciary and the Weaponization of Law

the right to movement by laws that are “necessary to protect national security, public order, public health or morals or the rights and freedoms of others,” but also requires that those laws “are consistent with the other rights”⁸⁹ in the ICCPR. Observers of human rights in Burma find that for instance, the requirement for home owners to register guests under the use of the Ward and Village Tract Administration Law, aids military surveillance, acting as a form of intimidation that discourages travel for political meetings,⁹⁰ whilst the Restriction of Movement and Probation of Habitual Offenders Act, similarly attempts to discourage political prisoners from re-engaging in political activities upon their release. As a result, it impairs the right to freedom of speech in Article 19 of the ICCPR and right to freedom of assembly in Article 21 of the ICCPR. As a consequence, these laws fall short of the international human rights standards contained in the UDHR and ICCPR and articulated by General Comment 27.

Restrictions on the right to freedom of movement must be proportionate to a legitimate aim of the executive branch. Thus, laws should not arbitrarily infringe upon the freedom of individuals to move and reside freely. In this sense, the use of law to monitor or limit movement is contrary to the practices of international democracies.⁹¹

4.2.4. People's Military Service Law

There are 195 member states of the UN, and 2 observer states worldwide. 85 countries among those UN members apply military service differently. Military service is imposed through justifications of national security, intended for the protection of other states from external intervention.

In Burma, the People’s Military Service Law was enacted in 2024, used to recover depleted military troops, as the resistance won scores of territory. The law allows for the enforced recruitment of civilians, often carried out through

88. Art 13, Universal Declaration of Human Rights (UDHR), 1948; Art 12, International Covenant on Civil and Political Rights (ICCPR), 1966.

89. Committee on Civil and Political Rights (CCPR), CCPR General Comment Number 27: Article 12 (Freedom of Movement) (CCPR/C/21/Rev.1/Add.9), 1999

90. Fortify Rights, *Midnight Intrusions: Ending Guest Registrations & Household Inspections in Myanmar*, 2015, Paras. 4 & 5, https://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf [Accessed 21 November 2024]

91. See for example, Article 45 of the Charter of Fundamental Rights of the European Union which confirms that citizens of the EU have the right to move and reside freely within member states.

to Repress Civilians in Burma

violent means. The law fails to clearly define “the terms required to participate in national security by every citizen” and how to recruit. Those who have since been conscripted through the enforcement of this law, have been recruited through force, with military personnel threatening arrest should they not comply. Laws on military service must be there to protect civilians from forced and violent recruitment. Currently, these laws are forcing conscripts to take up arms, engage in involuntary violence and occasionally even serve as human shields.

As reported by KHRG and Human Rights Watch, cruel, inhuman or degrading treatment to insist compliance with conscription is prohibited.⁹² Common Article 3(1)(c) of the four Geneva Conventions protects against ‘outrages upon personal dignity, in particular humiliating and degrading treatment’ in non-international armed conflicts.⁹³ This prohibition to inhuman or degrading treatment is reaffirmed in Article 7 of the ICCPR.⁹⁴

The way that conscripts are treated connects to these experiences of humiliation and degradation. Not only are conscripts violently taken and forced to take up arms, but they often also do not know where and for how long they are going away or do not get the chance to say goodbye to their family.⁹⁵

What’s more, the military junta is considered an illegal organisation by populations across the country and lacks any form of international legitimacy. This makes the enactment of the conscription law unlawful, as they do not hold the power to amend or enact any law, including the conscription law.⁹⁶

International human rights do not have an explicit prohibition on conscription, but the Human Rights Committee to the ICCPR has issued General Comment 22, which states that it is possible to construe a right of conscientious objection from ICCPR Article 18 by seeing conscription of a person as compelling activities that contradicts that person’s conscience, religion, or belief.⁹⁷ In such

92. Human Rights Watch, International Law and Human Rights Standards, 2001, https://www.hrw.org/reports/2001/drc3/Goma-08.htm#P331_47565 [Accessed 21 November 2024]; Karen Human Rights Group, Statement of condemnation of the enactment of conscription law by the military junta in Burma/Myanmar, 2024, <https://www.khrg.org/2024/03/statement-condemnation-enactment-conscription-law-military-junta-burmayanmar> [Accessed 21 November 2024]

