



Rule of Law Promotion in Times of Covid-19

No. 4:

Covid-19 in Myanmar: Effects of the Pandemic on the Rule of Law

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I. Introduction

The current paper series seeks to illustrate the effects of the measures taken against the spread of Covid-19 on the rule of law.

While the pandemic has already overloaded health systems of wealthier countries around the globe, fear of the effects of the crisis in the Global South has increased. Responding to this threat, governments have taken drastic measures, which do not always comply with the rule of law. In many countries the state of emergency has been imposed, fundamental rights have been restricted, and parliaments and other democratic control mechanisms have been suspended. In some countries, the line between civilian and military means is blurred when armed forces are used to execute orders aimed at preventing the spreading of the disease. There are also cases where political rights are curtailed, and the freedom of the media is restricted.

This paper examines the measures taken against the pandemic in Myanmar, and their effects on the constitutional order, the justice and security sector and state-citizen relations. It is based on research carried out by the RSF Hub team and an expert talk held on 16 June 2020.

II. Background information: Myanmar

Myanmar adopted a military-drafted Constitution in a 2008 referendum, held flawed elections in 2010 boycotted by the National League for Democracy (NLD), and free elections in 2015 won by NLD. Yet civilian rule is still limited legally and in practice, and the Tatmadaw – the Myanmar military – continues to maintain significant influence within the state institutions. Myanmar is scheduled to hold its next election in November 2020. After initially having denied the severity of the pandemic and the risk of infections in the country, Myanmar's government confirmed the country's first Covid-19 case on 23 March 2020. As of 3 July, there have been 304 confirmed cases and 6 deaths.

The country has one of the weakest health care systems in the Association of Southeast Asian Nations (ASEAN) region. According to the 2020 Rule of Law Index of the World Justice Project, Myanmar performs second to last within the East Asia & Pacific region, with significant deficits in fundamental rights, open government and criminal justice. On a global scale, the country ranks in the lower middle range in categories such as the rule of law and governance. This paper analyses whether these aspects worsened due to the Covid-19 pandemic.

III. The impact of the pandemic on the constitutional order

In contrast to other Southeast Asian states, neither a nationwide lockdown nor an emergency law has been officially imposed in Myanmar. Curfews were introduced in several regions and townships between 10pm and 4am late April. The nationwide curfew was reduced to 12am to 4am on 15 May 2020. State and local authorities established several community quarantines and a ban on gatherings of over five persons, which was expanded to a nationwide ban on 17 April. Moreover, a mandatory 28-day quarantine for foreign arrivals was announced, thereby especially affecting migrant workers returning from other Southeast Asian countries such as Thailand. The main legal bases for the curfew orders and the restrictions of rights during the pandemic are Section 14 of the Prevention and Control of Communicable Diseases Law and Section 144 of the Criminal Procedure Code. The latter provision had originally been constructed as a temporary judicial power, but is now used by the executive and the security forces.

One reason for the government's slow response to the spread of the pandemic may have been its belief or hope that the disease would not become a major threat to the population. Possibly they also wanted to avoid the President declaring the state of emergency, which according to the Chapter XI of the Constitution has to take one year, during which the legislative, executive and judicial powers are transferred to the Commander-in-Chief of the Defence Services.

After the WHO declared the Covid-19 disease a pandemic on 11 March 2020, Myanmar's Presidential Office announced the establishment of two different committees for the prevention of the spread of the virus. The first, called the National Central Committee for Prevention, Control, and Treatment of the 2019 Coronavirus, is led by State Counsellor Aung San Suu Kyi. The second, created shortly afterwards and called the Coronavirus Disease 2019 Containment and Emergency Responsive Committee, is a civil-military task force that includes several key military generals among its ten members. Their appointment and the increased role of the military during the pandemic more generally have been criticised by the UN Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, who warned about the risk of abuse of power by the military. The duality of

one military dominated and one civilian task force can also constitute an opportunity for the military to present itself as a particularly active or effective rescuer.

While the civilian-led government, in its delicate power sharing with the military, seems to manage the crisis response, Myanmar's parliament hardly plays an active role. On 26 March 2020, the parliament's last term ended and its following term was reduced from six to two weeks, focussing on discussions of budgets and health-related issues. Its reduced term will lead to another decline in parliamentary work, which, however, did not always exercise effective control over the government prior to the outbreak of the pandemic. Checks and balances had already been weak among others because the majority of the NLD, which is led by a centralized decision-making structure, does not leave much room for the parliament to play its role. Civil society organisations report that it has become difficult during the past months to advocate for fundamental rights in parliament since meetings with MPs have been restricted for the sake of public health. Yet their voice has already diminished throughout the administration, even before Covid-19.

IV. Effects on the justice and security sectors

Diverse measures in response to Covid-19 have been introduced and enforced in the different states and regions across the country. Due to their varying implementation and the uncertainty among judges about possible exceptions, the legal situation is quite unclear. This translated in mistrust in the justice institutions and consequently intensified the cautiousness of the people.

Moreover, the capacity of the judiciary has been limited during the pandemic, focussing on criminal and high profile cases. However, this includes cases of people, such as journalists and factory workers, prosecuted for COVID-19-related infractions while attempting to exercise their duly-limited rights to freedom of expression and assembly. As one expert put it, one can only speak of "rule by law" but not of "rule of law" in Myanmar.

