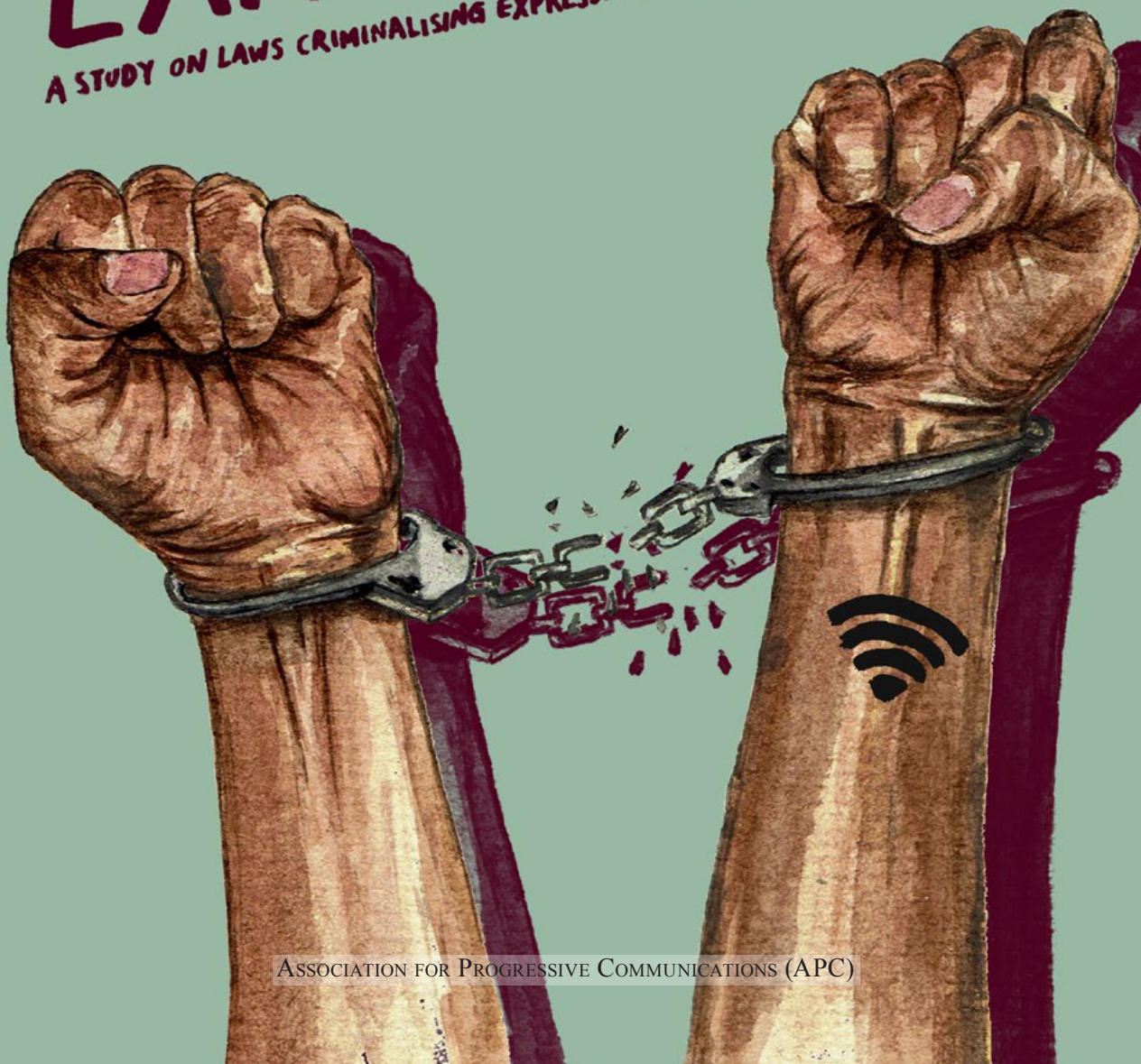
GISWatch 2017
SPECIAL EDITION

UNSHACKLING EXPRESSION:

A STUDY ON LAWS CRIMINALISING EXPRESSION ONLINE IN ASIA



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)

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SPECIAL EDITION

Unshackling expression: A study on laws criminalising expression online in Asia

APC

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Myanmar: A study on the criminalisation of online freedom of expression

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Introduction

Today, Myanmar is going through a transition period from a quasi-military government to a civilian democratic government. During this period, freedom of expression has suffered a setback, and Myanmar has failed to meet internationally acceptable standards. PEN Myanmar, in its freedom of expression scorecard, gave the current government a score of 6 out of 80 in its half-year assessment, and 8 out of 60 for its full-year assessment on freedom of expression.[1] The abysmally low score was due to the spike in arrests of journalists and activists for their online expression, and the government's use of laws related to information and communications technologies (ICTs) to curb online free speech.

