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Developing an Understanding of COVID-19 Pandemic Health Restrictions, Laws and Penalties in Myanmar.

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ABSTRACT

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In 2021, Myanmar faced a profound social, political, and human rights crisis, resulting in armed conflict, which continues, at the time of writing. COVID-19, a global pandemic, added fuel to the fire. Arising from this, our study gives an overview of the state of justice among offenders against COVID-19 pandemic health restrictions in Myanmar. First, we use a literature review to identify relevant laws, regulations and guidelines implemented during Myanmar's COVID-19 response. We then explore a lack of equity in penalties and use a qualitative phenomenological method that yields insights from discussions conducted with four informants — judge, prosecutor, offender and legal researcher — that were interpreted and translated over September 2021 to March 2022. These two approaches demonstrate that the government issued overlapping legal measures regarding COVID-19. We found penalties for those who violate such laws were different, even though cases were similar. Therefore, we form recommendations that suggest the government must consider advocating better civic awareness and education, in particular by using technology more effectively with respect to sharing COVID-19 information, supporting personal citizen rights to access timely information, and embracing international human rights law.

Introduction

COVID-19 was an unexpected and unforeseen global pandemic; within developing nations, where resources are limited and political responses often authoritarian, we find new challenges for human rights and legal standards. These have been developed ‘on the go’ to limit contagion. Sometimes, however, they are interwoven with political motivations. Set against a background of socio-political transformation, the military-backed government of Myanmar issued many pandemic-related legal standards and instructions across 2021 to prevent the spread of this infection, after taking power by staging a political takeover that removed a democratically elected government.

Hence, we find a tension that necessitates original research, because this emergent landscape is legally unprecedented. In Myanmar, the government enforces COVID-19 measures strictly, not necessarily respecting human rights, or championing their democratic cause. In this article, we contend that the new ruling government in Myanmar should consider the rule of law. It is clear to us, as observers on the ground, that there are inconsistencies in the basic principles of legality, citizen awareness and access to information during the pandemic crisis. Meanwhile, international intervention has done little to ensure, or educate about, the legal rights of the individual during this violent period in Myanmar. To explore this dynamic and turbulent setting, and develop guidance to inform dialogue on human rights in Myanmar during COVID-19, our study pursued three objectives:

1. To develop an understanding of COVID-19 violations and violators and establish their grounds for equal protection under the rule of law.
2. To consider if consistent punishment is deployed for offenders of COVID-19 rules in Myanmar.
3. To describe the legal landscape during the COVID-19 pandemic in Myanmar.

Research Methodology

This study used a design developed via a literature review and qualitatively informed research methods. It is co-constructed through dialogue with key stakeholders. The study was enacted under guidance at Mahidol University, Thailand, which led a yearlong project supporting independent early-career researchers in Myanmar and assigned a locally situated mentor to support the study; responsibility for interpretation, translation and transcription of interviews, data errors, representation and validity is conveyed under the translation work

done by the first and second authors. A research methodology was adopted to protect researchers and their respondents from harm. This began by purposefully leading a small-scale study, to reduce potential challenges of observation during a period of time when academic research was being repressed within research settings (Tracy, 2013; Creswell & Creswell, 2018).

Data that in any way identified the respondents was not stored, and the views presented were weighed by the lead author for re-identification vulnerabilities. After seeking voluntary consent and explaining the purpose of the study, a sample of four key stakeholders agreed to share views related to the objectives; this dialogue was conducted in Burmese, and data generated by both the first and second authors, in a discussion that lasted for one hour. It included a range of unstructured questions conveyed through phone conversation, with social media discussion used, as needed, in follow up, to clarify answers, with narrative themes in the interviews organized around a set of research questions and a literature review. Responses were likewise noted down as field notes influenced by a phenomenological tradition, rather than a formally codified transcript; sense-making was a feature of the ethnographic reflection, led by the first and second authors, to create ‘a snapshot that other researchers can build upon’ because the general framing of ethnographic features and responses included author emphasis in this qualitative study (Saldana, 2013; Steffen, 2014). This helped the research team reflect and thence apply their own context to the very unique issues faced by Myanmar citizens, and steer the dialogue in interviews more flexibly towards a holistic and fluid discussion (Saldana, 2013; Steffen, 2014).