93. International Committee of the Red Cross, Geneva Conventions of 12 August 1949: Common Article 3(1), 1949, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>; Karen Human Rights Group, Statement of condemnation of the enactment of conscription law by the military junta in Burma/Myanmar, 2024, <https://www.khrg.org/2024/03/statement-condemnation-enactment-conscription-law-military-junta-burmayanmar> [Accessed 21 November 2024]

94. Art 7, International Covenant on Civil and Political Rights (ICCPR), 1966

95. Human Rights Watch, International Law and Human Rights Standards, 2001, https://www.hrw.org/reports/2001/drc3/Goma-08.htm#P331_47565 [Accessed 21 November 2024]





Justice, the Judiciary and the Weaponization of Law

conditions, General Comment 22 views conscription as violating ICCPR Article 18 provisions of the right to freedom of conscience and right to religion or belief.⁹⁸ The Human Rights Committee situates the right to conscientious objection in cases where a conscripted person is expected to use lethal force, but also extends the right to conscientious objection to include cases where a person refuses conscription entirely, and refusal of conscription can be an expression of an individual's religion or belief.⁹⁹ The committee also states that prosecution, conviction, and imprisonment for refusals of conscription constitute violations of ICCPR Article 18, and that compliance with Article 18 requires either that there is no conscription of a conscientious objector or that there are alternatives to conscription which involve service consistent with human rights.¹⁰⁰ The Junta is not a government legitimately elected by the people, so using its laws to recruit soldiers is illegal recruitment and violates international human rights standards.

For comparative purposes, the Human Rights Committee's work references trends in national conscription laws. For example, countries such as the Netherlands, Peru, and the United States have suspended conscription, but still require young men to register their identities to the government to indicate their eligibility for potential conscription.¹⁰¹ A growing number of countries have adopted legislation or constitutional provisions that allow a right of conscientious objection. A number of countries, particularly within Europe, allow conscientious objectors to undertake alternative service in non-violent civilian roles outside their militaries.¹⁰² Hence, the People's Military Service Law, deviates from trends in other countries that are more responsive to conscientious objectors and allow national service outside the military.

96. Altsean Burma, Junta imposes enforced conscription in desperate move to offset losses, 2024, <https://progressivevoicemyanmar.org/wp-content/uploads/2024/02/2093-Conscription-briefer-26-Feb.pdf> [Accessed 21 November 2024]

97. Human Rights Committee, General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1/Add.4), 1993, <https://documents.un.org/doc/undoc/gen/g93/186/02/pdf/g9318602.pdf> [Accessed 21 November 2024]

98. Ibid.

99. See Human Rights Committee, Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea, (CCPR/C/88/D/1321-1322/2004), 2007, Para 8.3, <https://digitallibrary.un.org/record/591719?ln=en&v=pdf> [hereinafter cited as Yoon & Choi v. Korea, 2007] [Accessed 21 November 2024]

100. Office of the High Commissioner for Human Rights (OHCHR), Conscientious Objection to Military Service, 2012, https://www.ohchr.org/sites/default/files/Documents/Publications/ConscientiousObjection_en.pdf [hereinafter cited as OHCHR 2012]; Yoon & Choi v. Korea (2007) [Accessed 21 November 2024]

to Repress Civilians in Burma

4.2.5. Myanmar Citizenship Law

This Myanmar Citizenship Law was enacted as Union Law No.4 on 15 October 1982. With this 1982 law, the 1948 Union of Burma Citizen Act (Election) and 1948 Union Citizenship Act were repealed. By this law, there are 3 statuses of citizen:

1. Citizen – seen to have settled in Burma before 1823 or both parents are Burma nationals;
2. Associate citizen - provides partial citizenship under the Union Citizenship Act 1949 conforming to the stipulation and qualifications of Section 23 of the 1982 Law. This form of citizenship is the least common category and covers those who applied for citizenship pursuant to the 1948 Act prior to October 1982, but their application was still pending when the 1982 Law came into effect.
3. Naturalized citizen - a person who entered and resided in the state before 4 January 1948 and obtained a citizenship document later than 1982.