During the previous government's term, there were only four known cases of criminalisation of freedom of expression online. However, the Telecommunications Law Research Team reports that there have been 73 cases of such criminalisation of online free speech under the present government – from April 2016 to August 2017 alone.[2] Out of the 73 cases, 30 were filed by private individuals, 12 by the government, 11 by political parties, nine by supporters of political parties, six by the media and five by the military; more than half of the cases were motivated by political reasons. Although there have been some efforts[3] made by the parliament to amend the primary law that has been overly used to oppress freedom of speech online, the proposed amendments failed to address the root cause of the law that allows it to be misused for various political reasons.

Methodology

This report looks at the existing laws and regulations that curtail and criminalise freedom of expression online. The laws are put into different categories: fundamental laws and freedoms, governance and regulations of online spaces, and sectoral laws. The research team is limited by the lack of an accessible system to collect data on court cases and by the non-existence of a freedom of information law. However, a number of high-profile cases are highlighted in this report, gathered from local and international news and media reports, human rights violation documentation groups and existing ICT policy research papers.

Although there are only a few laws that had been used to criminalise online speech, we also look at other possible laws and provisions that could be used to curtail online expression. These are laws and provisions that have the potential to be used to curtail freedom of expression online, and we anticipate that they will be used by digital rights advocacy groups in the country in their advocacy efforts.

Lay of the legal land

Fundamental laws and freedoms

Constitution

Myanmar's current constitution is very recent in comparison to those of neighbouring countries since it was drafted in 1994 and enacted in 2008. This is the third constitution adopted after the 1947 constitution, which was a parliamentary democratic constitution, and the 1974 constitution, which was adopted during the socialist democratic government system. The 1974 constitution ended in 1988 with the country's fall into military dictatorship. In 1993, during the military junta era, the military government (State Peace and Development Council –SPDC) started the drafting process for the new constitution, which took 15 years, until it was adopted in 2008.

1 PEN Myanmar is a chapter of PEN International, a worldwide association of writers that promotes literature and freedom of expression. See: PEN Myanmar. (2017, 3 May). Scorecard assessing freedom of expression in Myanmar. https://pen.org/wp-content/uploads/2017/05/May-2017-Scorecard-English.pdf, accessed Aug 2017.

2 https://www.facebook.com/ResearchTeamForTelecommunicationsLaw66D

3 Freeman, J. (2017, 25 July). Myanmar moves to amend controversial online defamation law. *VOA*. https://www.voanews.com/a/myanmar-moves-to-amend-controversial-online-defamation-law/3958206.html

TABLE 1.

Exceptions with regard to defamation established by the Penal Code

Exception 1	It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.
Exception 2	It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and further. [sic]
Exception 3	It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.
Exception 4	It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.
Exception 5	It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as party witness or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct and no further.
Exception 6	It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance and no further.
Exception 7	It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.
Exception 8	It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-master of accusation.
Exception 9	It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.
Exception 10	It is not defamation to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

The constitution consists of 15 chapters, and the fundamental freedoms of the citizen are described under Chapter 8, which is titled, "Citizen, Fundamental Rights and Duties of the Citizens". In Article 354 under Chapter 8, citizens' right to freedom of expression is guaranteed as:

> Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:
> (a) to express and publish freely their convictions and opinions.[4]

Although Article 354(a) of the constitution guarantees freedom of expression, justifications and limitations have been laid out. That is, freedom of expression is not absolute, and as the justifications and limitations are vague – "if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality" – they may lead to arbitrary limitations on the right to freedom of speech and expression.

The constitution also guarantees the right to privacy, in Article 357:

> The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.

The Penal Code

The Penal Code in Myanmar was adopted on 1 May 1861, and drew from the Indian Penal Code, 1860, drafted in the colonial era. Although there have been several amendments made to the Penal Code, Article 500, which criminalises defamatory speech, still exists in the Penal Code.