We acknowledge this diverges from a traditionally codified, triangulated research study, yet a ‘sense-making’ approach has precedent in human rights investigations. Qualitative research, after all, within the disciplinary area of human rights, seeks in-depth insight to make sense of a natural habitus and subsequent sociological experience, intended to provide specific ethnographic context, alongside elaboration, rather than data generalization (Englander, 2018). The dynamic nature of research in conflict settings often requires flexibility; a holistic approach therefore enabled us to focus on stories conveyed, with the researcher selecting to represent what they felt mattered (Englander, 2018). Ethnographic reflection, then, is an appropriate method for this study, as it focuses on such ‘researcher-led sense-making’ (Englander, 2018). Applied to our context, ethnography makes sense as a methodological frame because, as Costa et al. (2022, p.428) argue, ethnographic researchers seek to gain a

“nuanced understanding of the phenomenon in question... by positioning themselves as best as possible within the communities they are studying.”

Hence, this article is an ethnographic reflection of the conversational space in Myanmar across 2021-2022, using COVID-19 as a central motif to explore violations of human rights during an armed conflict. It was also necessary to approach the study in this way, because of the turbulent and dangerous situation on the ground in Southeast Asia; students, journalists, medics and academics were met with authoritarian reprisals during COVID-19 in Thailand, Cambodia and Myanmar (Day & Skulsuthavong, 2022). The first author assumed responsibility for ensuring that the representation, translation and validity of those engaged in qualitative discussion was as truthful as possible to their original dialogue. To this end, in speaking out, respondents may indirectly put themselves at risk; so, mindful of striking balances between research scale and safety, we formed three key research questions that would drive analysis of interviews:

- RQ1: What laws are used to prosecute offenders against COVID-19 restrictions in Myanmar?
- RQ2: Why should the Myanmar government consistently punish such offenders?
- RQ3: What recommendations can be made for the future?

The research process was conducted from September 2021 to March 2022. Essential to success was guidance from via the Human Rights Education and Research Program (HRER) implemented under the Embassy of Denmark and facilitated by the IHRP. Operating the research involved meetings, ethics dialogues, and presentation of findings to a panel of IHRP staff. The participants involved in this study were reviewed under the IHRP and HRER, a process engaged in by the lead author. Verbal consent was sourced from the participants, following national legislation and IHRP requirements. All participants were citizens of Myanmar. First an experienced person, a judge, offered us insight as a public official appointed to decide cases in a court of law related to COVID-19 in Myanmar. Second, a court prosecutor helped us to develop an understanding of the information relating to the prosecution process. Third, an offender discussed being punished because for violating a COVID-19 curfew order. Fourth, a legal researcher reflected on differences in the laws being applied to prosecute violators of COVID-19 restrictions. As would be expected, contact and dialogue data was stored securely by the lead author, who took responsibility for the management of the study.

Literature Review: An Overview of COVID-19 and the Legal Framework of Myanmar

COVID-19, which we assert in this article can be used as a smokescreen to advance political goals, has spread globally (United Nations Office for the Coordination of Humanitarian Affairs [OCHA], 2020; PROTECT, 2020). The World Health Organization (WHO) identified it as a global pandemic in 2020. By 2021, there had been at least 5,000,000 deaths (World Health Organization [WHO], 2021). Myanmar has an under-developed health care system with limited resources. Furthermore, it has a porous border where workers cross into nearby countries, which led to a rapidly increasing and unpredictable number of infections, with a high number of peak cases linked, in some way, to illegal immigrants (Oo et al., 2020; PROTECT, 2020).

Under these circumstances, armed political conflict that began in Myanmar during this same period prevented effective hospital responses and limited external medical aid, which ensured that the pandemic overwhelmed the health care system, or what was left of it, by late 2021. In Myanmar, Notification No. 19/2020 in February 2020, which was issued by the Ministry of Health and Sports (MoHS), declared COVID-19 a notifiable disease and by November 2021, Myanmar had at least 515,000 cases and nearly 19,000 deaths, though the true figure is likely far higher given limited hospital support, inconsistent and often non-digital local health records amongst a large, rurally dispersed population (MoHS, 2021). The situation was so dire, that during the rise of the pandemic, Myanmar's limited healthcare infrastructure ran short of beds, equipment and even surgical supplies, like masks and sterile gloves (World Bank Group, 2020).