The law is divided into 2 categories of citizenship, whereby those with associate or naturalized citizenship gain less rights than those with full citizenship. According to Section 8 (a), the state can grant any person full citizenship, associate citizenship, or naturalized citizenship based on national interest. According to Section 8 (b), the State can revoke any citizenship other than those with full and permanent citizenship (citizens by birth) in Burma.

Sub-Sections (b, c, d) of Sections 35 and 58 prohibit the right to freedom of expression and association of associate and naturalized citizens. These two sections state that two kinds of citizens who violate these prohibitions will lose their citizenship status. Under just terms, someone is punished if they do a wrong act or omit the existing laws. These two sections place associate and naturalized citizens at risk of becoming stateless.

The 1982 law provides that applicants for citizenship under the Union Citizenship Act 1948 may determine who is an associate citizen. Those who settled in Burma before 4 January 1948 and whose children have not yet applied for citizenship shall be deemed associate citizens if they can prove their status with legal documents. But those who are accused of coming into Burma's territory after 1948 or who are not able to provide legal documents are still facing challenges in applying for citizenship. According to this law, if those

101. OHCHR, 2012.

102. Ibid. <https://www.firststepalliance.org/post/norway-prison-system-lessons> [Accessed: 15 December 2024]





Justice, the Judiciary and the Weaponization of Law

applicants and their next generations who have lived more than one generation in Burma cannot prove their status through official legal documents, they shall not be granted citizenship of Burma.

Moreover, according to Myanmar Citizenship Law, if one parent holding associate and naturalized citizenship has lost their citizenship, their children under 18 are also at risk of statelessness.

The Myanmar Citizenship Law poses human rights issues that arise from its discriminatory nature. The law's discrimination extends in two directions: 1) it creates a hierarchy of citizenship, with full citizens having more privileges and protections compared to associate or naturalized citizens, whose rights can be restricted or removed; and 2) limits full citizenship based on group identity of "national races." Such discrimination contradicts international human rights principles of non-discrimination, particularly the rights against non-discrimination contained in instruments such as the Universal Declaration of Human Rights (UDHR) Article 2, ICCPR Articles 2 and 3, ICESCR Articles 2 and 3, the Convention for the Elimination of Discrimination Against Women (CEDAW) Articles 11 and 14; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) Article 5, and Convention on the Rights of Persons with Disabilities (CRPD) Article 28. By imposing different sets of rights for different categories of peoples, the Myanmar Citizenship Law is contradicting international human rights expectations for equality and non-discrimination, and international human rights principles that all human beings are entitled to human rights.

In addition, the Myanmar Citizenship Law poses human rights problems because of its treatment of children. The act does not allow children the right to citizenship following the removal of the parent's citizenship, violates Articles 7 and 8 of the Convention on the Rights of the Child (CRC). Burma ratified the Convention on the Rights of the Child in 1991, and the state must amend the 1982 law in line with the standards of the CRC. State security and geopolitical issues should have no association with the rights of civilians who reside within the country. Moreover, not allowing children citizenship is also against Article 24(3) of the ICCPR.

The next three generations of associate and naturalized citizens must have citizenship status and full civil rights within Burma, ensuring that every individual, including ethnic minorities, are recognized and protected as citizens, with non-discrimination as a central tenet. While non-citizens may be inhibited from certain political avenues, including running for Parliament and voting, all should be subject to equal human rights.

5. The Basic Principles for Repeal, Amendment, and the Provision of New Laws

As stated in a publication by the Ministry of Legal Affairs, there are 508 Union Laws. One is the Penal Code which include 511 Section and the others are 507 union-level laws unrelated to the Penal Code.^{103A} These outdated laws, applied during the colonial period to control the population, continue to be applied in Burma today, in a similar vein, used as a tool to repress civilians. The laws were drafted long before the widespread adoption of democracy and human rights standards.

The law is applied for any considered crime in Burma, most frequently used by authorities to incarcerate political prisoners and innocent civilians, who are considered a threat. The successive militaries of Burma have enacted new laws, drafting special laws that suit them based on the environment at the time. Many laws consequently overlap, are undefined and result in the arbitrary arrest of innocent civilians. The laws must be reviewed and updated to reflect these principles in which international law sets. New laws must be enacted within the transitional period, in order to inform transitional justice mechanisms, reparation processes and so on, to ensure justice for those who have suffered human rights violations perpetrated at the hands of the junta, the authoritarian regime.

