

Undermining Freedom of Expression Amid the Myanmar Coup March 10, 2021

Introduction

After ten years of a slow but steady transition to a democratic civilian government, the Myanmar Tatmadaw launched a military coup in the early morning hours of 1 February 2021. Their actions resulted in the unlawful detainment and arrest of political leaders and activists. This illegitimate attempt to maintain power comes as the military felt threatened by the civilian government who had made attempts to reduce their control.

Since the coup, the country has been in a state of growing, civil unrest. Hundreds of thousands of civilians of different ages and backgrounds have gathered to participate in protests against the regime's illegitimate seizure of power. Wide-spread systematic state violence has followed as a result. Police and soldiers have openly fired to disperse crowds with the intention to kill or severely injure. In the evenings, Internet access is cut off and midnight arrests of dissidents and high-profile individuals condemning the coup are taken away to undisclosed locations. Freedom of expression has also been curtailed as the Myanmar leaders warn the media not to call the newly established government deemed the State Administration Council (SAC) 'a coup.'¹

Myanmar is at a crossroads; a departure from the norms of governance over the last ten years. It is imperative that the next steps be with intention and aimed at lifting the draconian measures which have been re-imposed on the people of Myanmar. This short briefing paper examines how civic and political rights to peaceful protest and assembly have been dangerously undermined in the current political climate.

An Overview of Myanmar's History on Media Freedom

The Constitution of the Union of Burma in 1947 guaranteed freedom of expression, and the liberties of thought and expression.² Two years later, the Emergency Provisions Act, which criminalised the spreading of false news knowingly and the slandering of civil servants and military officials was enacted.³ In the years to come, harsh laws would significantly limit the environment for the free press and activists to report and organize their activities. A military coup in 1962 by Ne Win saw the Printers and Publishers Registration Law, which required all those who print and publish materials to submit copies to the Press Scrutiny Board (now the Ministry of Information).

Between 1988 and 1966, several laws were passed to stifle information that ran contrary to the military junta's agenda. These included the Law Protecting the Peaceful

¹ Bangkok Post, '[Don't call it a coup, Myanmar junta warns](#)', 13 February 2021.

² See Wikipedia: Censorship in Myanmar; Post Independence Era https://en.wikipedia.org/wiki/Censorship_in_Myanmar#

³ Ibid

and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions.

Though significant progress has been made in recent years to Myanmar's repressive media laws, the environment for press freedom is still censored. There was hope in 2015 when the NLD won their first term victory that there would be reforms to draconian media laws that had silenced and suppressed activists and the press for decades. However, despite campaign promises to restore freedom of expression, their efforts were disappointing. In a 2020 World Press Freedom Index, Myanmar ranked 139 out of 180 countries.⁴

Laws including the controversial section 66(d) of the Telecommunications Act and section 505(b) of the Penal Code are both examples of problematic decrees. Both broadly worded in scope, the laws are not in line with democratic freedoms as there are many articles on defamation, sedition and offence. These laws and others have been used by members of the Myanmar Tatmadaw to censor journalists and activists. In 2017, 62 human rights organizations issued a joint statement calling for the repeal of 66(d) for its overly broad, narrowly defined terms which subjected anyone who shared an opinion criticizing the government or military, to charges.⁵ Human Rights Watch has called on the Myanmar Police Force and Ministry of Home Affairs to 'instruct all police departments that participation in peaceful assemblies should never be the basis for charges under Penal Code sections 143, 145, or 147, or Peaceful Assembly and Peaceful Procession Law section 19.'⁶ Peaceful protesters and journalists were persecuted over the years under laws that attempted to silence their worry into fear. The dwindling space for freedom of expression and assembly was distressing early into the NLD's first years of governance and continued over the following years.

While the NLD did not act or respond to pressure, activists were still hopeful that there would be amendments. They continued their lobbying efforts and challenged the government for their stance on media freedoms. However, since the military coup any attempt for reforms now appears nearly impossible as the status of freedom of expression has already declined rapidly. The Myanmar Tatmadaw has exceptional control over the telecommunications companies and have ready access to compromising devices legally under new laws they have drafted. The Ministry of Information has released several updates on amended laws that fail to protect civilian privacy and assembly laws. They are far from being in line with international standards. Further, there is deep concern for a further erosion of the media landscape and scope of assembly and peaceful protest.