Given these public health vulnerabilities and obvious challenges, prevention became a core concept for government policy and its subsequent strategy; the Myanmar authorities restricted movement, closed educational institutes and acted to suspend global travel to limit COVID-19 cases (OCHA, 2020). Although the authorities issued various directives, problems ensued, largely due to the turbulent civil unrest. Violations occurred throughout the country, including public defiance, gatherings and curfew breaking, which led to imprisonment, alongside arrests for political protest- thereby COVID-19 regulations as a smokescreen (Aung, 2020a; 2020b). The Assistance Association for Political Prisoners (AAPP), a non-profit political prisoner advocacy group created in 2000, has been monitoring and documenting cases in Myanmar, and their relationship to the pandemic. Their monthly COVID-19 Newsletter often highlights a need for transparency and consistency in prosecutions. According to AAPP documentation, across nine months in 2020, approximately 6,665 people were punished

during the pandemic, with some cases related to political resistance, as well as violation of COVID-19 legislation (Assistance Association for Political Prisoners [AAPP], 2020a; 2020b).

Public statistics about legal prosecutions related to COVID-19 are inconsistent, partly due to government Internet restrictions on the gathering of information during this period. According to Aung (2020a; 2020b), nearly 9,000 people have been punished under the Prevention and Control of Communicable Diseases Law. According to Thompson et al. (2020), the Unlawful Association Act, which was introduced in 1908, has formed part of the legal framework for enabling a COVID-19 legal response for those who challenge the pandemic response and spread misinformation related to it. Some progressive revisions have been attempted, such as when the MoHS sought to redraft the Prevention and Control of Communicable Diseases Law in May 2020, with a more up to date rationale, but laws are reportedly enforced inconsistently within the context of the pandemic (PROTECT, 2020).

Initially promising, the amendment was tentatively drafted in line with the health advice of global advocacy organizations, during a period where Myanmar was becoming more globally integrated with current human rights agendas (Aung, 2020a; 2020b). It was mentioned in state-owned daily newspapers, such as the New Light of Myanmar, from February 2020 onwards. Yet, the political change when the military seized power in February 2021 impacted the new legislature drafting process. The Myanmar government did not enact an emergency law immediately during the first wave of the COVID-19 pandemic, probably because of shifting political tensions at this time (RSF Hub, 2020). Instead, it initially ordered a curfew in some regions and townships; the President's Office of Myanmar banned public gatherings of any nature. Moreover, in the same period, the MoHS issued policies and quarantine measures to prevent the spread of COVID-19, which demonstrated a chaotic and unevenly distributed bureaucracy that added to the complexity of reducing the spread of the pandemic (Thompson et al., 2020; PROTECT, 2020).

Put simply, they struggled to keep track of what other relevant groups or agencies were doing. For example, according to a MoHS 'Health Sector Contingency Plan', state/regional administrations were ordered to develop responses to help support citizen welfare (Thompson et al., 2020). To respond to the spread of COVID-19, the government also set up diverse measures around the country, at local village and rural levels. Moreover, these 'micro-applied laws' to take action against violations of COVID-19 restrictions varied in each province and district, so legal proceedings regarding violations of many overlapping laws quickly

became very unclear (AAPP, 2020a; 2020b). Among the existing laws, AAPP (2020a; 2020b) reported the most often used was the

Prevention and Control of Communicable Diseases Law, the Natural Disaster Management Law (2014), the Prevention and Control of Communicable Diseases Law (1995) and the Amendment of the Prevention and Control of Communicable Diseases Law (2011).

Furthermore, cases concerning failure to comply with quarantine measures have been, bizarrely, and according to AAPP (2020a; 2020b), prosecuted under illegal drugs frameworks, property laws and digital communication regulations. Therefore, offenders are not being punished equally because of the different penalties under the different laws. For example, as AAPP (2020a; 2020b) reported, sentences for similar prosecutions under different laws during the pandemic can range from six months to three years. Thus, punishment may be inconsistent because these different laws are applied opportunistically, in order to make a point, curry favor or simply exert control, depending on civic attitudes in a particular area. The result is that not everyone in Myanmar was equal before the law and with respect to the pandemic. In other words, to paraphrase George Orwell, everyone is equal, but some are more equal than others. Yet, under Article 7 of the Universal Declaration of Human Rights (UDHR), to which Myanmar has been a party since 1948, all are equal before the law (United Nations General Assembly, 1948).