103A. All Burma laws are referenced from Myanmar Law Information System, unless stated otherwise. Available at: <https://www.mlis.gov.mm/> [Accessed: 2 June 2024].





Justice, the Judiciary and the Weaponization of Law

In Burma, sentences under the laws mentioned in this report, are most often disproportionately applied. In some cases, this includes a life sentence or death penalty. This reflects the junta's lack of recognition to the right of life and the right to live free from torture or cruel, inhuman or degrading treatment or punishment, protected under the UDHR. In comparison, countries that have increasingly recognized the role of restorative and rehabilitative forms of justice have shown to play a role in societal development whereby justice systems are used to resolve crimes or conflict through mediation and provides the required support to the criminal that allows for the effective reintegration of the criminal back into society.^{103B} These cases have shown significantly low cases in re-offending.

Burma is where people of varying ethnic and cultural backgrounds live together. There has already been a firm decision to adopt a federal democratic system to shape Burma's future. The process should also consider the division of power in the federal system and respect the different customs and cultures of its diverse identities. It should study how to divide the legislative process and jurisdiction order between the central state and federal units in order to ensure that every civilian has access to a just legal system to demand their rights.

103B. See for instance, the case of Norway: First Step Alliance, What We Can Learn From Norway's Prison System: Rehabilitation & Recidivism, 2022,

6. Federalism & Comparative Jurisdictions

The rule of law in Burma can be strengthened further through amelioration of the nation's governing systems and legal institutions. Fundamental and structural changes should be made to entrench the separation of powers between the executive, legislative and judicial branches in Burma, and to clarify the division of power between the central and local governments.

Burma's ethnic diversity and its historical development have contributed to a strong degree of legal pluralism within the nation.¹⁰⁴ A federal system allows this pluralism to be recognised and reinforced within legal and political structures. Local courts and parliaments are able to support the needs of community groups whilst federal laws and legislatures entrench fundamental rights and protections. Dispersing power in this manner reduces possible abuses of power and provides local communities with a greater degree of autonomy.

Comparative examples that share Burma's history as former colonies of Great Britain are Malaysia and India, whose ethnic and linguistic diversity are served through federal systems that provide for local differences. Malaysia's federal system vests significant power in its federal executive and legislative branches and maintains an, in theory, independent judiciary. It is sometimes described as a "consociational" state, bringing together a coalition of differing ethnic and religious groups.¹⁰⁵ Legal pluralism is especially apparent in Malaysia's model of federalism. The British common law tradition operates alongside Sharia law and indigenous customary law. The Indian Constitution similarly stipulates a separation of power between branches of government, and between federal and state governments. The Central Government is given authority over the financial resources and greater emergency powers, and the Supreme Court is

104. Helene Maria Kyed, Legal Pluralism in Myanmar, 2024, <https://oxfordre.com/asianhistory/display/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-830> [Accessed 21 November 2024]

105. Henry Jarrett, Consociationalism and Identity in Ethnically Divided Societies: Northern Ireland and Malaysia, 2017, https://onlinelibrary.wiley.com/doi/full/10.1111/sena.12209?saml_referrer [Accessed 21 November 2024]





Justice, the Judiciary and the Weaponization of Law

vested with the power to determine disputes between the Central and state governments. Both India and Malaysia have diverse populations within which a federal system of government operates to allow local and state administrative bodies to cater towards regional communities, whilst still providing an overarching central framework.

Additional comparison is Australia. Australia's federalism system recognizes three levels of power: federal (national), state and territory, and local. Federal power is limited to the powers that are specified in the Australian Constitution, which means that any subject not included in the constitution is reserved to state and territory levels. The local level powers are prescribed by each state and territory parliaments.¹⁰⁶ Because Australia uses a Westminster model of parliamentary democracy, and so it does not use the term "government" to describe the parliament or state. Instead, "government" refers to the Prime Minister and attendant Ministers, where a government is formed by the House of Representatives (or lower house) of Parliament.¹⁰⁷ Separation-of-powers is defined in the Australian Constitution, and divides the government as holding executive power, the Parliament as holding legislative power, and the judicial as holding the courts. The Australian Constitution specifies the subjects for which the federal parliament can enact laws, and there are some subjects for which the federal and state (or territory) parliaments have concurrent power to enact laws. In the event of a conflict between federal law versus state or territory law, the federal law will over-ride the inconsistent state or territory law.¹⁰⁸

