

MYANMAR

DISMANTLING DISSENT

CRACKDOWNS ON INTERNET FREEDOMS



Myanmar
Dismantling Dissent
Crackdowns on Internet Freedoms

2021
Asia Centre

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Internet freedoms are increasingly under threat, constituting part of the continuous regression in freedom of expression in Southeast Asia. Nowhere has this concerning trend been more apparent than in the Republic of the Union of Myanmar, since 1 February 2021 coup d'état. Threatened by the modern and dynamic capacity of the internet to facilitate democracy, the internet was the first target of the Tatmadaw's new tenure of brutal control and censorship.

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Myanmar: Dismantling Dissent: Crackdown on Internet Freedoms is dedicated to the people of Myanmar, especially those leading the protests. Democracy exacts a huge price; we remember in this report those who have perished during the ongoing struggle for democracy in Myanmar.

Your Sincerely



Dr. James Gomez
Regional Director
Asia Centre

Abbreviations

AICHR	ASEAN Intergovernmental Commission on Human Rights
AHRD	ASEAN Human Rights Declaration
ASEAN	Association of Southeast Asian Nations
CEDAW	Committee on Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CDM	Civil Disobedience Movements
COVID-19	Coronavirus Disease 2019
CRC	Committee on the Rights of the Child
CRPH	Committee Representing Pyidaungsu Hluttaw
DVB	Democratic Voice of Burma
FPCI	Foreign Policy Community of Indonesia
GPS	Global Positioning System
HRD	Human Rights Defenders
HRW	Human Rights Watch
ICCPR	The International Covenant on Civil and Political Rights
ISP	Internet Service Providers
MEC	Myanmar Economic Corporate
MNHRC	Myanmar National Human Rights Commission
MOHA	Ministry of Home Affairs
MOTC	Ministry of Transport and Communications
MPT	Myanmar Posts and Telecommunications
MRTV	Myanmar Radio and Television
MWD	Myawaddy TV
NHRI	National Human Rights Institution
NLD	National League for Democracy
OHCHR	Office of the United Nations High Commissioner for Human Rights
PLA	People's Liberation Army
RSF	Reporters Without Borders
SAC	State Administration Council
SDGs	Sustainable Development Goals
SIM	Subscriber Identity Module (card)
SPDC	State Peace and Development Council
SR	Special Rapporteur
UAV	Unmanned Aerial Vehicles
UN	United Nations

Abbreviations

UNGP	United Nations Guiding Principles on Business and Human Rights
UPR	Universal Periodic Review
VNR	Voluntary National Review
VPN	Virtual Private Network



Executive Summary

Internet freedoms are under threat in Myanmar and have been seriously curtailed following 1 February 2021 coup d'état. The transition to democracy from 2011 has seen dramatic internet penetration and user growth, thus leading to the rise of online platforms as a modern channel for individuals to exercise freedom of expression and other fundamental rights.

From 2015, during the administration of Aung San Su Kyi, who was elected in that year, persecutions of internet users became more evident as Myanmar embraced the liberalisation of its telecommunication sector. Existing poorly worded and vague laws were utilised by authorities to litigate against journalists, media workers, social media personalities and human rights defenders (HRDs) who used the internet and social media as vital tools for their advocacy and activism. Following the coup on 1 February 2021, the Armed Forces of Myanmar, or the Tatmadaw, curtailed all civil liberties. Freedoms of expression both online and offline in Myanmar have never before been subjected to the intense levels of criminalisation that currently threatens these fundamental rights. The military junta has moved beyond the traditional tactics that are focused on persecuting dissenting voices, to exerting control over the whole telecommunications infrastructure. The junta has imposed internet shutdowns, disrupted internet services and destroyed certain internet and telecommunication infrastructure.

This report examines a range of national laws that impact internet freedoms, namely the Constitution, Penal Code, Electronic Transactions Law, Telecommunications Law, and Law Protecting the Privacy and Security of Citizens. While Constitutional provisions on the freedom of expression look up to customary international law, oftentimes, the vaguely-worded clauses—on limitations of the exercise of such rights—under the very same provisions negate these freedoms. Additionally, the use of national legislation that further detail suspension or restriction of rights and punishments go beyond what is permissible under international human rights treaties. Evidence of these rights violations are tracked and reported in the submissions to Myanmar's Universal Periodic Review (UPR) and in the reports of the relevant United Nations (UN) Special Rapporteurs (SRs).





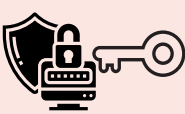

In order to safeguard internet freedoms, public access to information, and freedom of expression, this report presents specific recommendations that when implemented, will ensure that the people of Myanmar are able to use the internet and enjoy fundamental freedoms on the internet in accordance with international law. To this end, the recommendations call to: Remove provisions in the Penal Code that criminalise defamation; Amend the *Telecommunications Law* (2013) to ensure its alignment with the international standards, including repealing Section 66(d); Repeal Section 77 of the *Telecommunications Law* (2013), which allows cutting off access to information or regulating online content; Nullify and void amendments made to the *Law Protecting the Privacy and Security of Citizens* (2017) and the *Electronic Transactions Law* (2004) enacted during the coup that affect data privacy, rights to information, freedom of expression, association and assembly.

1. Introduction

Since the liberalisation of the telecommunication sector in 2013, Myanmar's military junta have been uncomfortable with any critical comments expressed on social media platforms. Using a range of legal instruments—such as the Penal Code, Telecommunications Law, Law Protecting the Privacy and Security of Citizens and Electronic Transactions Law—the Myanmar government and the military junta have sought to temper online criticisms. Utilising a mixture of tactics such as internet shutdowns, the throttling of internet speeds, online harassment, information operations, privacy violations and infrastructure destruction to dismantle online dissent and mobilisation.

This report takes a deeper look at the state of internet freedoms in Myanmar with a view to distilling areas for improvement in their laws, policies and adherence to international standards.

Dashboard of Internet Violations

Internet Shutdowns	Throttling Internet Speeds	Online Harassment	Information Operations	Privacy Violations	Infrastructure Destruction
					
Internet connections were blocked on a daily and nightly basis.	The speed of the internet connection was lowered to impact the flow of information.	Netizens were subject to a constant campaign of online harassment.	Propaganda campaigns were run using fake accounts.	Legal privacy protections were removed to track and spy on people.	Internet Infrastructure were destroyed in selected neighbourhoods.

1a. Methodology

Desk research for the first draft of the baseline study was conducted between February 2021 and March 2021, and encompassed a review of selected UN documents from 2010 to 2021. This included a review of reports submitted for three cycles of Myanmar's Universal Periodic Review (UPR), the annual reports of the Special Rapporteur on the Situation of Human Rights in Myanmar and Voluntary National Reports (VNR) under the reporting process of the Sustainable Development Goals (SDGs). The review also analysed national legislations invoked to justify suspension or disruption to the exercise of freedom of expression both online and offline. It draws on relevant reports of international organisations, think-tanks, government agencies and media reports in order to identify gaps in human rights and challenges to the realisation of internet freedoms in the country. Several research interviews¹ were also undertaken post-coup with Myanmar nationals within the country, as well as members of the international diaspora to learn details on how the protests were responding and adapting to the internet shutdowns in the country. Asia Centre also convened and participated in several online discussions such as the *Southeast Asia People-to-People Region Hall of the Political Crisis in Myanmar* and the *SEAFORB Steering Committee*,² where relevant input was taken on board for the report. On the 11 March 2021, Asia Centre organised a webinar "*Law and Lawlessness: Myanmar Coup and Human Rights*" to discuss the Myanmar military coup in February.

¹ During the coup, interviews were conducted with in-country informants who provided primary information on internet shutdowns, destruction of internet infrastructure and strategies adopted. Due to concerns over their safety they are not identified in this baseline study.

² SEAFORB refers to Southeast Asia Freedom of Religion or Belief, a regional forum on this issue.

From February to April 2021, the Centre also contributed expert opinion through a number of interviews,³ published a briefing note *Myanmar Coup and Internet Shutdowns*⁴ and submitted a set of recommendations to the Foreign Policy Community of Indonesia (FPCI), as part of the virtual regional town hall organised on 8 April 2020.⁵ Overall, a review of these documents and discussions with respondents and event participants informed the final contents of the report. Finally, this report also benefitted from several internal and external reviews.

1b. Background

Since its independence in 1948, Myanmar has had relatively little experience with electoral democracy, as a series of military coups interrupted its democratic potential in 1962, 1988 and 2021. The recent decade of democratic development began following the 2008 constitutional referendum and was seemingly advanced through the general election in 2015. This led to efforts to transition from military rule to a semi-democracy, which was started and led by President Thein Sein, a reformist General. His efforts included opening up the country to the international community after nearly three decades of isolation and dependency on China. He also undertook economic reforms to veer towards a market economy and international competition. His most notable contribution was the release of democracy icon, Daw Aung San Suu Kyi, in 2010.

