



Freedom of Expression, International Law and the Practice in Myanmar

Week 1: Introduction

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Introduction

- Welcome, many thanks for joining
- Looking forward to an exciting 9-week course with you
- Will be focusing on:
 - Freedom of expression as guaranteed under international law: what it covers, when and how it can be restricted
 - Media regulation and digital rights
 - Legal framework for freedom of expression in Myanmar, both pre- and post-coup
 - More details on the Moodle platform

Introduction, cont'd

- Certificate: Anyone who attends at least 6 of 9 lectures
 - We will be taking attendance for this purpose
 - If you are not using the same name here (on Zoom) as you registered with on Moodle, and would like to get a certificate, please sent a private (not public) chat to Laura with your email or alias that you've registered with on Moodle so we can track your attendance
- Many thanks to IDRC for supporting this course



Introduction, cont'd

- Three lecturers:
 - Myself (introduce + CLD)
 - Raphael Vagliano (introduce)
 - Laura Notess (introduce)
- Style: background readings, lectures, discussions, exercises
- Readings: “mandatory” and optional
- Lectures: will share slides afterwards
- Exercises: we have asked you to indicate whether or not you will join a breakout group and in which language and we are assigning you based on that

Introduction, cont'd

- Some technical features:
 - We will record lectures but turn it off for discussions
 - In lecture mode, only the presenter will be shown; everyone else will be muted but you can still chat
 - When in discussion mode, recording will stop, participants will be able to unmute and it will otherwise revert to regular Zoom features
 - Please keep yourself on mute unless talking
 - Discussions are off the record; you can talk about the discussion after the lecture but do not attribute comments or refer to any participant
 - Hopefully you have all been able to use the Moodle platform; email or message Laura if you have a problem

Discussion

- Any comments or questions (including using the chat)?



Switch to Presentation

International Law

- Freedom of expression is guaranteed under international law
- Created by States so a limit but also benefit
- Several types, two main: treaties, customary international law
- Also soft law: declarations, statements, etc.

Human Rights as Part of International Law

- International law was traditionally between States and did not apply to individuals
- More recently: humanitarian law did apply to individuals but was formally owed to States
- Human rights as such only became part of international law after World War II
- First time international law vests rights directly in individuals
 - Major change in understanding of State sovereignty

Human Rights as Part of International Law, cont'd

- Some general features of human rights:
 - Only what States have agreed (but they did agree to it)
 - Primarily binds States, not private actors
 - Covers all actors which are part of the State, understood broadly
 - Corporations also have human rights “responsibilities”; increasingly important in the modern world (e.g. Facebook)

Human Rights as Part of International Law, cont'd

- Human rights obligations legally binding but:
 - Only what is actually guaranteed (easy to make claims but not always correct; same for States – may claim not covered when it is)
 - Complex enforcement mechanisms which again depend on what each State has signed up for
 - E.g. Myanmar is not subject to the ICCPR and its mechanisms, let alone the individual complaints part
 - And even the full package has limited power to really enforce
 - Some of the regional systems are more muscular

Discussion

- Thoughts and views on this?
- Does it surprise you?
- How do international human rights look from a Myanmar perspective?

Freedom of Expression

- Main guarantees:
 - Universal Declaration of Human Rights (UDHR) – Article 19
 - Not a treaty but a General Assembly resolution, but generally agreed to be CIL
 - International Covenant on Civil and Political Rights (ICCPR): also Article 19
 - Binding treaty but not ratified by Myanmar
 - Regional treaties
 - Interpretation of treaties by courts/oversight bodies
 - Soft law: Joint Declarations, General Comment No. 34, UNESCO Declarations, civil society standards

Freedom of Expression

- Article 19(2) of the ICCPR:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

- Not just right to speak without interference; idea of maximising free flow of information in society

Discussion

- Is this what you thought freedom of expression meant?
- What would you say are its main characteristics?