Article 26 and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) mentions a similar ideology (United Nations Office of the High Commissioner for Human Rights [UN Human Rights], 1976). Section 21 (a) of the Constitution of the Republic of the Union of Myanmar also asserts all people in Myanmar shall enjoy the right to equality and fair justice under law (The Republic of the Union of Myanmar, 2008). Of course, the problem is which law applies when, to whom and for what action under COVID-19? Theoretically, a person could be charged multiple times, under different laws, despite the right to legal equality that every citizen has under the Myanmar Constitution. Meanwhile, economic relief efforts during the pandemic aimed to reduce the need for citizens to break the law out of desperation to survive, due to employment disruptions (United Nations Sustainable Development Group [UNSDG], 2020). Certainly, however, this was not directed sufficiently towards public health, nor was it enough to support a weak healthcare system, which was reported across international media in 2021 as struggling, though first-hand reports were often patchy and often overshadowed by human rights crises, violations and punitive outcomes

(Wittekind, 2021; PROTECT, 2020).

Officially, as of August 2020, Myanmar had recorded few deaths, and advocacy groups identified the then democratic civilian politicians leading Myanmar as effectively engaged in developing tentative responses to the virus (Deshpande et al., 2020). There were a total of around 3,000 reported pandemic deaths before the subsequent military coup in 2021 (Kurlantzick, 2021). However, after the change of power, the MoHS is now led by the State Administration Council (SAC) junta that took power, and during their subsequent post-coup administration, many more COVID-19 cases unfolded, though this may in part be due to the worsening of the pandemic globally (Theresa, 2021). Before the pandemic, Myanmar's economy was improving and reductions in poverty were noted alongside improvements in global economic growth, as the country opened up to the world. When, the military assumed power in Myanmar in February 2021, amidst the pandemic, Myanmar was brought to what was termed by the United Nations and World Bank as akin to the 'edge of a failed state' (World Bank, 2021; PROTECT, 2020; United Nations Development Programme [UNDP], 2021).

Social repression during COVID-19 in Myanmar was seen online, on the streets and in universities, as well as in neighboring Thailand, which faced similar domestic conflict in 2021 during student-driven political protests (Day & Skulsuthavong, 2021a; 2021b; Day et al., 2021). On 13 March 2020, the Myanmar President's Office imposed a ban on public events and mass gatherings through Announcement No.1/2020 (President's Office, 2020). The MoHS also stated that citizens must not gather together in shared spaces in groups of more than five people (No. 37/2020, Ministry of Health and Sports [MoHS], 2020). Failure to do so would be punished under the Prevention and Control of Communicable Diseases Law. However, in practice, our literature review and subsequent analysis observed many laws used in prosecutions, and as our ethnographic interviews reinforce, penalties issued to offenders often varied according to the background, location or family status of the accused, all of which have been suggested as playing a role in shaping cultural habits and bio-power within settings where sudden bursts of diversity changes social thinking, often creating a 'survival of the fittest mentality' (Low et al., 2020).

Findings: On-the-Ground Views Regarding Use of the Law during COVID-19 in Myanmar

When this problem was discussed with a prosecutor, they remarked:

I have heard that there are lawsuits which are prosecuted under the Natural Disaster

Management Law because those are consistent with this law. Some cases are in line with the provisions of the Natural Disaster Management Law. Although gatherings were banned and those who did not comply would be prosecuted under the Prevention and Control of Communicable Diseases Law under directives issued by the Ministry of Health and Sports, this is only as an instruction. In practice, there are problems relating to which prevails, law or directive. I think that only one law should prevail.

Meanwhile, a judge remarked in an interview that the “current directive should be given priority as it is a state of emergency. Offences should be prosecuted under the relevant law only when it is inconsistent with such a directive.” So one informant in our study remarked that a law should prevail over a directive but the other assumes that a directive should prevail over a law during a state of emergency. Both were professionally involved in legal affairs in Myanmar. Confusingly, directives were often repealed and then changed during the pandemic, and still upon writing. For example, different regulations were applied to the same violation in some cases, under the original directive of the MoHS. As the prosecutor remarked:

Although the Ministry of Health has issued a directive to take action under the Prevention and Control of Communicable Diseases Law, there are cases processed under the Natural Disaster Management Law, possibly because of bribery by the plaintiffs (e.g. police officers).