⁴ Reporters Without Borders, <https://rsf.org/en/ranking?#>

⁵ Human Rights Watch, "Burma: Repeal Section 66(d) of the 2013 Telecommunications Law." 19 June 2017
<https://www.hrw.org/news/2017/06/29/burma-repeal-section-66d-2013-telecommunications-law#>

⁶ Human Rights Watch, "Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar," 31 January 2019.
<https://www.hrw.org/report/2019/01/31/dashed-hopes/criminalization-peaceful-expression-myanmar>

Situation Overview

i. *Violent crackdown on peaceful demonstrators*

The security forces have routinely used excessive and lethal force, threats and violence against the unarmed peaceful protesters across the country. Myanmar police used tear gas, water cannons, rubber bullets and live ammunition to violently crack down the protesters. In most cases, the police and security forces are not providing any warnings before shooting into the crowds. Protesters have been met with violence by the armed security forces. Weeks of mostly peaceful demonstrations have resulted in police and military soldiers failing to comply with human rights standards and practice for the police. According to the Office of the United Nations High Commissioner for Human Rights (UNOCHA), police officials are expected to lead by example with 'good command and management practice and ensure that all police officials maintain respect for the dignity of all persons.'⁷ It also states that according to human rights standards, 'police shall provide for the protection of public safety and the rights of all persons.'⁸ In reality, we have witnessed an abhorrent display of violence on civilians and professionals.

Public incidents of soldiers killing and injuring civilians in broad daylight has exposed the horrors the regime is capable of. Since the second week of February, Myanmar police started using real bullets. On February 9, a young woman, Ma Mya Thwet Thwet Khaing, 19, became the first victim of exercising the right to peaceful assembly against the military coup. In a particularly disturbing case, a 19-year old girl was shot by a sniper in Mandalay while protesting on 3 March. The military has denied any responsibility in her death. These cases all demonstrate a failure by the authorities to uphold commitments to ensure the safety of all citizens, rather than evoke fear and violent methods against them.⁹

On 8 March 2021, the military and police used sound grenades and rubber bullets and destroyed nearby parked motorbikes. They stormed into civilian homes and apartments and arrested approximately 20 students and youth demonstrators. Whilst the police and military blocked Sanchaung Township in Yangon, people across the city protested against the curfew in various ways until midnight when the trapped demonstrators were finally able to escape. The military and police locked-down the entire township. At night, hundreds of protestors, particularly, students and youths were trapped in Sanchaung.

Attack on medical volunteers and vehicles are also reported. On 9 March, a Zabu Mittar Emergency Volunteer Service ambulance from YaNge village, Thayat Chaung township, Dawei district, Tanintharyi Region, was shot by the military and three rescue volunteers were captured. Shooting at ambulances and various charity

⁷ See UNOCHA Professional Training Series No.5/Add 3 <https://www.ohchr.org/documents/publications/training5add3en.pdf>

⁸ Ibid

⁹ Documentation Network for Burma Spring (DNFBS)

vehicles are in clear violation of international laws and is evidence of the disregard for humanity and brutality. There was also an assault against four young volunteer medics after their ambulance was destroyed in north Okkalapa township. CCTV footage captured a group of policemen beating and kicking them with batons and their guns.¹⁰

ii. *Death in detention*

Many in detention have been subject to torture resulting in death. There have been several cases of high profile NLD affiliates taken away at night and returned to their families with visible wounds of distress on their heads and backs indicating torturous, inhumane methods were used. Ko Zaw Myat Linn, in charge of Su Livelihood Science- Shwe Pyi Thar (a vocational institute) who was detained in an arbitrary night-time raid last night was announced dead today with injuries consistent with torture. NLD offices have also been raided.

iii. *Arbitrary arrest*

As of March 9, a total of (1939) people have been arrested, charged or sentenced in relation to the attempted military coup on February 1. Of them, (3) were convicted; (2) to two years imprisonment, (1) to three months. (72) have been charged with a warrant and are evading arrest, (319) were released. A total of (1620) are still under detention or have outstanding charges/evading arrest, including the (3) sentenced.¹¹

The junta declared on March 10 evening that it filed lawsuits against 23 individuals including prominent former leaders of All Burma Federation of Student Unions (AFSFU), Kyaw Ko Ko, Lin Htet Naing (aka) James, Moe Htet Nay; human rights defenders from civil society organizations such as General Wave, Future Nation Alliance; and members of the political parties, the National League for Democracy (NLD), Arakan League for Democracy (ALD) and Democratic People's New Society (DPNS) and some members of Labor Union under the Section 505 (a) of the Penal Code at Kamayut township police station, Tamwe township police station and Mayangone township police station for organizing and participating in anti-junta protests and supporting the CDM movement.¹²