Suu Kyi's National League for Democracy (NLD) won the general election in 2015 but under the military-drafted Constitution, Myanmar became a hybrid regime where the Union Parliament was composed of 498 elected MPs and 166 military-appointed MPs. From 2015 to 2020, the NLD government proved to be dysfunctional as its military counterpart blocked every attempt at major reforms. These included a motion to join the International Convention on Civil and Political Relations (ICCPR) (2019) and to undertake constitutional amendments (2020) to ensure guarantees on fundamental freedoms for everyone residing within Myanmar, and not only citizens of Myanmar. The Tatmadaw, fearing that they were losing control as the NLD once again emerged victorious in the 2020 general elections, staged a coup on 1 February 2021. As part of its control measures, it imposed severe restrictions on internet freedoms and criminalised online critics and protesters to deter resistance to the military rule.

1c. Internet Landscape

Before the political transition in the early 2010s, internet usage in Myanmar was heavily controlled and monitored by the military regime. Internet censorship and crackdown on internet cafés were not uncommon. The cost of access was high and few individuals could afford mobile phones, let alone pay for mobile internet data. This changed with the liberalisation of the telecommunication sector, introduced in tandem with the political reforms in 2013, when the Telecommunications Law was promulgated to regulate service providers. By 2015, the cost of a Subscriber Identity Module (SIM) card reduced from US\$150, to just US\$1.50 (Alliance for Affordable Internet, 2015).

As of 2021, four major telecommunication companies operate in Myanmar (Telenor, Ooredoo Myanmar, Myanmar Posts and Telecommunications (MPT) and MyTel). Internet penetration started to pick up in 2018, by which time 34% of the population (21,000,000) had access to the internet, while social media and mobile connectivity sat at 101% of the population (53,980,000) (Kemp, 2018).

3 During February to March 2021, per media requests, Asia Centre provided expert opinion on the situation in Myanmar for a total of 5 interviews: On the coup d'état in Myanmar, ABC News (2 February 2021), On the Myanmar military coup CGTN (2 February 2021), Why the internet shutdowns CGTN (12 February 2021), Interim Govt Plan In Myanmar Must Include Other Ethnic Groups StratNewsGlobal (3 March 2021) and; Myanmar: Post-coup Tension In Focus South Asia (31 March).

4 Available at: <https://asiacentre.org/myanmar-coup-and-internet-shutdowns/>

5 The submission to the FPCI is available on Asia Centre's website: <https://asiacentre.org/wp-content/uploads/Internet-Shutdowns-in-Myanmar.pdf>; this was later included in FPCI's Joint Declaration which is available here: https://r2pasiapacific.org/files/6545/Joint_Declaration_SEA_RegionHall_Myanmar_2021.pdf

Online platforms became a new avenue for people to express themselves politically. Unprepared and uncomfortable with online criticism directed at public officials, the NLD-Tatmadaw hybrid regime resorted to the Telecommunications Law and the country's Penal Code to silence critics, journalists and human rights defenders, or to impose outright internet shutdowns. These restrictions on internet usage and persecution of users has created a precedent for post-coup internet shutdowns and criminalisation of online activism, which are contrary to all international standards on freedom of expression and internet freedoms.⁶

1d. Implementation of Recommendations Under Human Rights Mechanisms

Internet freedoms and guarantees on freedom of expression are stipulated under Article 19 of the ICCPR as *"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"* (OHCHR, 1966). As stated in the General Comment No. 34, rights provision under paragraph 2 of the Article 19 protect all forms of expression and the means of their dissemination, including audio-visual, as well as electronic and internet-based modes of expression.

In this section, Myanmar's internet freedoms are assessed via its adherence to international human rights standards emanating from customary international law and its obligations under the treaties to which it is a party. Myanmar's implementation of recommendations under various UN human rights mechanisms is discussed, including those based on the country's UPR cycles in 2010, 2015 and 2020 and the reports of the UN Special Rapporteur on the situation of human rights in Myanmar. At the regional and national levels, the significance of the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, the ASEAN Intergovernmental Commission on Human Rights, and the Myanmar National Human Rights Commission (MNHRC) are also briefly considered.

In 2019, a motion from the NLD to sign the ICCPR was rejected by military members of parliament. While Myanmar is not a signatory to the ICCPR, its provisions on freedom of expression and the rights to privacy under the Constitution, which are essential to the realisation of internet freedoms, reflect the guarantees of the Universal Declaration of Human Rights (UDHR). The UDHR is widely regarded as customary international law, and Myanmar remains obligated to respect and comply with the UDHR as the country voted in favour of its adoption in 1948. The UDHR guarantees the right to freedom of expression in Article 19: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."* ASEAN has affirmed the commitment of its Member States to uphold all civil and political rights in the UDHR. Myanmar is therefore legally required to uphold the right to freedom of association.⁷

Additionally, the obligation to respect, protect and fulfill the right to internet freedoms is encompassed in different ways in Myanmar's existing treaty obligations, including under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Internet freedoms are in many cases a prerequisite—or at a minimum, significantly impacted by—many of the rights articulated in the ICESCR, such as the right to education, the right to take part in cultural life, and the right to work.

⁶ These standards are well treated in the authoritative General Comment Number 24 of the Human Rights Committee: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁷ International standards for the freedom of expression are articulated by the International Covenant on Civil and Political Rights (ICCPR), the UN Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression, and other authoritative sources.

Joint Declaration which is available here:

https://r2pasiapacific.org/files/6545/Joint_Declaration_SEA_RegionHall_Myanmar_2021.pdf

The CEDAW Committee in its General Recommendation No. 35, which addresses gender-based violence against women, has also highlighted the need for state action to address online gender-based violence and the occurrence of it in digital spaces. Reporting on internet freedoms did not feature in comments made with regards to Myanmar's obligations relevant to treaty bodies such as the Committee on Economic, Social and Cultural Rights (CESCR), the CEDAW Committee, the CRC Committee, or the Committee on the Rights of Persons with Disabilities (CRPD), as reported on in Myanmar's UPR throughout the three cycles.

A review of the three cycles of the UPR shows that internet freedom-related issues started to emerge in the 2nd cycle (2015), when internet penetration in the country began to pick up. Journalists and media workers, as they published their stories online, were among the first groups to face criminalisation due to their digital content (BBC, 2014).

The major issues raised across Myanmar's three UPR cycles were:

- Article 77 of the Telecommunications Law had been used by the government as a tool to impose internet shutdowns to hinder access to information.
- Internet shutdowns were implemented in Rakhine State and Chin State and the regulations of online content of telecommunications firms were increased, as was also raised by the SR.
- Vaguely-worded laws such as the Official Secrets Act continued to be used to impede public access to information.
- Persecution of journalists, bloggers and media workers occurred under Section 505(b) of the Penal Code and the Electronic Transactions Law.
- The right of journalists to collect information without being subject to arrest or detention was routinely violated and the government failed to combat hate speech on social and religious issues.

By the time Myanmar finished its 3rd Cycle (2020), persecution of ordinary internet users was commonplace (Freedom House, 2021).

Mandate holders of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana (2008-2014), Yanghee Lee (2014-2020) and Thomas Andrews (2020-present), took note of a range of human rights violations. They expressed concerns over the deficiency of the legal framework to safeguard rights to freedom of expression, both online and offline, and the rights to freedom of information. The government's control and censorship of the media and internet, arbitrary arrests, detention and harassment of journalists were similarly noted. By the time internet usage in Myanmar began to increase in 2015, disinformation and hate speech had become major concerns, playing into the government's hands as an excuse to impose restrictions on freedom of expression and public access to information. Subsequently, in February 2021, the military coup spelled an end to any semblance of genuine expression freedoms online by cracking down further on the digital landscape.

Several key issues related to Internet freedoms have been noted:

- **Persecution of bloggers and internet users** - In January 2013, with authorisation from Parliament, an internet blogger was investigated for his criticism of members of parliament, in relation to amendments to the Constitutional Tribunal Law. The Myanmar government responded to these as actions "taken in accordance with existing laws".
- **Proliferation of hate speech, surveillance, and persecution of internet users** - With the liberalisation of the telecommunications sector, there arose a proliferation of hate speech, surveillance and persecution of internet users, journalists and activists over their social media content, particularly that which was critical of the military. Some key instances include the incitement of violence by the radical Buddhist group *Ma Ba Tha*, pursuant to which the Special Rapporteur experienced personal attacks during her country visit in 2015. Other examples include the prosecutions of 'The Irrawaddy' editor Ye Ni and independent filmmaker Min Htin Ko Gyi in April and August 2019 respectively.