Article 500 of the Penal Code states: "Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."[5]

However, Article 499 of the Penal Code establishes 10 exceptions with regard to defamation which are presented in Table 1.

4 English translation sourced from: www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

5 English translation sourced from: www.burmalibrary.org/docs17/1861-Penal_Code-ocr-en+bu.pdf

The Penal Code is not the only piece of legislation where defamation is mentioned. In Article 66(d) of the Telecommunications Law of 2013, defamation is again stated, but it is unclear whether the abovementioned exceptions are applicable as well. Although the exceptions to the crime of defamation define the scope of the offence in a narrower sense, this is still not in line with international standards, as the Myanmar Penal Code continues to criminalise defamation with harsh punishments such as jail terms, affecting both online and offline speech.

Law Protecting the Privacy and Security of the Citizen

While the right to privacy is guaranteed in the constitution, the government has also enacted a law solely dedicated to privacy, in March 2017. Enacted without meaningful public consultation, this law was passed with haste in the parliament. The result has been the lack of robust definitions in the law, which fall below international standards, and also the lack of protections for the right to privacy online and with regard to digital data.

In the Law Protecting the Privacy and Security of the Citizen, in the definition chapter, privacy is defined as follows:

> Privacy means the right to freedom of movement, freedom of residence and freedom of speech of a citizen in accordance with law. Security means security of private affairs of a citizen. It shall also include the security of residence or residential compound and building in the compound, possessions, correspondence and other communication of a citizen.[6]

While the definition does, in principle, protect certain aspects of privacy of a citizen (but not of non-citizens), it is far from comprehensive, falling below the standards set out in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and its corresponding General Comment, which extends privacy to the digital sphere. The definition, though enacted in 2017, also falls short of the United Nations General Assembly's recognition that privacy is a crucial right in the digital age.

The Evidence Act

The Evidence Act in Myanmar was adopted on 1 September 1872 from the Indian Act 1 of 1872. Due to the outdated definitions of "documents", it was amended in 2015 to include electronic records and information. This is followed by more detailed examples, and among these, the one related to digital spaces is:

> Any record generated, sent, received or stored by means of electronic, magnetic, optical or any other similar technologies in an information system or for transmission from one information system to another.[7]

Before the amendment of the Evidence Act, the courts had limitations on accepting digital evidence according to the respective laws that are used in cases. For example, previously, defamation online would be difficult to prosecute using the Penal Code since the evidence could not be submitted to the court due to the limitations of the Evidence Act. This lack of digital evidence provisions was also one of the arguments that lawmakers gave to justify their rejection of the repeal of Article 66(d) of the Telecommunications Law. A civil society coalition consisting of 21 groups called for the repeal of Article 66(d) of the Telecommunications Law given that defamation already exists in the Penal Code and the Evidence Act had been amended accordingly.

Governance and regulation of online spaces

Computer Science Development Law

This law was enacted in 1996 with objectives mainly targeting the development of computer science education and professionals. The law contains outdated requirements that demand prior permission in order to possess computer devices and also to develop computer networks. This is established in the law as follows:

> Article 32. Whoever imports or keeps in possession or utilizes any type of computer prescribed under sub-section(a) of section 26, without the prior sanction of the Ministry of Communications, Posts and Telegraphs shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine.
>
> Article 33. Whoever sets up a computer network or connects a link inside the computer network, without the prior sanction of the Ministry of Communications, Posts and Telegraphs shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine.[8]

6 English translation sourced from: www.myanmar-responsiblebusiness.org/pdf/Law-Protecting-Privacy-and-Security-of-Citizens_en_unofficial.pdf

7 English translation sourced from: www.burmalibrary.org/docs21/2015-12-24-Law_Amending_the_Myanmar_Evidence_Act-73-bu.pdf

8 English translation sourced from: www.burmalibrary.org/

TABLE 2.

Electronic Transactions Law provisions that curtail freedom of expression

Article	Description	Penalty
Article 33	(a) committing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture. (b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture.	Jail term from five years to at most seven years.
Article 34	(d) creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.	Fine from MMK 1,000,000 to 5,000,000. If unable to pay fine, he/she will be liable to be sentenced from six months to not more than one year of imprisonment.