Myanmar's 46 prisons and 50 labour camps are ill-equipped for the pandemic with only 30 doctors and 80 nurses. At the end of April, President Win Myint granted amnesty to almost a quarter of the country's prison population to mark the traditional New Year. The release of 25,000 prisoners (albeit including very few political prisoners) was one of the biggest mass pardons in recent years and was positively commented by international organisations, as Myanmar underlies critical weaknesses in its correction system that lead to shortcomings in the protection of basic human rights standards. Since there is no data on the released prisoners, it was not clear if the mass pardon was also an effort to reduce the risk of Covid-19 spreading among them.

Meanwhile the justice organs are reacting in a robust manner on violations of social distancing rules or curfews. At least 500 persons have been imprisoned for reasons related to the pandemic since March 2020. Most of them were convicted for violating Article 188 of the Criminal Code, "disobedience to an order duly promulgated by a public servant", the National Disaster Management Law, or the Prevention and Control of Communicable Diseases Law, under which people who intentionally spread diseases face up to three years in prison. Although the measures taken to limit public health risks are necessary, sanctioning violations with prison sentences raises the number of inmates and by this further increases infection risks in the overcrowded and unhygienic facilities. This approach to countering Covid-19 by the judiciary and security authorities is counterproductive and undermines human rights.

V. State-citizen relations

Since the outbreak of the pandemic, there have been several smaller protests especially by factory workers against the measures taken by the government. Nevertheless, the right to peaceful assembly and the freedom of expression have been challenged by government actions. More than 200 websites deemed to spread “fake news” related to Covid-19 and media stations received legal threats by government officials and were blocked, following Article 28 of the Natural Disaster Management Law. Moreover, street artists have been prosecuted for allegedly insulting religion with works related to Covid-19. Besides, the impact of civil society groups shrank, which negatively influenced their advocacy efforts for fundamental rights.

Lastly, the impact of the pandemic on state-citizen relations will also depend on the government’s further handling of the socio-economic challenges posed by the pandemic. For example, the government of Myanmar has been quite forthcoming to alleviate the situation of the poorest in the country with targeted assistance.

VI. Effects on the conflict situation and on IDPs

It seems that the main goal of the military continues to be getting the areas controlled by ethnic armed groups under their authority, and Covid-19 seems to constitute but a disrupting factor in their view. At the beginning of May, the military announced a nationwide ceasefire until 31 August so that Covid-19 related containment, prevention, and treatment activities could be carried out. The ceasefire applies to “all areas except where terrorist groups declared by the government take positions”. This refers directly to the areas occupied by the Arakan Army in Rakhine State, which the government had declared a terrorist organisation on 23 March 2020. Rakhine State and parts of Southern Chin State are thus excluded from the ceasefire, and it is indeed the area where most of the fighting is currently taking place. Some clashes are also reported in Shan, Kachin and Kayin States.

Nevertheless, the pandemic has opened room for talks. The constructive collaboration between the government and some ethnic armed groups in the distribution of medical support might also have some trust-building effect. However, in other areas, like Karen State, the Tatmadaw has taken action against Karen National Union (KNU) efforts on Covid-19, further worsening relations. At the same time, contradictory messages towards some ethnic armed organizations reveal lack of coordination between the government and the military.

The recent efforts to revive the 21st Century Panglong Peace Conference as a chance also for negotiating a more federal constitutional system have slowed. However, preparations and in some cases negotiations between the government and the ethnic armed organisations are continuing online and a new date for the conference is being negotiated. Furthermore, the number of conference participants will be reduced from 700 to 200 persons. It may be expected that peace negotiations will extend well beyond the 2020 elections.

The Covid-19 pandemic also constitutes a serious threat to the estimated 350,000 internally displaced persons (IDPs) in camps across Myanmar. Those camps are potential “tinder boxes”, due to the lack of testing, lack of access to health services in the settlements, and lack of reporting to health authorities by IDPs, fearing they might be separated from their families and put under restrictions of movement. Besides, throughout much of Rakhine State, and parts of Kachin and Northern Shan State, the military is

blocking access of international organisations to areas controlled by ethnic armed groups, which leads to a shortage of humanitarian aid and health services for IDPs.

VII. Possible long-term effects on the rule of law in Myanmar

As to the long-term effects of the pandemic, the expert opinions vary between more positive and pessimistic views. While some consider the country already to be in a post-Covid-19 situation, others raised concerns that the worst was yet to come. The insufficient numbers of tests carried out by the government lead to a lack of information about the actual situation.

Furthermore, negative effects on the planned parliamentary election in November are to be expected. A regular election campaign is difficult to imagine in the current situation.

Certain government measures such as the afore-described use of Section 144 of the Criminal Procedure Code are rights abusing and require stronger interventions to ensure authorities respect rights as part of their public health measures. Some experts said this might indicate a shifting back to more authoritarian rule.

Finally, local civil society organisations cooperating with international partners meet growing distrust. They are faced with hate speech and “othering”, portraying them as the ones responsible for the spread of the virus. This change of atmosphere might have a long-term impact on international cooperation also in the area of rule of law promotion.

VIII. Contributors

This paper is based on the expert talk “Covid-19 in Myanmar: Effects of the Pandemic on the Rule of Law”, which was held on 16 June 2020. On behalf of RSF Hub, Tilmann J. Röder (moderation), Johannes Socher and Michelle Benzing participated. The RSF Hub is grateful to all scholars and practitioners who contributed to this paper, among others:

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About RSF Hub

RSF Hub is a project-based think tank funded by the German Federal Foreign Office fostering knowledge transfer between politics, academia and field practice in the area of rule of law promotion and related topics such as transitional justice. RSF Hub organises, in collaboration with various partners, expert talks and round tables. Team members teach at universities and train ministry staff, speak at events, contribute to blogs and publish academically. For more information on the Hub’s activities see <http://www.fu-berlin.de/rsf-hub>.

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