- **Targeted internet shutdowns and disruptions** - In 2020, the military engaged in online manipulation and the government coerced telecommunications companies to impose internet shutdowns and disruption of services in Rakhine and Chin states. Access to more than 221 ethnic news websites was blocked.
- **Limitations on free expression** - Concerns were raised over restrictions on freedom of expression based on provisions contained in the Penal Code, the Electronic Transactions Law, and the Telecommunications Law. In 2019, a Facebook live-stream showing political satire that mocked and criticised the military, landed six artists of 'Peacock Generation' with one year imprisonment for violating Section 505(a) of the Penal Code; four of them were later given an additional six months of imprisonment for 'online defamation' under Section 66(d) of the Telecommunications Law. In 2020, journalists were charged for spreading fake news on social media over a report of the number of COVID-19 patients and deaths, which the authorities disputed.
- **Unequal internet access during elections** - Issues around unequal access to the Internet and the holding of elections during the pandemic were highlighted by the UN Special Rapporteur on the human rights situation in Myanmar. Issues were particularly present for individuals in remote areas where internet speeds were limited to 2G, or the internet was entirely restricted.
- **Registration of SIM card users** - The short notice from the government in February 2020 to enforce one-time SIM card re-registration by 30 June 2020, based on the 2014 Code of Practice for Mobile Service User Registration, poses a threat to freedom of expression and access to information for those lacking adequate documentation to undergo this re-registration.
- **Nationwide internet shutdowns and blackouts** - Starting from 1 February 2021, a number of internet shutdowns and disruptions to services such as an internet curfew had been imposed by the Tatmadaw to deter post-coup resistance, further degrading internet freedoms in Myanmar.

Infringement on freedom of expression and internet freedoms are also ignored by Myanmar authorities in regional mechanisms. Myanmar signed up to the human rights provisions under the ASEAN Human Rights Declaration (AHRD) to promote and protect universal standards on freedom of opinion. However, the state has continued to perceive human rights to be an issue serving foreign countries' interests and thus opposed the creation of an ASEAN human rights commission. While a compromise was reached and the ASEAN Intergovernmental Commission on Human Rights (AICHR) was created in 2009, Burmese representatives are mostly former government officials whose roles have been ceremonial at best, providing opening remarks or officiating policy planning meetings. They remain accountable to their own government and are more interested in preventing the country's reputation damages.

Similarly, it is observable that, throughout its existence, the Myanmar National Human Rights Commission (MNHRC) was staffed by former government officials who have been largely silent on infringement on freedom of expression, especially if the perpetrators were military personnel. Hence, the MNHRC, as noted across the three cycles of the UPR process, is not an independent entity and does not qualify as a national human rights institution (NHRI) as per the Paris Principle.

Having provided an outline of Myanmar's political background, internet landscape and international and regional standards, this report goes on to look at the country's legal framework. Specifically, the next chapter analyses relevant clauses of the Constitution and Penal Code, as well as the Telecommunications Law, draft Cybersecurity Law, Law Protecting the Privacy and Security of Citizens and Electronic Transactions Law and how they have been used to curtail internet freedoms.

2. Laws and Policies

Internet freedoms are not specifically articulated in Myanmar's legal framework. While the 2008 Constitution makes reference in general terms to freedom of expression, a review of national laws—such as the Penal Code, Telecommunications Law, draft Cybersecurity Law—shows that a key focus has been to deal with criticism against the state and public authorities. These laws have been amended and used to counter online political expression, especially after the 2021 military coup. The declaration of the State of Emergency by General Min Aung Hlaing has provided the military with the authority to introduce a slew of amendments to repress political expression online, such as the Law Protecting the Privacy and Security of Citizens and the Electronic Transactions Law. This section will examine the existing laws that have facilitated this crackdown, as well as the laws that have been amended, to control the internet and social media as a platform to progress democratic ideals in Myanmar.

2a. Constitution

In May 2008, a new Constitution was promulgated pursuant to a referendum, despite international concerns over the free and fair nature of the referendum. The referendum, first announced in 2003, was a by-product of the so-called Myanmar's *Roadmap to Discipline-flourishing Democracy* and received support from the State Peace and Development Council (SPDC), the name of the former military government which had ruled the country since 1988. While not making direct reference to internet freedoms, Chapter 8 of the Constitution recognises the fundamental rights of Myanmar's citizens, including individual freedoms, freedom of expression, freedom of assembly and association, freedom of religions and belief, the right to education, healthcare, and workers' rights. On top of this, clauses prohibiting discrimination and obstructions to the exercise of the aforementioned rights are also present.

Although a number of basic rights are guaranteed under the Constitution, many provisions in the Constitution, especially when related to the suspension of rights, are not aligned with international human rights standards. For example, the guarantee on freedom of expression, assembly and association under Article 354 is conditioned as the exercise of such rights cannot be "... *contrary to the laws ... community peace and tranquility or public order and morality.*" This limitation does not meet the requirements for restrictions on free expression as laid down in international human rights instruments such as the ICCPR, whose provisions on freedom of expression, as noted earlier, Myanmar is obliged to follow under customary international law. The limitations attached to freedom of expression in the Constitution suggest that laws could be passed that would impermissibly restrict freedom of expression. However, the guarantee of fundamental freedoms under Chapter 8 of the Constitution is that which Myanmar officials refer to and rely on when questioned at UN meetings about the country's commitment to international human rights obligations. These constitutional legal rights and protections, or lack thereof, also influence how specific laws such as the Penal Code, Electronic Transactions Law and Telecommunications Law, are formulated and implemented, therefore exacerbating the challenge of alignment to international human rights standards.

On 1 February 2021, alleging widespread voter fraud in the 2020 general election, the military junta seized power from the civilian government after months of refusal to accept the NLD's victory. Citing Article 417 and 418 of the Constitution, the Commander-in-Chief General Min Aung Hlaing declared a state of emergency and established the State Administration Council (SAC) to head the interregnum period. However, President Win Myint was unable to perform the functions required under Articles 410 and 417 of the Constitution as he was under military detention. As such, the proclamation of the state of emergency was technically illegal and unconstitutional. Yet, it was used to validate amendments to laws that have drastically infringed upon internet freedoms.

Table 1: Legal Regulations and Penalties in Myanmar (2011 - 2020)

2b. Penal Code

As a former colony, Myanmar inherited the 1861 Penal Code from the British Empire. Historically, the colonial government used the Penal Code to protect the Crown and the government from local uprisings. The intention of the law to shield the government from criticism and reputational damage was carried over into post-colonial Myanmar, and is used today to silence government critics, journalists and activists who voice criticism against public officials. Defamation is criminalised under Article 505 of Myanmar's Penal Code (1861). The use of Article 505 has extended beyond print media to also target content on internet and social media platforms. Before the military coup in 2021, Article 505(a) was used when the subject of discussion or criticisms were Tatmadaw officials.

Regulation	Penalties
Penal Code - Criminal Defamation Article 505(a) Article 505(b)	1. Jail term up to 2 years and/ or an unspecified amount fine 2. Jail term up to 3 years
Telecommunications Law I. Section 66 (d) II. Section 77	I. Jail term up to 3 years and/ or an unspecified amount fine II. Jail term up to 6 months and/ or an unspecified amount fine
Cybersecurity Law	Jail term up to 3 years and/ or a fine up to \$USD 71,000
Law Protecting the Privacy and Security of Citizens	Suspends the sections protecting citizens from abuse of power as long as the SAC is in power
Electronic Transactions Law	Introduces an exception allowing officials to confiscate personal data and prohibits sharing various types of information online

Article 505(b) was used when the subjects of discussion or statements were public officials and politicians not affiliated with the military. Since the 2021 military coup, Article 505(a) has been amended to criminalise criticism against the military, both online and offline, and to dissuade military personnel from joining the civil disobedience movement (CDM). This was in response to increasing criticisms and uprisings against the Tatmadaw as the general public did not consent to the military takeover.

2bi. Article 505(a)

As mentioned above, Article 505 of Myanmar's Penal Code has been used by the past military and NLD governments to quell criticism, criminalise free speech, and disrupt the ability of journalists and HRDs to carry out their work. This worsened after 1 February military coup, when on 14 February the junta passed the State Administration Council Law No (5/2021) amending the Penal Code. In dissuading protesters from convincing security personnel to join the CDM and maintaining loyalty among the rank-and-file, Article 505(a) was revised to criminalise *"any attempt to hinder, disturb, damage the motivation, discipline, health and conduct of the military personnel and government employees and cause their hatred, disobedience, or disloyalty toward the military and the government."* Seeking legitimacy to litigate against critical comments or reports, a new vaguely-worded sub-section was also added to criminalise *"whoever causes fear to a group of citizens or to the public, spread false news, knowing or believing that it is untrue, or causes, or intends to commit or to agitate directly or indirectly, criminal offence against a Government employee, any kind of Government employees or Government employees"*. Such offences could result in a three-year imprisonment.

Drastic amendments to the Penal Code have been actualised by the junta, specifically Section 505(a), which criminalises comments that "cause fear," spread "false news" or "[agitates] directly or indirectly, criminal offence against a government employee". The ambiguity of the law has been a key tool for the Tatmadaw to suppress any resistance within the population with ostensive legality.

