

Appendix

Amendment of the Code of Criminal Procedure Law

On February 14, 2021, the State Administration Council (SAC) amended the Code of Criminal Procedure Amendment Law to make offenses under sections 505A, 124C, and 124D non-bailable and subject to arrest without a warrant. The changes were made by Sen. Gen. Min Aung Hlaing on behalf of the SAC, under the guise of article 419 of the Constitution, which allows for the transfer of executive and judicial power to a “suitable” body or person, as part of the State of Emergency procedures.

Section 505A

On February 14, 2021, the SAC announced amendments to the Penal Code that could lead to criminal liability for thousands of demonstrators exercising their rights to free expression, and anyone publicly criticizing the military coup through any means.

The SAC inserted a new provision, section 505A, that could be used to punish comments regarding the illegitimacy of the coup or the military junta, among others. The new section would criminalize comments that “cause fear, spread false news, agitates directly or indirectly criminal offense against a government employee.” Violation of the section is punishable by up to three years in prison.

Section 505(a) previously made it a criminal offense to publish or circulate any “statement, rumor or report ... with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty.”¹¹¹ It has been replaced with much broader language seemingly designed to penalize those encouraging members of the civil service or the security services to join the Civil Disobedience Movement, or take part in criticism of the military.¹¹²

¹¹¹ Penal Code, 1861.

¹¹² The Global New Light of Myanmar, February 15, 2021, “State Administration Council Law No 5/2021 Law Amending the Penal Code,” <https://www.icnl.org/wp-content/uploads/penalcode.pdf> (accessed December 13, 2022).

Section 124

The SAC significantly broadened the “treason” provisions in section 124 of the Penal Code. Section 124A, which already criminalized comments that “bring into hatred or contempt” or “excite disaffection against” the government, was expanded to include comments relating to the Defense Services and their personnel, effectively criminalizing any criticism of the military or military personnel. Violation of the section is punishable by up to 20 years in prison, where previously the penalty was a maximum 3 years’ imprisonment.

The newly added section 124C imposes a prison term of up to 20 years on anyone who intends to “sabotage or hinder the success of performance of the Defense Services and law enforcement organizations who are engaged in preserving the stability of the state.” This provision would criminalize efforts to encourage security forces to join the Civil Disobedience Movement or permit unauthorized protests.

Finally, under section 124D, a person can be sentenced up to seven years in prison if they hinder a government employee from carrying out their duties. This provision is so broad that any actions of protesters could be interpreted as preventing security personnel or Defense Service officers from performing their duty.

Amendment of the Legal Aid Law

On April 29, 2021, the SAC amended the 2016 Legal Aid Law, removing the right to legal aid services during pretrial detention and for criminal cases.¹¹³ The amendments to section 3(b) remove terms bound to international standards, while the revocation of section 3(e) means detainees can now be held indefinitely.¹¹⁴ Section 4(i), which previously stated that “allowing the legal aid providers to carry out independently in accord with the Law and to protect them,” is also removed.

¹¹³ 2021 Amendment to the Legal Aid law, section 3.

¹¹⁴ See International Commission of Jurists, “Myanmar: amendments restrict legal aid thousands of detainees,” May 21, 2021, <https://www.icj.org/myanmar-amendments-restrict-legal-aid-for-thousands-of-detainees/> (accessed December 14, 2022).

Amendment of the Counter-Terrorism Law

On August 1, the SAC amended the Counter-Terrorism Law to introduce harsher penalties for organizations and individuals supporting anti-junta activities. Signed by Sen. Gen. Min Aung Hlaing, the vaguely worded amendments criminalize “acts of exhortation, persuasion, propaganda and recruitment of any person to participate in any terrorist group activities or terrorism,”¹¹⁵ with penalties of a minimum of 10 years to a maximum of imprisonment for life or the death sentence.¹¹⁶

¹¹⁵ State Administration Council Law no. 21/2021, 9th Waning of Waso 1383 ME, August 3, 2021, published in the *Global New Light of Myanmar*, August 1, 2021, “The State Administration Council hereby enacts this law under Section 419 of the Constitution of the Republic of the Union of Myanmar: 1. This law shall be called Law Amending the Counter-Terrorism Law. 2. Sub-section (a) of Section 52 of the Counter-Terrorism Law shall be substituted as follows: ‘a) acts of terrorism under Clause (15) to (18) of Sub-section (b) of Section 3’”, See Burma Library, <https://www.burmalibrary.org/en/the-global-new-light-of-myanmar-tuesday-3-august-2021> (accessed December 9, 2022).

¹¹⁶ See 2014 Counter-Terrorism Law, “Offences and Penalties”, article 51, <https://www.mlis.gov.mm/mLsView.do;jsessionid=5B029BFB369BF0AA41D22495C5A69293?lawordSn=9596> (accessed January 23, 2023); <https://www.burmalibrary.org/en/counter-terrorism-law-pyidaungsu-hluttaw-law-no-232014-english> (accessed April 7, 2023).