This is not in compliance with domestic law, Article 354 of the 2008 Constitution, or international law. Article 19 of the Universal Declaration of Human Rights (UDHR), and Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) protects the right of freedom of press and freedom of expression. Since the junta

¹⁰ The Guardian, "Myanmar: police filmed assaulting medics in CCTV footage – video," 4 March 2021

<https://www.theguardian.com/world/video/2021/mar/04/myanmar-police-filmed-assaulting-medics-in-cctv-footage-video>

¹¹ Association for Assistance of Political Prisoners (AAPP)

¹² Documentation Network for Burma Spring (DNFBBS)

does not follow its own drafted legal framework it is not a surprise they utterly disregard international standards.

iv. Outlawed Labour Organizations

There were 16 Labor Unions and labor rights organizations outlawed by the Ministry of Labor, Immigration and Population. According to the announcement issued: “these organizations are not registered in line with the law and are identified as illegal organizations”. Effective action would be taken if they keep running, according to the announcement.

v. Internet Shutdowns and Blocking of Social Media Applications

Internet service was suspended almost immediately after the military coup took place. On 4 February, this levelled up as providers were told to temporarily shut down Facebook, and a day later Twitter and Instagram. Data networks were shut down on 6 February and by 10 February and several IP addresses were also temporarily blocked. A cyber security monitor, Netblocks confirmed that internet connectivity in Myanmar fell to 50% of normal levels.¹³ Six weeks later, internet disruptions are still continuing in Myanmar. In February, the authorities also blocked Wikipedia in all languages.¹⁴ All of the censorship signals that the Myanmar Tatmadaw and SAC are trying to maintain their hold on power as another means of legitimizing their authority and control the population. As documented by the Association of Burmese Political Prisoners, many of the arrests of activists and rights defenders are taking place in the middle of the night – when the internet is intentionally cut.

Further, the legal changes by the SAC grants the authorities the power to regulate Internet service providers and communications companies. The Ministry of Transport and Communications is justifying these provisions on the basis that references and circulation of fake news are problematic, which put the stability of the nation and interest of the public at risk. However, in reality these laws reveal the junta’s paranoia and their subsequent attempts to use extreme tactics of widespread surveillance.

Under the United Nations Guiding Principles on Business and Human Rights, an unjust Internet shutdown without legal basis should be restored. Freedom of expression rights-based group, Article-19 observed that ‘Myanmar has a dark history of communication blackouts.’¹⁵ The network disruptions across telephone lines and social media applications led to decreased national connectivity levels.

¹³ Netblocks Twitter, <https://twitter.com/netblocks/status/1356058517464113152> 1 February 2021

¹⁴ Business Standard, “Myanmar blocks Wikipedia in all languages, internet suspended: NetBlocks,” 21 February 2021 https://www.business-standard.com/article/international/myanmar-blocks-wikipedia-in-all-languages-internet-suspended-netblocks-121022100112_1.html

¹⁵ Article-19, “Myanmar: Freedom of expression and access to information crushed as coup unfolds,” 1 February 2021 <https://www.article19.org/resources/myanmar-freedom-of-expression-and-access-to-information-crushed-as-coup-unfolds/>

Many resorted to Virtual Private Networks but there are looming fears that more Internet shutdowns are imminent at any point.

vi. Censorship of the Free, Independent Media

The crackdown on Myanmar media outlets since the coup on 1 February 2021 is evidence of a deliberate attempt to shut down reporting on violence against protesters and the country's quickly deteriorating security situation.

Claiming to act in the pursuit of unity, on 2 February Myanmar's Ministry of Information released a statement alleging that there was some media and citizens who were spreading false information on social media to cause unrest.¹⁶ Shortly after, SAC issued another statement to the Myanmar Press Council informing journalists that 'incorrect words' such as coup will not be tolerated and will be recognized as 'acts of instigation that may arouse civil unrest.'¹⁷ In response, a statement by independent media including *Frontier Myanmar*, *Myanmar Now*, *the Voice*, *The Irrawaddy* and others declared their commitment to stand for the rights to 'freely report and broadcast mentioned in Article 19 of the Universal Declaration of Human Rights.'¹⁸ On 3 March, the Foreign Correspondents Club of Thailand released a statement on the detention and prosecution of journalists in Myanmar writing that the 'independent media plays a vital role in bringing full information about what is happening in Myanmar to the world's attention.'

vii. Arrest of Journalists

Meanwhile, as protests take place in major cities and townships, journalists have not been spared in the violent attacks by heavily armed police and security forces. On 26 February, a Japanese journalist was briefly detained in Myanmar while covering the protests¹⁹ and released. On 27 February, Myanmar Now video journalist, Ma Kay Zun Nway was also arrested while broadcasting live. In ethnic areas, the situation is significantly worse for the press who are more limited in terms of funding, resources and what areas they are able to cover. Myanmar Army soldiers are known to inform broadcasters that if they record live, they will be arrested and detained and in extreme cases shot at.