In Burma, obtaining control of local administration would allow the military regime greater access to surveillance and oppression of communities. But since the 2021 coup, as resistance groups take over parts of the country, systems of self-governance have emerged and the opportunity to remove the military and establish a federal democracy where states can establish their own rules, is becoming increasingly likely.¹⁰⁹ In order for this to happen, areas of resistance control must establish their own local laws, that are in line with human rights

106. Parliament of New South Wales, Federalism in Action: The Three Levels of Government, 2024, <https://education.parliament.nsw.gov.au/federalism-in-action-the-three-levels-of-government/> [Accessed 21 November 2024]

107. Ibid.

108. Parliamentary Education Office, Three Levels of Government: Governing Australia, 2024, <https://peo.gov.au/understand-our-parliament/how-parliament-works/three-levels-of-government/three-levels-of-government-governing-australia> [Accessed 21 November 2024]

109. United States Institute of Peace, Amid the Fight for Myanmar, Federalism Rises from the Grass Roots, 2023, <https://www.usip.org/publications/2023/05/amid-fight-myanmar-federalism-rises-grass-roots> [Accessed 21 November 2024]

to Repress Civilians in Burma

standards. Actions of such resistance groups are necessary to combat the undemocratic processes and conduct of the junta at a fundamental community level. Yet the organizations have no just constitution to base the systems of government from. As resistance forces gain increasing control of the country, adopting a conception of federalism akin to that in similar Asian jurisdictions where there are diverse populations and a need for legal pluralism, can assist in uniting local groups and upholding the rule of law at a grassroots level.

In addition, strengthening the role of independent watchdogs and organisations may also assist in ensuring Burma's laws comply with international human rights standards. For example, the International Commission of Jurists recommended that the 2014 Myanmar National Human Rights Commission Law be amended to ensure the Commission's independence and to strengthen its mandate to investigate human rights abuses in Burma.¹¹⁰

110. International Commission of Jurists, Four Immediate reforms to strengthen the Myanmar National Human Rights Commission, 2019, <https://www.icj.org/four-immediate-reforms-to-strengthen-the-myanmar-national-human-rights-commission/> [Accessed 21 November 2024]





7. The Relationship between Justice and Law

Legislators should consider the practical application of their provisions when enacting laws. Justice and law are intrinsically linked, akin to two sides of a coin, and cannot be separated. A law devoid of justice is as ineffective as a pen without ink.

While the essence of justice remains constant, the specific provisions of laws will vary based on a society's political system, religious concerns, ideologies, customs, and neighboring influences. Moreover, the principle of human equality and respect for rights, as outlined in the Universal Declaration of Human Rights, should serve as a foundational norm in the drafting of laws.

Legitimate governments, elected by the people, have to consider justice and respect for diverse religious beliefs, identities, cultures, regional relevance, and vulnerable groups when enacting, repealing, or amending laws. These considerations should be integral to the legislative process, ensuring that human rights are respected, and all citizens have equal rights and opportunities.

It is crucial that laws lacking relevance or containing provisions contrary to these principles ought to be repealed or amended. Moreover, the judicial system must operate impartially and free from corruption. Even with perfectly just and equitable laws, a biased judicial system renders justice unattainable, and it will be an incomplete construct. For a country to uphold human rights, reforms must extend beyond legislative enactment to ensure just legal enforcement. During transitional periods, institutional reforms are essential to ensure that all issues these institutions handle adhere to human rights and democratic standards.

to Repress Civilians in Burma

In Burma, many existing laws do not align with democratic and human rights norms; instead, they serve as oppressive tools for ruling authorities. These laws are grounded in a unitary system, making them incompatible with the federal system that Burma aspires to establish. It is time to initiate dialogue among all ethnic groups to discuss equality and protect and promote citizens' rights to build a sustainable federal future.

Relevant representative organizations and leaders should proactively consider which laws need amendment or repeal and re-enactment. Preparing and drafting these bills in advance will facilitate their swift implementation during the transition period, enabling justice as quickly as possible.