Concerning this problem, the legal researcher commented that the “...application of different laws to prosecute the accused for violations of COVID-19 restrictions may be due to regional differences or bribery. In addition, judges are considered to have misused discretionary power.” When asked whether the directives issued by the MoHS were effective or not in controlling the COVID-19 epidemic, the offender informant remarked:

I think that they are not effective in controlling the COVID-19 epidemic because COVID-19 can spread any time. So if the committee issues a lockdown order, it should issue the order for 24 hours or 14 days or 21 days. In reality, KTVs and restaurants operate without following regulations although the COVID-19 Township Committee issued regulations... [They] are biased and not transparency about taking action against failing to follow COVID-19 restrictions... there is corruption.

This indicates that in the view of one informant interviewed, bribery and corruption influenced the COVID-19 legal process in Myanmar, which complicated further issues faced in human

rights equality during the pandemic; possibly, people bribed police officers to be more lenient or to switch to another law entirely, with a lesser sentence for the same crime. As such, this might go some way to explain why there are so many different laws, because the resulting flexibility allows corruption by enabling those prosecuted to pick and mix their punishments, perhaps through bribery. The media commonly reported those sentenced under many laws, seemingly, to create an ad hoc punishment process (Human Rights Watch, 2020).

We can find evidence in the literature and public reporting to support this disequilibrium. In April 2020, several hundred attended the funeral of a respected elderly Buddhist monk, ignoring regional government rules (Mann, 2020). In that case, the organizing committee was fined 100,000 kyat's under Section 188 of the Penal Code (Mann, 2020). In contrast, 14 men were prosecuted in Chanmyathazi Township for holding a religious event, under the Natural Disaster Management Law (AAPP, 2020a; 2020b; Mann, 2020). We asked the offender informant about variable punishment in similar cases. They remarked:

I think that the government cannot enforce COVID-19 restrictions to be followed by all people and the degree of punishment is different. The government cannot take equal action over violations throughout the country. In some areas, imprisonment was imposed although the law specified only a fine for failing to follow COVID-19 restrictions. In particular, a sentence of imprisonment was passed on offenders although in ethnic areas fines can be imposed. Therefore, these restrictions have more socioeconomic impact than effectiveness in preventing and controlling COVID-19. I was jobless because I was sentenced to three months.

Context, it seems, therefore, plays a role in deciding punishment. In Tamu Township, Sagaing Division, a man and his father were sentenced and fined for holding a wedding ceremony in April 2020 (AAPP, 2020a; 2020b). Despite being a US citizen, the groom was allowed to pay a fine of 1,000,000 kyat's, but initially was charged under the Disaster Management Act in the Sagaing Region (Mann, 2020). Unsurprisingly, the citizen paid the fine. Meanwhile, the groom's father was also given an identical sentence, but issued under Art. 5 (1) of the Foreign Registration Act with a complaint for failing to report his son's stay and marriage arrangements (AAPP, 2020a; 2020b). Similarly, in Myeik Township, Tanintharyi Division, a wedding was hosted after a lockdown had been imposed on 23 March 2020. Yet, the bride and groom were fined only 50,000 kyat's in this instance (Mann, 2020). There is, then, variable context in the application of offences, which may vary due to the conditions of the crime,

such as the size or scale of the violations. However, when we interviewed the offender informant with respect to this practice, they remarked:

I think that the process of the judiciary may be chaotic. I think that some people are given priority and special rights during this pandemic. I don't believe and rely on the current judiciary for justice. In the judiciary, a new generation should be substituted for a perfect judicial process. In the judicial mechanism, the persons affected by corruption should take effective action. This judicial mechanism can be improved only when every citizen can get equal rights according to the law and a perfected and guaranteed judiciary can be put in place.