There have been at least 37 journalists arrested in Myitkyina (Kachin State), Monywa (Sagaing Region) Haka (Chin State), Magwe Region, Patheingyi (Ayeyarwady Region) Pyaw (Bago Region), Mawlamyine (Mon State), Myeik (Tanintharyi Region) Meiktila (Mandalay), and Taunggyi (Shan State). Most of the arrests have been in Yangon. Though 19 were released, 10 were charged under 505 (A) and are still in

¹⁶ Myanmar Times, "[Myanmar information ministry warns some media and public not to spread rumors and incite unrest](#)" 3 February 2021.

¹⁷ Ibid

¹⁸ Mizzima, "[Statement by Independent Media](#)," 25 February 2021.

¹⁹ Kyodo, "[Japanese journalist briefly detained in Myanmar while covering protests](#)," 26 February 2021.

Insein Prison, except for two who are on bail. The whereabouts of 8 remain unknown.²⁰

The targeting and attempted censorship of the press is draconian and is indicative of the repressed media climate of 1988. Shortcomings in Myanmar's media laws are not in line with international standards as additional reporting restrictions are only set to undermine the free press further.

viii. *Banned Media*

The junta threatened the media outlets not to use the terms, "military coup", "the junta" and "military regime". Myanmar Radio and Television (MRTV), announced that five domestic *media outlets including DVB, Mizzima, 7 Day, Myanmar Now and Khit Thit who would have their broadcasting license suspended.*²¹ These media outlets produce breaking news revealing the brutal truth of this junta. This oppression is aimed to conceal human rights violations and to weaken communication channels between free media and the public, in addition to weakening the momentum of the peaceful protests. This repression is also a signal to threaten the shrinking space of the remaining free media.

ix. *Raiding of Press Offices*

After the military junta revoked the license of five private independent media agencies, the junta's security forces raided the office of Myanmar Now news agency on March 8, then stormed offices of Kamayut Media and Mizzima on March 9, arresting founders of Kamayut Media, Nathan Maung and Han Thar although no staff of Mizzima was arrested.

x. *Repressive Laws*

Throughout history, the military regime was able to maintain their control over the population through fear mongering tactics that much of the world knew little about. This was especially true during the protests of 1988 where thousands were gunned down in the street, beaten, tortured and killed. A lack of access to the country made it so the authorities could largely evade accountability for their crimes against their own people. Myanmar lagged behind their Southeast Asian neighboring countries in terms of progressive technologies. Sim cards were expensive and access to the Internet was reserved for the elite. In 2014, foreign mobile operators such as Telenor and Ooredoo put an end to state-run communications. What followed was millions flocking to the Internet to share and create content.

Now, those same civilians alongside an increasingly tech-savvy generation sharing videos and photo evidence of violence being perpetrated against them and their

²⁰ Detained Journalists Information Myanmar grup

²¹ Voice of America, "Myanmar Military Strips Five Media Companies of Licenses," 8 March 2021 <https://www.voanews.com/east-asia-pacific/myanmar-military-strips-five-media-companies-licenses-0>

communities. In response, the SAC has put forward a series of reforms to laws that would set back the country's progress in rights freedoms by a worrying standard.

(i) The Cyber Security Bill

On 9 February 2021, the Ministry of Transport and Communications authorized a directive on the proposed Cyber Security Bill, which were riddled with a series of violations on privacy and digital rights. The bill states that online service providers would be forced to keep a set of user data on file such as the individuals' name, phone number, address, and IP number for up to three years. When data is requested by the authorities, businesses would be legally bound to do so, or face up to three years in prison. The law also uses sweepingly broad terms, which would allow the State to interrupt the charges as they wish. This is especially problematic for online service providers required to block or remove content at the request of the authorities for content that is deemed 'misinformation and disinformation' or 'information which causes hate, disrupts the unity, stabilization and peace,' though there is no definition in the law to define what misinformation is deemed as. The law is a further extension of the military's powers and effectively gives the SAC direct control over the removal of any content they do not approve, and threatens to diminish the already shrinking space of freedom of expression and its related civil liberties. Civil society responded by rejecting the Cyber Security Bill as it would give sweeping amounts of power to the SAC to dismiss and deny accessibility rights to anyone they deemed guilty of violating the laws.²²

(ii) The Electronic Transactions Law

Two weeks after seizing power on 15 February 2021, the SAC announced changes to the Electronic Transactions Law²³, a law that was first enacted in 2004 by the State Peace and Development Council. It was introduced as a way to control information, especially given that the regime was not well equipped to respond with technology. Myanmar Now called recent changes to the law, 'an attempt to rein in growing protests against the return to military rule'²⁴ in what they deemed 'heading back into a dark age.'²⁵

The amendments made by the junta are problematic as they grant the government access to personal data under Section 27-C, which allow the authorities to manage personal data under matters related to stability, tranquility and national security of the state. Not surprisingly, these are broad in their application and not clearly defined in the legislation.