Conclusion

As of now, Burma does not have a constitution that everyone accepts. We understand that most Spring Revolutionary Forces and Ethnic Resistance Organizations that are fighting against the junta have to use the existing legal frameworks in their areas of control. These legal frameworks should be noted as inherently repressive, as well as amended, enacted and weaponized by the junta against the people.

Moving forward, we hope this report will be helpful for revolutionary forces to review the laws currently in used in their areas of control.





Justice, the Judiciary and the Weaponization of Law

Annex

Annex 1: History of the Penal Code

| No | Amended year | Amendment facts |
|----|--------------|--|
| 1 | 1937 | Terminology revised |
| 2 | 1940 | Terminology revised |
| 3 | 1948 | Terminology revised |
| 4 | 1957 | Repealed Section 171 (j) and CRPC annex table 2 of “to either Chamber of Parliament.” |
| 5 | 1960 | Revised sections related to the offense affecting life and the human body (sections -299, 300, 301, 302-1,304.) |
| 6 | 1963 | Raised the sentence from 6 months to 3 years imprisonment in Sections 285 and 286. Added Sub-Section 312 (offences relating intentional contraception to others and abortion) |
| 7 | 7.1.2016 | Terminology revised: Changed life imprisonment to 20 years, made pecuniary changes, and repealed some sections. |
| 8 | 25.3.2019 | The definition of life imprisonment changed to living in prison until death. Substituted Section 376. |
| 9 | 14.1.2021 | Amendment of the Offense against the state provided in Chapter 6 of the Penal Code and Section 505 |
| 10 | 24.8.2021 | Sections 311-a and b were added to the Penal Code. |

Annex 2 – Post-Coup Penal Code Amendments

| No | Sections | Cause of amendment | Remark |
|----|----------|--|----------|
| 1 | 121 | Attempts or prepares to alter unconstitutional means or any other means | Addition |
| 2 | 124-a | Brings or attempts to bring into hatred or contempt, or excites disaffection towards the Government or Defense service or defense services personnel | Addition |
| 3 | 124-c | Whoever intends to or causes sabotage or to hinder the success of performance of the Defense Services or law enforcement organizations who are engaged in preserving the stability of the state, shall be punished with imprisonment which may extend to ten years with fine, or a fine. | Addition |

to Repress Civilians in Burma

| No | Sections | Cause of amendment | Remark |
|----|----------|---|---------------|
| 4 | 124-d | Whoever causes or hinders the Defense Services personnel or Government employees towards the Government, disrupts or hinders by any means, those who are carrying out their duties, such a person shall be punished with imprisonment which may extend to seven years, or with fine, or with both. | Addition |
| 5 | 505(a) | With intent to cause, or which is likely to cause, members of the Defense Services or Government employee or deprecate, affect, hinder, disturb, damage the motivation, discipline, health, conduct upon the Government or the Defense Services and the duty of Government employees or members of Defense Services to bring into hatred, disobedience, disloyalty. | Addition |
| 6 | 505A | a- causes or intends to cause fear to a group of citizens or to the public b- causes or intends to spread false news, knowing or believing that it is untrue; c- causes or intends to commit or to agitate directly or indirectly criminal offenses against a Government employee, any kind of Government employees or Government employees; such as a person shall be punished with imprisonment, which may extend to three years, or with a fine, or with both. | Addition |
| 7 | 311A | Introduced a provision relating with genocide, stating "Whoever with intent to destroy, in whole or in part" a national, ethnic, racial or religious group: (a) Kills members of the group; or (b) Causes grievous hurt or serious mental harm to members of the group; or (c) Deliberately inflicts on the group conditions of life calculated to bring its physical destruction in whole or in part; or (d) Imposes measures, not in accordance with any existing laws, intended to prevent births within the group; or (e) Forcibly transfers children of the group to another group, is said to have committed the offence of genocide. | New provision |
| 8 | 311B | Introduced a penalty for genocide, stating (1) Whoever commits the offence of genocide under subsection (a) of section 311A, shall be punished with death and shall also be liable to fine. (2) Whoever commits the offence of genocide under subsection (b), (c), (d), or (e) of section 311A, shall be punished with imprisonment for life, and shall also be liable to fine." | New provision |





Briefing in Relation to the Military Coup

22 January 2025

တရားဥပဒေကို လက်နက်သဖွယ်
အသုံးပြုခြင်း

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