Since its amendment in February 2021, the Penal Code has been used mainly to criminalise those who participated in anti-coup demonstrations, especially celebrities who expressed their disagreement towards the junta on their social media accounts. As of May 2021, 120 actors, filmmakers, models and social media influencers have been arrested under Section 505(a) of the Penal Code (RFA, 2021).

2bii. Article 505(b)

Under Article 505(b), it is a punishable offence for *“whoever makes, publishes or circulates any statement, rumour or report with intent to cause or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility.”* Those found guilty, face imprisonment up to two years and/or a fine for an unspecified amount.

While Article 354 of the Constitution recognises freedom of expression, it is a heavily limited guarantee, as characterised by the overly broad term *“not contrary to the laws,”* and does not meet international human rights standards, which requires that restrictions on rights must be precise, specific and legitimate. Article 505(b) of the Penal Code has been abused in order to suppress freedom of expression and silence dissidents. In October 2019 during the rule of Aung San Suu Kyi’s NLD government, five members of a satirical poetry group were sentenced to one year in prison under the Penal Code for ‘undermining the military,’ after their performance was live-streamed via Facebook (BBC News, 2019a). In May 2020, Reporters Without Borders (RSF) reported that Zaw Ye Htet of online news agency Dae Pyaw was handed a two-year jail sentence under Section 505(b) of the Penal Code, over his Facebook post reporting on an individual who had died from Coronavirus Disease 2019 (COVID-19) in the Karen State (RSF, 2020).

2c. Telecommunications Law

Starting from late 2010, after nearly three decades of self-isolation, Myanmar began to open itself up to the world and the international market. One immediate action taken by the former military government was the liberalisation of the telecommunications industry. It is for this reason that the Telecommunications Law (2013) was passed to provide the legal framework and regulations to guide telecommunication companies and investors. However, Section 66(d) of the law includes a vaguely-worded clause tantamount to criminal defamation. This provision provides for up to three years imprisonment and/or an unspecified fine for *“extortion of any person, coercion, unlawful restriction, defamation, interfering, undue influence, or intimidation using a telecommunication network.”* Furthermore, termination or disruption of access to the internet may be ordered by the Ministry of Transport and Communication under Section 77 of the Telecommunication Law, which stipulates *“on the occurrence of any public emergency, the Ministry, subject to the approval of the Union Government, may, for the duration of the public emergency, direct any licence holder to suspend a telecommunication service, restrict specific forms of communication, jam or intercept any communication.”* Failure of compliance by any telecommunications firms will result in imprisonment of up to six months and/or an unspecified fine amount. In 2019, there were more than 49 criminal cases brought forward under the Telecommunications Law (Athan, 2020).

Section 77 was used to enable internet shutdowns in Myanmar, even prior to the 2021 military coup. Conflict between the Arakan Army and the Tatmadaw resulted in complete internet shutdowns enacted by the military in the affected townships, implementing regional digital shutdowns of the politically unstable Rakhine and Chin states from 21 June 2019 all the way up to 2 February 2021, when the internet was restored. The restoration was brief, with implementation of post-coup nationwide shutdowns and internet throttling soon following (The Irrawaddy, 2021a).

With the ongoing military clearance operations in the area, UN Special Rapporteur Yanghee Lee expressed concerns that the internet shutdown would be used as cover for committing gross human rights violations against discriminated civilian populations (Article 19, 2019).

Due to push-back from human rights advocates domestically and internationally, the NLD government amended the Telecommunications Law in 2017. The government claimed that the amendment would enhance clarification capabilities and reduce the vague nature of the law's wording. Despite some minor re-working of a number of clauses, the most contentious clause, Section 66(d), remained largely intact. The serious potential for this law to be abused by authorities therefore remained (Free Expression Myanmar, 2017a).

Since the coup on 1 February 2021, after proclaiming a state of emergency, the military has invoked Section 77 of the Telecommunications Law to impose a combination of internet shutdowns and curfews, blocking access to social media platforms and disabling mobile data throughout the country. By 5 February, according to internet watchdog organisation NetBlocks, social media platforms such as Facebook, Instagram, Twitter and WhatsApp were inaccessible across all telecommunication service providers (NetBlocks, 2021). This would soon be followed by a nationwide internet curfew and disablement of mobile data connection.

2d. Law Protecting the Privacy and Security of Citizens

In 2017, the NLD and military enacted the 'Law Protecting the Privacy and Security of Citizens', known locally as the 'Privacy Law'. The law was officially formulated to strengthen Article 357 of Myanmar's 2008 Constitution on Privacy and Security (Burma Library, 2008).⁸ It provided more concrete provisions on physical privacy and security in the case of citizen abodes, and also gave citizens further protection from authorities when filing lawsuits, as there had been previous cases of stalking and intimidation. In relation to digital privacy however, the law did not outline clear conduct to prevent data being stored unnecessarily, making it inadequate (Yamin Aung, 2020a; FreedomHouse, 2017).

The law additionally criminalised defamation in Article 8(f), whereby "no one shall act in any way to slander or harm [a citizen's] reputation". Article 10 states that any person found guilty under Article 8(f) "shall be punished with a prison sentence between six months and three years, and a fine between 300,000 and 1,500,000 kyats" (Free Expression Myanmar, 2017b). Consequently, this specific article was widely abused, particularly by powerful individuals and political incumbents, to sue journalists and activists critical of them. There were over 110 lawsuits of this nature from 2017 to 2020, until minor amendments were made in 2020 to curtail this abuse (Yamin Aung, 2020b; Myanmar Responsible Business, 2020).

Article 10 of the Privacy Law is not aligned with international human rights standards, specifically the ICCPR, which encourages state parties not to criminalise defamation and be mindful of doing so, with regards to freedom of expression. Under Article 19, the use of criminal sanctions should only be countenanced for the most serious of cases and imprisonment is never an appropriate punishment (Office of the United Nations High Commissioner for Human Rights, 2011).⁹

Major concerns were raised amongst civil society organisations as Myanmar did not have, and currently still does not have in 2021, any comprehensive legislation for online data protection and privacy. There was therefore major pushback from international watchdogs and local civil society organisations, in spite of promises from the government that the data would only be used to ensure that people were not registering with a fake identity (Chau, 2019).

⁸ Burma Library is a free, non-commercial, open, multi-source, searchable, online research library focused on Myanmar. It grew out of the documentation on Myanmar provided from 1987 to the UN, ILO and other international bodies by the Burma Peace Foundation.

⁹ These standards are well treated in the authoritative General Comment Number 34 of the Human Rights Committee: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

Other objections raised were due to the potential for the database to be used to further aid and facilitate ethnic minority persecution, such as in the case of the Rohingya people.

On 15 February 2021, two weeks after the coup, the SAC amended the Privacy law. The amendment suspended Section 8 of the law, and thereby expanded the scope of actions that could be taken by authorities to conduct searches, seize equipment and make arrests and detentions; this also included the interception of telecommunications and enabled investigations and surveillance activities without the need for judicial oversight. Section 8 of the Privacy Law stipulated the prohibitive actions on the state authorities as follows:

"In the absence of an order, permission, or warrant issued in accordance with existing law, or permission from the Union President or the Union Cabinet, a Responsible Authority: 1) Shall not enter into a citizen's private residence or a room used as a residence, or a building, compound or building in a compound, for the purpose of search, seizure, or arrest; 2) Shall not surveil, spy upon, or investigate any citizen in a manner which could disturb their privacy and security or affect their dignity; 3) Shall not intercept or disturb any citizen's communication with another person or communications equipment in any way; 4) Shall not demand or obtain personal telephonic and electronic communications data from telecommunication operators; 5) Shall not open, search, seize or destroy another person's private correspondence, envelope, package or parcel; 6) Shall not unlawfully interfere with a citizen's personal or family matters or act in any way to slander or harm their reputation; 7) Shall not unlawfully seize the lawfully owned movable or immovable property of a citizen, or intentionally destroy it either directly or by indirect means".

By suspending Section 8, the aforementioned actions are now permissible with legal impunity when executed by government officials. The interception of communications and the obtaining of personal data from telecommunication and technology firms has proven most damaging to freedom of expression and internet freedoms in Myanmar. The suspension of Section 8 has left the populace vulnerable to raids from the Tatmadaw, conducted under the cover of darkness at night. These are carried out in sync with targeted internet shutdowns so that activists have no means to coordinate or warn others of the forthcoming incursions (Bloomberg News, 2021). Not requiring a warrant to enter and search a property for evidence, creates an atmosphere of constant tension that benefits the regime, reminiscent of similar illegal night-time raid tactics used by the military throughout the 1990s. The suspension of Section 8 of the Privacy Law has aided in it becoming another tool in the Tatmadaw's intimidation arsenal.