²² Bangkok Post, '[Myanmar junta's planned cyber law condemned](#)' 13 February 2021

²³ See Free Expression Myanmar Law (English) <https://freeexpressionmyanmar.org/wp-content/uploads/2017/07/Electronic-Transactions-Law-EN.pdf>

²⁴ Myanmar Now, 'Amended law throws Myanmar back into dark media age' 19 February 2021 <https://www.myanmar-now.org/en/news/amended-law-throws-myanmar-back-into-media-dark-age>

²⁵ Ibid

Modifications have also been made to the law protecting the privacy and security of citizens. These too are extremely worrying as they authorize the junta to conduct searches, seizures and arrests (to extend detention) without any judicial oversight or warrant.²⁶ This legally allows state forces to search, seize and arrest without civilian observation under Section 5 of the amended Privacy Law. Section 7 then gives the government the authority to keep those detained for as long as they determine is fit, all without the intervention of court proceedings.

(iii) Law Amending the Penal Code

On 14 February 2021, the SAC enacted this law according to Article 419 of the State Constitution.²⁷ Changes in this law included the creation of new offenses and worsening the punishments for existing offenses. These changes were targeted directly at those challenging the military coup and showing support and solidarity for the Civil Disobedience Movement. Once again in line with the military's notoriety with broadly worded laws, a new provision (Section 505 A) would be used to punish anyone who 'causes fear' or spreads 'false news.' There is no definition of what this entails. Those found guilty would be punished up to three years in prison.²⁸

Additional amendments according to a legal analysis by Human Rights Watch included broadened terms, such as the treason provisions in section 124 of the Penal Code.²⁹ Legal consequences are now viable against anyone who makes critical comments against the defense services and/or defense personnel.³⁰ Anyone who expresses any form of criticism against the Myanmar Tatmadaw or security factions is liable for up to 20 years in prison. A subsequent, timely addition also includes section 124C which prohibits anyone from encouraging security forces to join the Civil Disobedience Movement. This too comes with a punishment of 20 years in prison.³¹

Unfortunately, the military has shown that it is not interested or willing to tolerate any one that does agree with them. These laws and the many others which have been altered or introduced, as well as those likely to come give no sense of relief. Rather, the threat against the media, activists and civilians is perhaps greater now than ever before.

Recommendations

²⁶ See Myanmar Amends Legislation on the Privacy and Security of Citizens amid State of Emergency, 24 February 2021 <https://www.lexology.com/library/detail.aspx?g=8b7bb162-b331-41e0-a70e-2be15cf80872>

²⁷ Ministry of Information, <https://www.moi.gov.mm/moi:eng/news/2761> 14 February 2021

²⁸ Human Rights Watch, "Myanmar Post Coup Legal Changes Erode Human Rights," 2 March 2021 <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights>

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

To the State Administration Council

- Immediately engage in a peaceful transfer of power with the democratically elected National League of Democracy government
- Immediately cease all use of violence against peaceful demonstrators, journalists and supporting relief agencies amid the demonstrations, including medical relief teams
- An immediate halt of offensives in ethnic areas which threatens to only exacerbate the security of civilians further, including those already forcibly displaced particularly in Karen, Shan and Kachin States
- Release all those detained who have been arrested and arbitrarily detained since the military coup, including all political prisoners
- Lift all restrictions on access to social media websites and refrain from sporadic Internet cuts
- Repeal all legislation which threatens to diminish the people's right to freedom of assembly and freedom of expression

To the United Nations:

- Immediately dispatch an intervention mission to Myanmar to put an end to the violence being perpetuated against peaceful protesters and civilians
- Enforce a global arms embargo on Myanmar
- Impose targeted sanctions against all military leaders and their affiliate conglomerates and businesses
- Put pressure on the State Administration Council to abide by international laws and principles and to prioritize the safety and well-being of all people in the country
- Strengthened, coordinated consequences for the regime for their conduct and illegal seizure of power