Key Attributes of FoE

1) **Negative** and **positive** aspects:

- Negative: State cannot interfere
- E.g. defamation law must not go too far
- Positive: State must sometimes do something to ensure respect
- E.g. must regulate broadcasters or there will be chaos, RTI laws, protection against attacks

Key Attributes of FoE

2) Belongs to **everyone**:

- Foreigners, prisoners and children
- May not apply in exactly the same way
- I am a foreigner when abroad but I still have rights

3) Applies **regardless of frontiers**:

- You have the right to receive information from and send it abroad (i.e. to use the Internet or to import books or newspapers from abroad)
- Seems obvious today but less so in 1948 when the UDHR was adopted

Key Attributes of FoE

4) Goes beyond the right to speak and includes the rights to **seek and receive**

- Mainly think of right to “impart” (speak)
- Also includes right to “seek” and “receive”
- Equally or even more important: think, e.g., about elections, planning your life, understanding the world
- If government closes down a newspaper, it interferes with the journalists’ right to speak, but also the right of readers of the newspaper to seek and receive information; *Mavlonov and Sa’di v. Uzbekistan*

Key Attributes of FoE

5) Covers **all kinds of information and ideas**:

- Not limited to statements people are comfortable hearing but also includes “offensive” ideas

6) Covers the **dissemination** of expressive content in any way:

- newspapers, magazines, pamphlets, radio, television, internet, mobile telephones, public meetings, house-to-house canvassing, paintings, sculptures, cartoons, smoke signals, Morse code, face-to-face conversations
- What about colour of house?

Key Attributes of FoE

7) Covers **direct and indirect** interferences:

- special taxes on expressive content that do not apply more generally
- the government refuses to place advertising in a newspaper that is critical of it

Content

Criminal

Civil

Administrative

Online
Content

Media
Regulation

Independence of Regulatory Bodies

Journalists

Print
Media

Broadcasting

Digital Space

Public Service
Broadcasters

Content

**Always subject to three part test*

Criminal:

- Hate Speech
- Security/Public Order
- Obscenity
- Judiciary

Others never legitimate,
like fake news

Online Content:

- No special online content restrictions
- Only if specific to online harms
- Filtering/Blocking
- No strict liability for intermediaries

Civil/Administrative:

- Defamation
- Privacy

- Right to information law

Media Regulation

*Media Freedom, Independence, Diversity

Journalists:

- No licensing / registration
- Protection of sources
- Accreditation
- Protection from attacks

Print Media

- No licensing; technical registration
- Complaints (press council)
- Right of reply

Private Broadcasters:

- Licensing
- Code of conduct

Other issues:
competition
rules; media
sustainability

Public Service Broadcasters:

- Independence
- Mandate
- Funding

Digital Space

Online Content:

- No special online content restrictions
- Only if specific to online harms

Other issues:

- Content filtering
- Blocking orders
- No strict liability for intermediaries

Online Media:

- No licensing

Internet access:

- Promoting access
- No Internet shutdowns
- Net neutrality

Privacy Protections:

- Data protection
- Limits on surveillance

Discussion

- Will be covering some of this in more detail later on.
- Any comments or questions?

Importance of FoE

- A number of rationales are commonly put forward for why foe is important
 - 1) Inherent part of **human dignity**:
 - Everyone likes to talk
 - Just look at a baby
 - 2) Best way to discover the **truth**:
 - Idea is that in battle of ideas, truth will win
 - But does that still hold today with social media?

Importance of FoE

3) Key to democratic functions and **participation**:

- Need for to be able to hold elections: both for speaker (candidates and parties but also media discussing their ideas and platforms) and listener (voter)
- Goes far beyond elections: need freedom of expression to participate at every level

4) Holding powerful actors, including government, **to account**:

- Need for to find out what government is doing
- And also need it to expose wrongdoing, incompetence when that is discovered

Idea of Restrictions

- Not an absolute right: security, reputation, privacy
- International law: start with broad protection, allow limits
- Not impose restrictions – allows States to do so
- Be covered in next lecture

Exercise

- Scope of freedom of expression: not restrictions though
- Go into breakout groups
- Appoint one person as rapporteur to be ready to report back to the group

Thank you

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