2e. Electronic Transactions Law

Myanmar's Electronic Transactions Law was first introduced in 2004 during the time of the SPDC. While the law was intended to govern online economic activities, it also contained vaguely-worded provisions that could be used to criminalise online expression. Under Section 33(a), for example, a person is liable for up to a 15-year jail sentence, if he or she, using electronic transaction technology, commits *"any act detrimental to the security of the State or prevalence of law and order"*. In 2008, Section 33(a) was used by authorities to condemn 21 activists associated with the 88 Generation Student Group to 15-year imprisonment sentences each (OMCT, 2008). Meanwhile, a number of activists—such as Chaw Sandi Tun (2015) and Tun Tun Oo (2017)—were also charged over their criticism towards the military under Section 34(d), which criminalises expression deemed to be *"detrimental to the interest of or to lower the dignity of any organization or any person"*.

Attempts to repeal the Electronic Transactions Law occurred in 2013, though this did not lead to any change. The law was amended after the military coup on 15 February 2021, and served to heighten infringements on fundamental freedoms.

The amendment embodied the Tatmadaw's signature approach of implementing vaguely-worded provisions, thus allowing the government to confiscate personal data and outlaw the act of sharing online information. It is important to note that some elements of the draft Cybersecurity Law have been incorporated into this amendment to the Electronic Transactions Law.

Under Chapter 10 of the Electronic Transactions Law, for example, a new clause, Section 27(c), was added to provide for an exception to the safeguarding of personal data in the occurrence of *"detecting, investigating, organizing of information, verifying the information conducted in accordance with management power on the cyber security and cybercrime matters relating to stability, tranquillity, national security of the state"*. This addition is almost wholly copied from Chapter 6 (Personal Information Management) of the Draft Cybersecurity Law, drawing criticism from the public and international human rights organisations. Additionally, under the newly amended Section 38(c), it is a punishable offence with up to three years imprisonment and/or a fine of \$7,000 USD for those *"who, at the cyberspace, commits creating false news or fake news with the intention to cause public panic, to lost trust, to lower the dignity by public or to destroy the unity of any association."* Section 38(c) is almost a word-for-word duplication of Article 64 of the Draft Cybersecurity Law, excluding the fine amount.

As of June 2021, there are no concrete examples of Section 38(c) being used, partly due to Section 505(a) of the Penal Code being the main legal instrument to criminalise online political expression as fake news. However, the amendment of the Electronic Transactions Law signals the junta's intention to return Myanmar to the previous situation under the SPDC, where the flow of information was strictly controlled and monitored.

2f. Cybersecurity Law (Draft)

On 9 February 2021, one week after the coup, the newly self-appointed SAC sent a draft Cybersecurity Law to telecommunication companies in Myanmar, seeking their input by 15 February. Worryingly, the proposed Cybersecurity Law, if passed, would grant authorities sweeping powers to access user data, impose disruptions to internet and mobile connectivity, deny access to specific content online, and criminalise dissidents or employees of companies that refuse to comply. Under Article 29 of the leaked draft, the government has the right to impose *"interception, removal, destruction or cessation" of one's account, when contents are deemed as (per a very vaguely worded clause) "causing hate or disrupting unity, stabilisation and peace," any "disinformation, or any comment violating any existing law"*. Those found guilty of breaking the law will be punished with up to 3 years imprisonment and a fine of \$7,500 USD (RSF, 2021). Article 30 of the draft prescribes that online service providers must, when requested, hand over to the government *"the user's name, IP address, phone number, ID card number and physical address"* (RSF, 2021). Article 31 stipulates that an online service provider in Myanmar *"may provide all or part of the information contained in Section 30 if the assigned person or authorised organisation [is] requested under any existing law."* As of the time of writing, the law has not been finalised.

As explained in the previous section, some provisions of the draft Cybersecurity Law, especially those introducing new offences, have been transferred into amendments to the Privacy Law and Electronic Transactions Law and enacted. This has allowed the military junta to skirt the criticisms arising from the possible implementation of the cybersecurity law, while still enacting these laws through existing legislation. The suspension of various sections of the Privacy Law allows the junta to meet similar objectives of the draft Cybersecurity Law, such as obtaining personal data, surveilling citizens, and disrupting their personal communications when deemed necessary. Sections 27(c) and 38(c) of the amended Electronic Transactions Law are almost wholly identical to articles from the draft Cybersecurity Law.

The draft Cybersecurity Law violates international standards on internet freedoms, enumerated in Human Rights Council Resolution of 2018, that called for the elimination of all undue restrictions on freedom of opinion and expression online (Human Rights Council, 2018). In 2011, international mechanisms¹⁰ on freedom of expression made similar calls to respect online expression in their Joint Declaration to the Human Rights Council. They note, inter alia, that "access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections," that intermediaries should not be targeted and that standards of liability "should take into account the overall public interest in protecting both the expression and the forum in which it is made" (OAS, 2002).

In sum, even before the 2021 military takeover, it was observable that suspension of public access to information (a State of Emergency Provision under the Constitution) and criminalisation of internet freedoms (criminal defamation provisions) were facilitated by a number of domestic laws, which are vaguely-worded and not aligned with international human rights standards. These 'permissions' to infringe on rights have expanded since the coup, resulting in more frequent and egregious violations. The military junta introduced amendments to existing laws that have allowed authorities unfettered power to control domestic public opinion, disrupt the local population's ability to mobilise using social media platforms and directly access individuals' personal data.

¹⁰ The United Nations (UN) Special Rapporteur on 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
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

3. Impact on Internet Freedoms

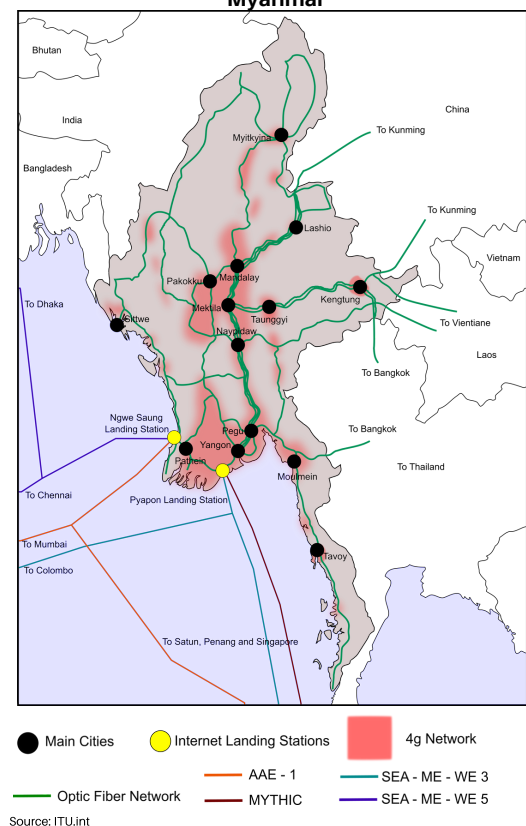
Since the liberalisation of the telecommunications sector and internet from November 2010 onwards under General Thein Sein, the elected NLD government, driven and orchestrated by the military behind the scenes from the early stages, took steps to control infrastructure and censor any digital content non-conducive to the military's agenda of power preservation. Pre-coup, these steps included the blocking of outspoken media outlets, including provincial internet shutdowns in Rakhine and Chin states. Post-coup, the strategies utilised have become bolder; any sites hosting critical dialogue and almost all independent news outlets have had their access blocked domestically. National internet shutdowns have been enacted, destruction of internet infrastructure carried out, and systematic harassment and persecution of dissenting social media users has been conducted by Tatmadaw personnel online.

3a. Infrastructure

A primary feature of the Myanmar telecommunications sector is the prevalence of state-controlled companies. MyTel's entry to the market in 2017 raised eyebrows among human rights advocates as an attempt by the Tatmadaw to reassert its dominance in the economy through the military-controlled business venture Myanmar Economic Corporate (MEC). The lack of transparency of the MEC and its business transactions was worsened by its partnership with Viettel, which is a state-owned enterprise of Vietnam's Ministry of Defence. In February 2020, Facebook removed fake accounts and pages disseminating disinformation promoting MyTel.

Internet shutdowns and service disruptions are nothing new in Myanmar. Through legal measures such as the Telecommunications Law, the government can effortlessly order content removal, terminate access, or simply criminalise the act of accessing certain information. MyTel is owned conjointly by the Tatmadaw, allowing for direct control by the military.