Although there are no longer cases filed in relation to this law, there are still potential risks as there is an article that targets freedom of speech online. In Article 35 of the Computer Science Development Law, seven to 15 years in prison and/or a fine are the punishment for committing any act (including transmitting and receiving information) that "undermines state security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture."

Electronic Transactions Law

The Electronic Transactions Law was enacted in 2004 and later amended in 2014. The main objective of the law is to promote and support electronic transaction technologies for economic development and educational purposes. However, because of the severe penalties and vague definitions, it was infamous for putting many political activists behind bars during the era of the military government. According to the original Electronic Transactions Law, a person is liable for imprisonment from seven to 15 years for committing any act that undermines national security, community peace and tranquillity, national unity, the state economy or national culture.[9] We must note that these are vague terms. Under the law, it is also possible to be imprisoned for three to five years for "dishonesty" and "defamation". The provisions in the Electronic Transactions Law that curtail freedom of expression are detailed in Table 2.

Due to the resultant controversy and threat for journalists and political activists, the Electronic Transactions Law was amended by a motion in parliament by MP U Thein Nyunt[10] from the National Democratic Force party in 2014. The amendment reduced the jail terms and also replaced some of the jail terms with fines for defamatory speech online. Despite this effort, the law is still on the books and can be used to criminalise online speech.

Telecommunications Law

The Telecommunications Law was adopted in 2013 during Myanmar's telecom liberalisation process. The law is mainly targeted towards the telecom sector players, which are the regulatory body, the Ministry of Transport and Communication, telecoms operators and network companies. It also aims to address consumer protection, specifically for the telecommunications sector. Despite its main objectives, there is a clause in the law that has proved to be problematic. A number of cases have arisen from the usage of Article 66(d) of the Telecommunications Law, which states:

> Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both.
>
> [...]
>
> (d) Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network.[11]

A person convicted of an offence under Article 66(d) is liable for imprisonment of up to three years and/

docs15/1996-SLORC_Law1996-10-Computer_Science_Development_Law-en.pdf

9 English translation sourced from: www.burmalibrary.org/docs15/2004-SPDC_Law2004-05-Electronic_Transactions_Law-en.pdf

10 Soe Than Lynn. (2013, 4 February). Government to redraft 'outdated' electronic transactions law. *Myanmar Times*. www.mmtimes.com/index.php/national-news/3977-govertment-to-redraft-outdated-electronic-transactions-law.html

11 English translation sourced from: www.burmalibrary.org/docs23/2013-10-08-Telecommunications_Law-en.pdf

or a fine. According to the Telecommunications Law Research Team, as of August 2017, there have been over 90 known cases under Article 66(d), where the section has been used against online speech. At the time of writing this report, an amendment of the Telecommunications Law has been discussed and passed in the parliament from the primary draft presented by the Ministry of Transport and Communication and with inputs from the lower and upper house (Hluttaws) of parliament.[12] The amendment of the Telecommunications Law was approved and passed in August 2017.[13] Despite campaigns and calls from civil society and the media to abolish Article 66(d) or at the very least remove the term "defamation" from the stated article, the amendment decreased the jail terms from three to two years, but without removing the term defamation.

Further, Articles 68(a) and (b) of the Telecommunications Law state that:

> 68. Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine or to both.
>
> (a) communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation;
>
> (b) prohibiting, obstructing or interfering the transmission, reception, communication, conveyance or distribution of information without permission.

The vague definition "incorrect information with dishonesty" gives rise to the potential for misuse and arbitrary criminalisation of online speech, and leads to a chilling effect online.

Sectoral laws

News Media Law

The News Media Law was enacted in 2014 with the main objectives of promoting independent journalism and protecting journalists. Due to the recent enactment, the News Media Law includes the digital medium as a source of media, and media workers are defined as those who are involved in the media business and are responsible for news and information. Chapter 4 of the News Media Law outlines extensive duties for media workers, titled "Responsibilities and code of conduct to be complied with by news media workers".[14] Therefore, the law fails to explicitly recognise media freedom in relation to freedom of expression. However, the News Media Law refers back to the existing rights and restrictions of the relevant laws within the country.

Printing and Publishing Enterprise Law

The Printing and Publishing Enterprise Law was enacted in 2014 together with the News Media Law in order to regulate and promote the print and publishing sector. It was meant to replace Myanmar's 1962 "Printers and Publishers Registration Law" which required prior approval by the Press Scrutiny and Registration Board for publishing content, which enabled pre-publication censorship. In 2012, the government dissolved the censorship board and the 1962 law was lifted. Although this new law was adopted as a successor to the previous draconian law, it still lacks a clear explanation as to why the law is needed for a democratic country, since it gives the regulator (which consists of government officials) the power to "take actions" on "unethical" media content.[15] This could lead to future restrictions of both offline and online content.