Consequently, it seems in the view of this participant, inconsistent punishment is related to corruption and preferential treatment; hence, penalties could likely be restricted by applying laws in force in the area or region or even by the social status of the offender. According to Beagle (2020), during the pandemic crisis, citizens more willingly follow government regulations if they have confidence in the transparency of the laws (Beagle, 2020). This could explain why many in Myanmar might have felt that they did not need to adhere to legal frameworks and political guidance during the coup- they knew loopholes existed, or that they would not be applied fairly. In the cases discussed in our study, we found different sentences may depend on location and the discretionary power of the judiciary, resulting in a 'cult of personality' decision-making process, reducing a legal matter to essentially bias. Even the judge noted that in their view '*... the laws applied may vary. Those who disobeyed the curfew are charged under Section 188 of the Penal Code. Many other cases are usually prosecuted under the Prevention and Control of Communicable Diseases Law*'.

Myanmar has not previously had much contact with the rest of the world; it was only beginning to open to tourism under the previous democratic government, whilst during SARS, a significant health pandemic issue facing many Asian countries, Myanmar was largely immunized during the crisis due to, then, a stricter regulated closure of political borders (Khine, 2020). According to international guidance, freedom of expression can be restricted only in limited circumstances, usually related to respect for the reputations of others, national security or public health. This allows variability in the interpretation of available information and of what constitutes a true crisis warranting such restrictions (United Nations Office on Drugs and Crime [UNODC], 2020). This was reinforced in our discussion with the offender informant, who remarked that they "*...faced difficulties when I followed the COVID-19*

restrictions because of the various regulations and directives. Moreover, these regulations changed from time to time”.

The government formed a taskforce to examine ways to support citizens struggling in the limited pandemic-ruined Myanmar economy, but the effect of their efforts was limited and regionally specific (RSF Hub, 2020; Lwin, 2020). One further problem, of course, was the need to control COVID-19 misinformation, which propagated widely on social media during the pandemic in Southeast Asia (Day & Skulsuthavong, 2021b). Whilst the Internet would ideally be used to benefit humankind, misinformation often forces governments to assume greater control over communication (Day et al., 2015). Bizarrely, in Myanmar, the Telecommunications Law that was introduced to control the dissemination of misinformation, in 2013, is used alongside the Penal Code that was introduced in 1861 (Thompson et al., 2020), to punish modern day pandemic violations.

Citizens have already been convicted under these laws for communicating COVID-19 related misinformation, and are serving several years of imprisonment (PROTECT, 2020). For example, the government prosecuted reporter Aung Ko Ko for commenting about the pandemic on social media (Yaing, 2020). Myanmar government censorship, over resistance to the coup, undoubtedly damaged transparency and the transmission of COVID-19 information; examples include censoring the Internet in western Myanmar, blocking news websites, and introducing citizen data-plan SIM registration. This was likely to track and, potentially, limit or repress Internet activity that might violate public orders, such as those who sought to share, beyond Myanmar, information with respect to the conditions faced during the pandemic, and abuses of human rights by varying political forces (PROTECT, 2020). When we asked about access to public information relating to COVID-19, the offender informant related their experience:

I had already known the directives to be followed relating to COVID-19 pandemic issued by Ministry of Health and Sports. But I didn't know about the curfew ordered by the administrative township officer and they didn't issue an announcement publicly.

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Myanmar is a party, emphasizes clearly that everyone has a right to enjoy the highest attainable standard of physical and mental health (PROTECT, 2020). Moreover, access to health information, we contend, is not found in the bill of Prevention and Control of Communicable Diseases Law, 2020 (See: Bill of Prevention and Control of Communicable

Diseases Law, 2020). When we discussed this with the legal researcher informant, they remarked:

Although the government issued many directives and orders to prevent and control the COVID-19 outbreak, it didn't announce a state of emergency. However, the government should perform to provide timely access to information about the pandemic. I think that there is a problem about the cause: how to follow any law or order in Myanmar. Mostly, any new law is mentioned only in State-owned newspapers before it is officially imposed.

They also noted:

There is rarely any facilitation and necessary awareness given about any new law, order or directive before they appear. For example, the relevant administrative organ in a State or Division takes legal action just by issuing an order or directive. But this organ doesn't consider the fact that the necessary information or awareness about this order or directive should be provided for the local people. In fact, it is important how much authority is enforced to take action under the law. Another fact is how the basic needs of people who follow this law, directive or order are fulfilled. Therefore, I think that there is a gap between the administrative organs and the people. There is no advocacy for people to understand and follow the law in Myanmar. It is not enough just to publish the law in the newspaper.