Figure 1: Internet Infrastructure Network in Myanmar



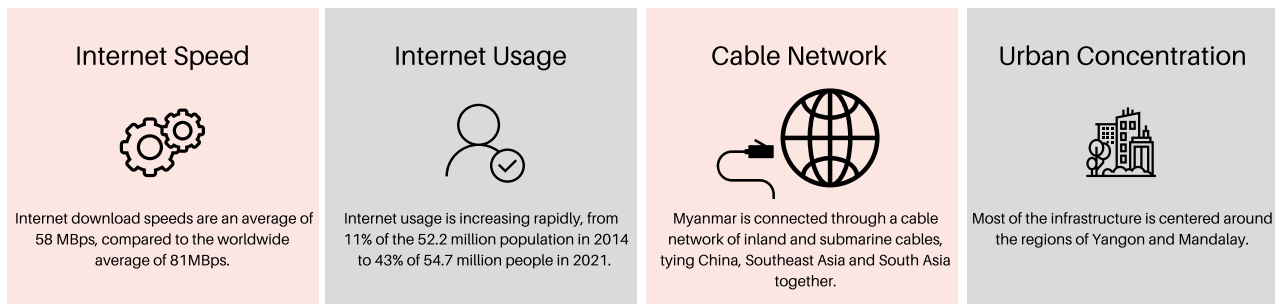
MPT is under the supervision of the Ministry of Post and Communications. As such, these two companies have been more inclined to impose the military's sanctions. From June 2019 to February 2021, internet shutdowns have been imposed and re-imposed in Rakhine State and some parts of Chin State, due to ongoing ethnic conflicts. With the onset of the COVID-19 pandemic, at the suggestion of the military and the military-backed Ministry of Home Affairs (MOHA), the government blocked local ethnic news media, a number of independent and regional news outlets and at least 221 websites, claiming that they were 'fake news' or had links with terrorist groups (Hlaing Lin, 2020). Local telecom operators were informed to stop the provision of mobile and fixed line data services during the height of the early post-coup protests and even block phone numbers of activists (Yuda, 2021; Potkin & Mcpherson, 2021).

The termination of access or blocking of online content has been a tool used to establish control over domestic telecommunications infrastructure by the state, especially during the 2021 military coup to continue exerting control over the population.

On 1 February 2021, the first day of the coup, the Tatmadaw imposed internet shutdowns across major cities such as Naypyidaw, Yangon, and Mandalay. Using Section 77 of the country's Telecommunications Law (2013), the military junta compelled Telcos and Internet Service Providers (ISPs) such as Telenor Myanmar, Ooredoo Myanmar, Myanmar Posts and Telecommunication (MPT), MyTel, Welink, 5BB and Frontiir to adhere to their demands of service disruption. Section 77 gives the government the authority to direct ISPs to "suspend a telecommunication service or restrict specific forms of communication" on the occurrence of public emergency (Telecommunications Law, 2013). NetBlocks revealed that the internet disruptions from 1 February to 7 February led to below-average connectivity, 50% to 75% lower than ordinary levels (Netblocks, 2021).



Spotlight : Myanmar's Internet Infrastructure



Starting from 3 February, the Ministry of Transport and Communications (MOTC) issued instructions to telecommunication operators to block access to social media platforms including Facebook, Instagram, Facebook Messenger and WhatsApp, citing this as a necessity to guarantee public security (Telenor, 2021). On 18 February, all language editions of Wikipedia, Wikimedia, and Wikidata were blocked to ban the use of certain words describing the events of the coup d'état and pro-democracy movements. Such restrictions also prevented an 'edit-war' of online articles on those platforms, particularly in relation to General Min Aung Hlaing's biography page (Netblocks, 2021). While termination of access to social media platforms and denying access to critical content had been executed in the first two weeks of the coup, by mid-February 2021, the military junta had changed their tactics to impose total internet blackouts instead.

From 15 February, the MOTC imposed a nationwide internet curfew from 1 AM to 9 AM during which connectivity was between 14%-15% of ordinary levels. On 15 March 2021, control over online communication was intensified again as the MOTC disabled mobile data nationwide. From 15 March, at 7 PM every night, letters ordering internet shutdowns and a daily list of banned Virtual Private Networks (VPNs) would be sent to telecommunication companies (Myanmar Now, 2021). On 18 March, publicly available WiFi networks faced disruptions. On 23 March, the military junta reaffirmed their intention of keeping internet use under strict control, citing violence and unrest being encouraged online. The junta also blamed the media for fanning the nationwide protests. After a long period of 72 nights of Internet curfews, the military rescinded the order on 28 April and broadband internet was allowed to operate as usual (Netblocks, 2021). This has been decreed amidst economic concerns, with the aim to boost economic performance. Restrictions on internet data, however, have continued. In the same vein as the lift on the internet curfew, partial restrictions on some applications were lifted on 28 May

Furthermore, during the coup, it was observed that the Tatmadaw was gradually shifting tactics from enacting internet shutdowns, blocking access and censorship, to destroying internet and telecommunication infrastructure. On top of internet shutdowns and mobile data suspensions, on 2 April 2021, the military ordered security forces to physically destroy wireless broadband and cables (Reuters, 2021).

On 8 April, the military issued a ban on using PSI satellite dishes that allow people to access local news outlets, especially the DVB and Mizzima, which continue to report on daily protests (The Irrawaddy, 2021b). In residential areas, there were reported cases of authorities visiting electronic shops and trespassing private residences to confiscate satellite dishes (Prachatai, 2021). On 4 June 2021, a shutdown was in place at the same time as the National Unity Government organised a press conference, during which they condemned the coup and called to dismantle the military and reinstate a democratic government.

The growth of the telecommunications sector saw an increased reliance on the internet and other digital services for businesses. Consequently, the internet blackouts were damaging to the digitalised economy of Myanmar, reducing the ease of business engagement in the country. The shutdowns, which lasted for a total duration of 3,830 hours from 15 February to 28 May, were estimated to account for a loss of \$2.1b USD (Woodhams & Migliano, 2021). To protect the economy whilst controlling the use of the internet for political purposes, the Tatmadaw allowed provisional internet access for business activities from 27 April 2021. Microsoft Office and banking applications were made available to the public and businesses, deemed essential for the economy to function (KrASIA, 2021).

The Tatmadaw has been actively pursuing an 'intranet' strategy by only allowing a handful of online services to be accessible using mobile data. On 25 May, a 'whitelist' of 1200 services was released which dictated which online services were allowed to continue operating. With over 300 websites allowed to operate, the business sector has been the most privileged. Entertainment, dating and gaming applications were allowed to run again (Strangio, 2021). While Facebook and Twitter were banned as they were identified as a place of coordination for pro-democracy protesters, other social media platforms such as YouTube, Instagram, WhatsApp and Viber were allowed to operate again. The reason advanced for the whitelisting of WhatsApp and Viber was that these applications were mostly used for business purposes (Nikkei Asia, 2021). The large focus on business apps reinforces that the military has been under pressure to re-establish economic stability in the country.

However, whether the implementation of an intranet will allow the military to salvage the economic performances of the country remains dubious at best. Indeed, while China has been successful in keeping their internet sealed off, it has come at a great cost. Myanmar does not have similar capacities, economic resources or alternative internet services as in China or Russia. Moreover, these restrictions will not only deter foreign investments, but also innovation within the country. In the long term, if this occurred the nascent e-commerce and start-up sectors would simply disappear and damage Myanmar's economy (Crisis Group Asia, 2021).

3b. Violation of Privacy

Under NLD rule in 2015, the telecommunications company 'MyTel' was formed; a joint venture between the Burmese military and the Vietnamese Ministry of Defence. It quickly became one of the largest telecommunication providers in Myanmar due to unfair pricing strategies and compelling incentives such as allowing subscribers to stream the English Premier League, a football (soccer) tournament that is hugely popular in Myanmar. To access the streaming content and other services that MyTel provides on their 'My ID Digital Hub' application, users are forced to accept a number of intrusive application permissions, including audio recording, Global Positioning System (GPS) tracking, access to photos and videos, contacts, and the ability to read USB content storage. A report from Justice for Myanmar reveals that it is almost certain the expansive personal data collected is being handled by MyTel and analysed in conjunction with the Vietnamese military (Justice for Myanmar, 2020). These arrangements have been beneficial for the Tatmadaw, with the information gathered on users enabling targeted crackdowns on dissidents since the coup (Potkin & Mcpherson, 2021).

Leading up to the coup d'état, telecommunications service providers such as Ooredoo were ordered by military officials to install spyware in their software infrastructure to allow the military to intercept calls and monitor information (Waring, 2021). It provided the military with the ability to listen in on calls, view text messages and web traffic, and track specific users' GPS locations (Potkin & Mcpherson, 2021). Since the coup, the military have also used unmanned aerial vehicles (UAVs) and drone technology to keep track of protest movements; the neighbouring Chinese People's Liberation Army (PLA) provided much of the surveillance hardware to the Burmese military's previously-outdated arsenal (Duncan & Mendelson, 2021).