Broadcasting Law

The Broadcasting Law was enacted in 2015 with the primary objectives of deploying spectrum usage and promoting access to knowledge and information by means of supporting public and private broadcasting services. Similar to the News Media Law, the Broadcasting Law fails to acknowledge and promote freedom of expression, with respect to the international standards and definitions, as in Article 19 of the Universal Declaration of Human Rights and the ICCPR. This can be seen from the questionable independence of the authority (regulatory body) and the council to be formed according to the law. Moreover, there is still room for improvement for the regulatory body for the broadcasting service to be independent, and for the power and provisions.

Curtailment of online freedom of expression

Although there are numerous laws in Myanmar that have or may have restrictions to freedom of expression online, the law that has been used widely is Article 66(d) of the Telecommunications Law. Since its adoption, there have been 96 known cases filed

12 Win Ko Ko Latt, & Kan Thar. (2017, 18 August). Myanmar lower house approves minor changes to telecom law. *RFA*. www.rfa.org/english/news/myanmar/myanmars-lower-house-approves-minor-changes-to-telecom-law-08182017161716.html

13 San Yamin Aung. (2017, 24 August). Amendments to telecoms law passed. *The Irrawaddy*. https://www.irrawaddy.com/news/burma/amendments-telecoms-law-passed.html

14 English translation sourced from: www.burmalibrary.org/docs18/2014-Media_Law-en.pdf

15 English translation sourced from: www.article19.org/data/files/medialibrary/3679/Printing-and-Publishing-Enterprise-Law-Bill.pdf

using this law. Out of the 96 cases, seven were filed under the previous government and 89 were filed under the current National League for Democracy (NLD) government. The ratio of cases according to the party that filed the complaints during the NLD government is illustrated in Figure 1.

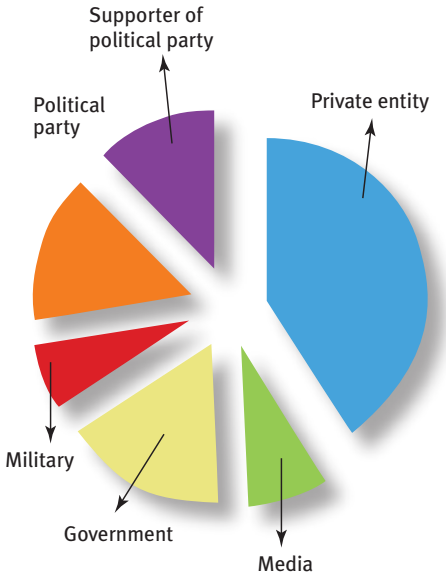
From the ratios, we can see that more than half of the cases are motivated by political reasons, which include cases filed by the government, military, political parties and supporters of a certain political party.

In Article 66(d) of the Telecommunications Law, there are seven actions for which a person could be charged: "Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network."

But in reality, almost all of the known cases have been filed under the category of defamation. All of the complaints have also been filed on the basis of content posted on Facebook and not on other online platforms such as websites or blogs. The following are some of the prominent cases under Article 66(d).

FIGURE 1.

Ratio of cases according to the party that filed the complaint under the Telecommunications Law



CASE STUDY 1: CHAW SANDI HTUN[16]

Chaw Sandi Htun, also known as Chit Thamee on Facebook, was arrested in October 2015 for her post on her Facebook profile that compared the colour of Military General Min Aung Hlaing's uniform to the colour of one of Aung San Suu Kyi's longgyis (skirts). This was considered inappropriate according to the widely accepted culture in Myanmar, as comparing a man's shirt with a woman's underskirt is considered to lower the dignity of the man. The complaint against Chaw Sandi Htun was filed by an army official, for the reason that her Facebook post allegedly undermined the dignity of the Tatmadaw (army). Chaw Sandi Htun was held in custody for four days without proper judicial procedure. She was first charged under Section 34(d) of the Electronic Transactions Law, Article 66(d) of the Telecommunications Law and Section 500 of the Penal Code. In the final court judgment, which was available in December 2015, she was sentenced to six months imprisonment, under Article 66(d) of the Telecommunications Law.