In June 2020, one public advocacy group suggested the government had charged over 8,000 people in the context of reducing dissidence and the pandemic (PROTECT, 2020). Hence, deliberately ambiguous laws led to further chaos, increased economic pressure on the poor, as well as an increase in the potential spread of COVID-19 by creating imprisonment clusters (Khine, 2020). We spoke with the legal researcher about this, and they remarked:

In Myanmar, the main issue is the weak cooperation between government institutions. For example, the MoHS is the main responsible organ during the pandemic. So, the Department of Justice must act in accordance with the directives of the MoHS. I think that there may be uncertainty about the power and authority among them...I do not know if there is any thought that punishment will stop the spread of the COVID-19 virus. The Department of Justice did not cooperate with the Ministry of Health and Sports. The actions of the Department of Justice have not been effective in preventing COVID-19 infections. Their actions led to the spread of COVID-19 in prison. That's why

the penalties for violating the COVID-19 restrictions do not seem to be effective. Because there is no social distancing in prison, it also undermines the control of COVID-19.

However, it is clear that some citizens have had no choice but to break restrictions, because they would have starved if they did not travel for casual work; the pandemic hit those suffering from socio-economic deprivation the hardest, ensuring social-distancing compliance was very difficult (Khine, 2020). When we asked about the impact of COVID-19 laws on livelihood, the offender informant presented their opinion:

I think that penalties for violating the COVID-19 restrictions are not effective because the government cannot fully provide for the livelihood of people during a pandemic. So people cannot follow some COVID-19 restrictions because of their livelihood. Another fact is that these restrictions have more impact over social economic factors than they are effective in preventing and controlling COVID-19. I was jobless because I was sentenced to three months.

Discussion

Governments beyond Myanmar have used the pandemic to reduce, or disable, democratic legal procedures (Molly, 2021; PROTECT, 2020). Meanwhile, unlike other Southeast Asian states, such as nearby Thailand, Myanmar's responses to COVID-19 have been far from organized (RSF Hub, 2020). This has a lot to do with politics; if the Myanmar government wants to enact an emergency law, the President will have to transfer some degree of state power to the military, following Section 418 of the Constitution (The Republic of the Union of Myanmar, 2008). Within Myanmar, the President can, during a State of Emergency, under Section 414 of the Constitution, limit public activity in far-reaching ways, including expression (The Republic of the Union of Myanmar, 2008). As shown in the informant data above, inconsistency of legal punishment during the pandemic has translated into mistrust of the justice system and intensified the cautiousness of citizens, who now increasingly resist the government (PROTECT, 2020).

Ordinary people, it seems, can become victim to inconsistencies in legal practice led by the Myanmar government (RSF Hub, 2020; PROTECT, 2020). Thus, as evident from the discussions offered, the government's 'failure to act' or 'acting without equality' has directly led to increased consequences for citizens; many of whom possibly are

not clear on the directives and the subsequent impact on their lives. Perhaps, the state of confusion is deliberate. Existing legislation is, however, not designed for a pandemic, or a civil armed conflict (Thompson et al., 2020). The Myanmar government has taken actions inconsistently in cases of not following the regulations on prevention and control of COVID-19 during the pandemic.

For example, as reported in the media over 2020, in Mon State, a citizen who organized a religious gathering was sentenced to nine months in prison, whilst another sentence of three months' imprisonment was passed on two citizens in Yangon for a similar violation (Tun, 2020; PROTECT, 2020).

Whilst this study was conducted, Aung San Suu Kyi and Win Myint were also charged and subjected to two years' imprisonment. They allegedly broke pandemic restrictions during their political campaigning in 2020 (Human Rights Watch, 2021; PROTECT, 2020). We see, then, a theme emerging: political pressure determining the use of the law. Clarity is, therefore, needed regarding COVID-19 violations, and the relevant laws, as well as sanctions, should be redefined. At the time of writing, the government has not taken action to improve equality over how the relevant laws apply and which should be used, as well as when, how or why with respect to COVID-19. Instead, there is an opportunity for many different local variants to be applied. Arising from this, we offer a series of recommendations to improve human rights and justice before the law in Myanmar, based on our investigation and review:

1. Provide clearer guidelines for lawfulness regarding violations of COVID-19 restrictions.
2. Consider further ways to ensure punishment is consistent not only from the perspective of human rights standards, but also according to the basic principles of the Myanmar Constitution.
3. Ensure that the right to freedom of expression is respected, as defined under numerous international human rights policies, protocols and practices discussed in this article, and others.
4. Redefine the freedom of information policies adopted during the Myanmar conflict. As we have established, the prosecution of journalists, digital advocates or students merely commenting on social media, for breaching COVID-19 regulations, is contributing to the pandemic itself, by creating uncertainty, panic and furthering conflict.
5. Identify more effective, pro-human uses of digital media during the pandemic,

because this sector plays an important role in informing the public and controlling the spread of COVID-19.

6. Support personal rights to access information according to international human rights law.

Conclusion

This article has addressed why there is a need to develop an understanding of the access to, and fairness of, justice within Myanmar concerning COVID-19. It has offered original ethnographic insight that highlights Myanmar citizens need support and transparency, without discrimination, for their protection, as citizens, under domestic law (PROTECT, 2020). We have, in this article, indicated an ongoing need to question the consistency of punishment regarding relevant COVID-19 legislation. During this pandemic, many citizens violated the regulations relating to pandemic health restrictions. Some did so knowingly, others in confusion due to unclear legislation, whilst a few even did so simply to survive; we found, in line with literature, evidence to support that there was no clear, apparent or consistent law used to punish COVID-19 violations, and that many laws were used, some unrelated to the pandemic (PROTECT, 2020).

COVID-19 is a huge challenge for Myanmar, as is the political status quo. Many rules and orders for the prevention of the spread of COVID-19 issued by the new government on behalf of state, and regional governments, are inconsistent, and some authorities simply follow their own rules. This is a problem. The central government confers full authority to state and regional governments to use discretion and local judgment, which adds to the confusion of citizens. In our view, the central government of Myanmar thus should provide better guidelines for legal action with respect to someone committing a violation of COVID-19 restrictions. Initially, it should be clearly decided which law should be used with respect to all violations of the COVID-19 restrictions, and a uniform framework developed to phase-out other laws, such as those found locally, closing off the ambiguity that is reported as having a significant impact on human rights, welfare and personal freedoms during the pandemic (PROTECT, 2020).

Meanwhile, we urge that greater attention to citizen rights should be taken into account in the future, and in the likely redraft of the Prevention and Control of Communicable Diseases Law in Myanmar. Moreover, it is paramount that the government allows free communication via digital systems such as the Internet, in order to ensure that any directive

or regulation related to COVID-19 law can be understood as widely as possible. Studies of education, via the web, argue that the Internet is a vital tool in the development of an informed, empowered citizenry, but have noted that sometimes this is undesirable to governments seeking control of citizens (Day, 2014). This may be true with respect to Myanmar, where also web education is still developing, digital literacy is low and, as a result, the potential is high for misinformation, ensuring citizens might easily believe fake news about COVID-19, falling victim to legal reprisals (Day, 2019). There is a relationship between an empowering civic education system and human rights, supported by digital technology, and studies have suggested digital education can help create a pro-human citizenry, by furthering personal rights, alongside education and digital identity (Day, 2014).

This recognition and fairer and more transparent laws must form part of the educational relief effort, once universities reopen and life resumes as normal in Myanmar, which we hope, for all citizens, happens soon. COVID-19 is a pandemic that knows no geographical limits, nor understands any law. Therefore, the wider pro-human context, as well as the consequences of sentencing violators, should be considered by the government, with a view to fairer outcomes (PROTECT, 2020). To this end, we acknowledge that the government has to instruct people to follow laws, orders, directives and regulations regarding the control of COVID-19. Yet, to be effective in the aim of limiting potential damage, and the death toll across Myanmar, the reasons used to justify stricter regulation must align coherently with the local communities' and community-based organizations' practices. This article contends that everyone should be brought into an open dialogue with the government. Only by promoting pro-human conditions, tolerance and restraint, in partnership with stakeholders across all political, geographical, social and legislative levels, can justice for citizens upheld and pandemic laws applied fairly.

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