China has become a key ally for the regime by lending their surveillance expertise and technology. From December 2020 onwards, urban areas in Myanmar have witnessed the rollout of the first phase of Huawei's 'Safe City' initiative, a programme that has been widely implemented in neighbouring China. Naypyidaw had 335 Huawei cameras installed as part of the Safe City project, the official reasoning behind the implementation of the project being that it would aid in crime reduction. The integrated software facilitates facial recognition, number plate identification and automatically notifies authorities when it captures individuals on a wanted list. This network of cameras gives the regime a key tool for suppressing any resistance to the coup in the area of Naypyidaw that it covers. There are similar plans for the Safe City initiative to be rolled out in Mandalay and Yangon in late 2021 (Human Rights Watch, 2021). China's Huawei has also partnered with Burmese and Vietnamese military-owned MyTel to establish 5G infrastructure in the nation. This could possibly further endanger users' privacy and data amid allegations from U.S officials that through its 5G infrastructure, Huawei has the capability to intercept user data at will. This is the same reason as to why the company has been totally banned from participating in 5G infrastructure projects in nations including the United States, Australia, New Zealand, Japan, Taiwan, with many other countries considering their future involvement with Huawei (Bucholz, 2020).

Surveillance Partners



Due to the post-coup internet shutdowns, protesters have shifted to using SMS messages and offline apps to record government crackdowns on protesters or human rights violations as evidence and for future reports pending internet resumption. However, these acts pose great risks to civil society activists as the data stored in their gadgets could be used for prosecution of law violations when arrested. This is particularly worrying because secret budget documents from 2019 and 2020 show that the previous NLD planned on purchasing \$4 million USD worth of sophisticated data extraction and spyware products. It is unknown as to whether those purchase plans were executed, and to what extent non-military members of the NLD were involved in those plans (Potkin & McPherson, 2021). Cutting off the internet also impacted journalists who perform critical reporting, as they could not keep abreast of the latest developments on the ground. Before the shutdown of internet services, journalists were able to be more proactive as they could receive instant information from onlookers or informers close to the incident in question via social media. Since the coup, this regular method has been cut-off. Increased obstacles placed in the path of effective digital journalism have emboldened Tatmadaw attacks on reporters. This has been demonstrated through the way in which military personnel have arbitrarily and aggressively targeted members of the press reporting upon the protests to the coup (Thet Paing & Son, 2021).

3c. Persecution and Harassment of Users

In Myanmar, criminalisation of internet users is the norm, committed through overly-broad provisions under the Penal Code (Section 505), Telecommunications Law (Section 66d), and amendment to the Electronic Transactions Law (Section 38c) which legalises criminal defamation. Online criticism of government officials and the sharing or publishing of content on social media qualifies as criminal defamation. In 2019 alone, according to the Freedom House's Freedom on the Net Report, there were more than 49 criminal cases brought forward under the Telecommunications Law and 37 cases under the Law Protecting the Privacy and Security of Citizens. In total, hundreds of cases were brought forward against social media users (Freedom House, 2021).

Journalists fared no better during the COVID-19 pandemic. Aung Ko Ko of Eleven Media Group was initially prosecuted under Section 27 of the Natural Disaster Management Law, before the charge was withdrawn and he was re-charged under the Telecommunications Law (Eleven Media Group, 2020). It is believed that the reason behind this was his remark on Facebook, suggesting the Ministry of Health had underreported and delayed press releases related to the COVID-19 pandemic in Myanmar.

Following the 2021 military coup, the military used Section 505(a) of the country's Penal Code on an unprecedented scale to criminalise ordinary people, protesters, critics and even celebrities who openly voiced their opinions against the regime. Those who engaged in protests against the coup, showed support to the CDM or the Committee Representing Pyidaungsu Hluttaw (CRPH) and encouraged labour strikes, especially over social media platforms, were also persecuted. 'Doxing' - the action of finding or publishing personal information about someone on the internet without their permission, especially in a way that reveals their name or address - ensued. The military listed photos with hometown names and Facebook pages of actors, musicians and social media influencers charged with violating Section 505(a) of the Penal Code for "spreading news to affect state stability"; this information was also published in local government controlled media. It was reported such individuals were charged under Section 505(a) for the content on their social media accounts (The Sydney Morning Herald, 2021). As of 29 April, those who were subjected to this public shaming tactic totalled 737 individuals.¹¹

Control Tactics

Harassment of journalists



Closure of media outlets and detention of journalists has become common place in Myanmar.

Silencing of prominent personalities



Under the cover of "fighting fake news", social media accounts have been closed and banned.

Disinformation campaigns



Negative harassment campaign have been undertaken against critics.

Personalities targeted by the Tatmadaw's public shaming tactics included Paing Takhon and Han Lay. On 8 April, Takhon, a model and actor, was arrested at his mother's home in Yangon. His social media accounts on Facebook and Instagram, with more than a million followers, were also deleted. Before the arrest he had been actively participating in anti-coup protests and supporting the ousted leader Aung San Suu Kyi and the NLD through his online posts. During the Miss Grand International beauty contest in April in Bangkok, Miss Grand Myanmar Han Lay, a psychology graduate of the University of Yangon, took to the stage to speak up against the military junta and plead for the international community's support for her countrymen's struggle against the military regime.

Due to her public criticism of the Tatmadaw, she received threatening messages on her social media accounts, including threats of imprisonment. Though not officially confirmed, rumours have circulated that local authorities have issued a warrant for her arrest (Bracamonte, 2021).

In Myanmar, the use of social media platforms by both military personalities and ultraconservatives of the Ma Ba Tha have consistently shown the degree to which social media can be employed to fuel local ethnic conflict and legitimise gross human rights violations. Since the Rohingya genocide intensified in late-2017, the Tatmadaw has engaged in social media manipulation, promoting their own narratives online while discounting critical reports of independent media outlets as 'fake news'. Often, this was done through the social media accounts of its military-run networks or state-owned enterprises. In August 2018, the phenomenon was serious enough that Facebook, facing international condemnation, set up a task force of local fact-checkers to respond to this hate speech and authoritarian disinformation (Financial Times, 2018). In December, Facebook took further action, taking down 425 Facebook pages, 17 Facebook groups, 135 Facebook accounts and 15 Instagram accounts for their links to the Burmese military and for engaging in "coordinated inauthentic behaviour" on its platforms (Warofka, 2018). The move came after the earlier actions in August, when it banned the accounts of Myanmar's Commander-in-Chief of the Armed Forces Gen. Min Aung Hlaing and the Tatmadaw's Myawaddy Television Network, along with 17 other Facebook accounts, 1 Instagram account and 52 Facebook Pages for covertly pushing the military's propaganda (Reuters, 2018).

On 2 February 2021, a day after the coup, the newly appointed Minister of Information issued a public warning that some media outlets "were spreading false rumours and statements which can cause unrest." In a statement to the Myanmar Press Council, the Ministry of Information instructed the media against using "incorrect words" such as 'coup' and referring to the military as a 'junta' or 'regime', in an attempt to control the narrative surrounding the events of February 2021 (Bangkok Post, 2021).

On 9 March 2021, the military moved from public warnings to closing media outlets, ordering five independent media organisations to shut down (7 Day News, Democratic Voice of Burma, Khit Thit News, Mizzima and Myanmar Now). Under the order, media organisations would be deemed to be breaking the law if they continued to "publish or broadcast articles, programmes or reports or transmit messages via social media" (RSF, 2021). On the same date, Myanmar Now's office also suffered a raid from the authorities, who forced their way into the building, seizing documents and office materials. According to Reportingasean, as of 15 April 2021, a total of 77 journalists have been arrested, 43 of whom remained in custody. Most were charged under Article 505(a) of the Penal Code for causing fear and spreading fake news (Reportingasean, 2021).

On the contrary, state-owned broadcast stations Myanmar Radio and Television (MRTV) as well as military-run networks such as Myawaddy Media, Myawaddy TV (MWD) Variety and MWD Myanmar were left unscathed, and have since been regularly used to propagate disinformation, pro-military rhetoric and threats of violence towards peaceful protesters. On 22 February, Facebook took down MRTV and MRTV Live from the platform, citing repeated violations of its community standards. This action came a day after the MRTV broadcaster made veiled physical threats to demonstrators. On 5 March, YouTube took similar action to remove MRTV and the military-owned channels on its platform due to the violation of its community guidelines and applicable laws.

The discourse on the 2021 military takeover was not limited to Myanmar per se, but became an international contestation when western nations imposed sanctions on the military personnel and their assets. In a bid to gain better international standing and image, the Tatmadaw hired a former Israeli spy, Ari Ben-Menashe, who had previously worked for Mugabe's regime in Zimbabwe, to lead a lobbying campaign painting the military regime in a more positive light.

Apart from placing the blame for the Rohingya humanitarian crisis on Aung San Suu Kyi alone, Ben-Menashe, so far, has been trying to present the previous NLD administration as too close to China. Sooner rather than later, Myanmar would then fall into China's orbit. Given this strategic imperative, the military had stepped in to prevent this scenario from happening (Safi, 2021).

3d. Women

While increased internet penetration had allowed for greater connectivity and mobilisation prior to the 2021 coup, women have faced disproportionately more online harassment. They have experienced instances of cyberbullying, cyberstalking, intimidation as well as blackmail through doctored pictures or 'revenge porn'. For example, a woman reported that a fake Facebook account had been created using her name and phone number that claimed she was selling sexual services. Another woman, upon losing her phone, was told to pay 100,000 kyats for it, or doctored pictures of her would appear online. Seeking legal recourse for such cyber abuse has proved to be ineffective. Due to a lack of digital literacy, district-level approval is required to accept and work on such complaints. The authorities are focused more on social media that defames the military junta or government, rather than acting on instances of individual cyber-crime that are deemed as insignificant (Aung, 2016).

Women on the Internet



The draft Cybersecurity Law, if passed, will pose more problems to women, rather than addressing the challenges women face as mentioned above. This is especially true for Section 30, which needs to be monitored closely, as it states that *"The online service provider in Myanmar shall retain the following information from the service users for up to three years from the date of use of the service. (a) Username, Internet Protocol (IP) address, telephone number, identification card number and address of the service users. (b) User record of the service user. (c) Other information as directed by the department"*. This section threatens the right to anonymity and thus further exposes women to unsavoury treatment online that has become commonplace. This must be read in conjunction with Section 28, whereby *"internet service providers in Myanmar shall ensure the following: (a) The device that stores the users' information must be kept in a place designated by the ministry. (b) Internet service providers must be registered in accord with the Myanmar company law. (c) Taxes must be paid in accordance with the provisions set forth in relevant laws if it is due to claim any tax relating to the business conducted through internet service or similar profitable business"*. The issue of contention here is the requirement to store data in a location designated by the military junta. As the military has been involved in violence against women before and during the coup, their storage of personal data risks disproportionate penalisation of women who already face risks with their increased internet usage.

Despite the harassment faced, as well as the additional risks women face in Myanmar's patriarchal society, women have been at the forefront of various pro-democracy movements. These include the 1988 Uprising and Saffron Revolution of 2007. Women are once again visible at the forefront of the CDM and have made effective use of social media to mobilise against the forcibly imposed military rule. Female journalists such as Naw Betty Han and Nyein Lay, despite the increased risks present due to them being female, continue to report on-going developments of the coup (Aye, 2021). A growing feminist movement #Sisters2Sisters has been started by activist Thinzar Shunlei Yi to raise awareness of the excessive violence and force used against women by the junta. Through this movement, over 80 civil society organisations have been advocating for the junta to end their tenure of violence in the country, as well as release imprisoned female HRDs (Aye, 2021). Such movements have also allowed individuals outside Myanmar to better understand the treatment of women during the coup. However, due to the on-going internet shutdowns and restrictions, people in Myanmar may not be able to access these movements as effectively. The use of the internet to report the on-going coup has also enabled the recognition of women's participation in Myanmar's politics and pro-democracy movements. Mya Thwe Thwe Khaing, a 19-year old female, was the first protester who died due to military violence. Her image has since become something akin to a martyr, an important defining motif for the CDM, depicted in posters around Myanmar and shared widely online (Head, 2021).

Though male activists are still more prevalent than their female counterparts in the protest movement, the fact that women are so visible in the CDM is a testament to their important role. As of May 2021, around 800 women have faced arrest and 50 have been killed in the protests (Aye, 2021). The presence of female activists has only grown over the past years, portraying a change in mindset in a society where gender norms repeatedly perpetuate the inferiority of females compared to male counterparts, rather than a society where women are treated no differently than men.

The attack on internet freedoms has intensified following the February 2021 coup, especially in response to the use of the internet to mobilise the masses in movements and protests against military rule. These attacks are a culmination of attempts over the last 10 years since the internet became publicly available in Myanmar to limit and control the civic space present online. Access to information, freedom of expression and rights to privacy have been seriously infringed upon, and progress made in the telecommunications infrastructure and internet freedoms area has severely eroded. Despite the severe restrictions in place on internet access and use, individuals in Myanmar remain resilient and have found ways to skirt around these controls to continue advocating for pro-democracy reforms. In the next section, a set of recommendations are formulated, taking into account the pre and post-coup environment.

4. Recommendations

The ongoing review of Myanmar's national legislation by the government, since the 2008 Constitution was enacted, shows that reviews and subsequent reforms have done little to safeguard internet freedoms in Myanmar. The rights for access to information, freedom of expression and rights to privacy were regulated, though infringed upon through the exercise of vaguely-worded laws granting expansive powers to the government. These laws failed to comply with international standards. The situation following the coup with the declaration of the state of emergency and amendments to existing laws have further reduced fundamental civic freedoms and human rights.

The following sections outline recommendations to ensure that internet freedom, access to information, and freedom of expression are adhered to and protected. Recommendations here are directed towards parliamentarians so that they may be adopted should the situation revert and the old laws be reinstated. Recommendations are also directed towards international organisations, the international community, and transnational corporations to call out and roll back internet shutdowns in Myanmar. The principles behind these recommendations could also be adapted into the drafting of any modern and progressive constitution.

- Remove provisions in the Penal Code that criminalise defamation.
- Amend the *Telecommunications Law* (2013) to ensure its alignment with international standards, including repealing Section 66(d).
- Repeal Section 77 of the *Telecommunications Law* (2013), which allows the blocking of access to information or regulates online content.
- Nullify and void amendments made to the *Law Protecting the Privacy and Security of Citizens* (2017) and the *Electronic Transactions Law* (2004) enacted during the coup that affect data privacy, rights to information, freedom of expression, association and assembly.
- Propose draft legislation to establish an independent NHRI in line with the Paris Principles, so as to monitor internet freedoms, address violations and provide remedies to victims.
- Establish an independent authority responsible for oversight *ex ante* and *ex post* of all surveillance measures conducted by law enforcement agencies to ensure compliance with Article 11 of the UDHR, and Article 17 of the ICCPR.
- Call upon the Government to sign and ratify core human rights treaties, especially the ICCPR, and ensure a follow-up to the recommendations made by human rights mechanisms.
- Issue clear statements condemning internet shutdowns and take firmer action to ensure internet access to the people of Myanmar.
- Condemn the actions taken by the military junta against social media users through actions such as arrests or doxing.
- Corporations must execute their responsibilities under the United Nations Guiding Principles on Business and Human Rights (UNGP), which calls on business entities to “seek, prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.
- Refuse to cooperate with the military regime in handing over personal data or other sources of information that may put individuals at risk of arrest, incarceration and human rights abuses.

These recommendations, with suggested amendments to current legislation and proposed draft legislation, would enable the promotion and protection of internet freedoms and freedom of expression online. These are especially salient in the aftermath of the 2021 coup, where laws have been misused and amended to further curtail internet freedoms. It is essential for the country to move towards more democratic institutions and governance, with strict checks and balances on the role of the military in politics and decision-making, to enable smoother transitions towards the implementation of such recommendations.

5. Conclusion

Since 2010, Myanmar's political transition from a full-fledged military oligarchy to a semi-democratic parliamentary system had promised greater online freedoms and other democratic potentials. Liberalisation of its telecommunications sector created competition and economies of scale, reducing the cost of access to the internet for users in Myanmar. Social media platforms, especially Facebook, became popular mediums not only for corresponding, but for news consumption.

Internet access was sharply and brutally curtailed through the 2021 military coup. Internet freedoms took a severe turn for the worse through a series of internet shutdowns, services disruptions, and the destruction of physical infrastructure. Yet, this is no surprise, as infringements related to access to information, freedom of expression and rights to privacy have been building up since the internet was made widely available. This is, in part due to Myanmar's overly-board national laws that do not align with the international human rights standards.

Various UN instruments, meetings and urging by the Special Rapporteurs were not able to bring Myanmar to either adhere to international standards or sign up to international human rights treaties. Instead, Myanmar officials often dismissed such requests altogether. Similarly, although Myanmar has been a member of ASEAN since 1997, the regional group has not been able to soften the military regime's transgressions. Over the last two decades, ASEAN has been criticised for not being effective in this regard.

Young people, notably women, have taken leading roles in nationwide protests that have been attempting to rein in and roll back the military takeover. They have been subject to arbitrary arrests, torture, and excessive force as the military cracked down on the resistance. Fallen women protesters have become new democracy icons. Post-coup amendments to the Penal Code, Privacy Law and Electronic Transactions Law have been used by the military junta to consolidate its control of the internet and thwart anti-coup mobilisation.

Given the political developments in Myanmar, this report recommends key short-term and long-term goals. In the short-term, there is a need to address and restore access to the internet in the country. In the longer-term, the national laws have to be revised to ensure that they align to international standards. Myanmar should also sign up to international treaties that it has not yet ascended to and ratified.

To ensure that this happens, stakeholders need to lobby the legitimate government of Myanmar, ASEAN, telecommunication companies and the international community to protect internet freedoms that are integral to freedom of opinion and expression.

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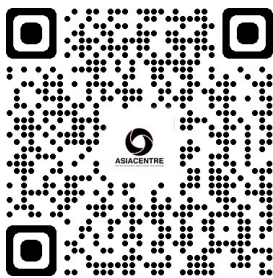
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