CASE STUDY 2: HLA PHONE[17]

Kyat Pha Gyi (The Big Rooster) is the name of the Facebook account that mocks the government and military by posting "photoshopped" images. Hla Phone was accused of being the person behind Kyat Pha Gyi, and was arrested in February 2016 on the basis of a complaint filed by a military officer. He was sentenced to imprisonment for two years under Article 66(d) of the Telecommunications Law, the National Flag Act, and Section 505(b) of the Penal Code, which establishes penalties for:

> Whoever makes, publishes or circulates any statement, rumour or report–
> [...]
>
> (b) 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 tranquillity...

16 The case of Chaw Sandi Htun, Global Freedom of Expression. https://globalfreedomofexpression.columbia.edu/cases/case-chaw-sandi-htun-myanmar

17 Khine Khine. (2017, 27 May). Free, but not free. *The Voice*. thevoicemyanmar.com/perspective/8866-fre

CASE STUDY 3: MAUNG SAUNG KHA[18]

Maung Saung Kha is a poet and a member of the NLD youth committee. He is also a member of PEN Myanmar (the national branch of PEN International). Maung Saung Kha was arrested for the poem he posted on Facebook titled "Image", in which the controversial part read: "I have the president's portrait tattooed on my penis / How disgusted my wife is." The case was filed by a police chief in October 2015. Although the poem was published during President U Thein Sein's government, the case was concluded and the sentence was handed down under the NLD government. He was held in custody for six months and 19 days and later sentenced to six months in prison.

CASE STUDY 4: SWE WIN[19]

Swe Win is an award-winning journalist and the editor of Myanmar Now.[20] His criticism of U Wirathu, one of the leaders of the ultranationalist group Ma Ba Tha, in a Facebook post, led to a complaint being filed by a Ma Ba Tha supporter. The complaint was filed in March 2017 under Article 66(d) of the Telecommunications Law and Article 295 of the Penal Code, which states:

> Section 295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class or persons, with the intention of thereby insulting the religion of any person or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
>
> Section 295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [persons resident in the Union], by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punishes [sic] with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Although the Ministry of Culture and Religious Affairs issued a statement saying that Swe Win's speech is legitimate and that he should not be charged under Section 295 of the Penal Code, the case is still ongoing on the basis of Article 66(d) of the Telecommunications Law.

International treaties

Although Myanmar is included in the first group of countries to sign the Universal Declaration of Human Rights, Myanmar has yet to ratify the key human rights treaties such as the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Myanmar is, however, a party to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Since Myanmar is a member of the Association of Southeast Asian Nations (ASEAN), it is also a party to the ASEAN Human Rights Declaration.[21] In the ASEAN Human Rights Declaration, the right to freedom of speech and expression is enshrined in Article 23, which reads as follows:

> Article 23 - Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.

Future violations through draft laws

The Ministry of Culture and Religious Affairs of Myanmar is drafting an anti-hate speech law.[22] While the law is still being drafted, the process itself is opaque, with civil society being kept out of the process. Concerned about the potential violations of freedom of expression through the draft anti-hate speech law, civil society organisations came up with a separate draft, named the "Interfaith Harmony Bill". The civil society initiative is supported by local and international human rights organisations and the document has been drafted in accordance with international standards. However, the chances of the government adopting the civil society bill are slim.

18 Freeman, J. (2016, 2 March). The bizarre trial of a poet in Myanmar. *The New Yorker*. https://www.newyorker.com/books/page-turner/the-bizarre-trial-of-a-poet-in-myanmar

19 The Irrawaddy. (2017, 30 July). Myanmar Now editor arrested. *The Irrawaddy*. https://www.irrawaddy.com/news/burma/breaking-myanmar-now-editor-arrested.html

20 www.myanmar-now.org

21 asean.org/asean-human-rights-declaration/ accessed September 2017

22 Ei Ei Toe Lwin. (2016, 20 May). NLD considers religious harmony law. *Myanmar Times*. https://www.mmtimes.com/national-news/yangon/20397-nld-considers-religious-harmony-law.html

It is reported that a cybersecurity or cybercrime bill is being drafted by the Ministry of Home Affairs, but the process has been opaque until now and there are concerns among civil society groups about potential violations of online freedom of expression, and worries about broader digital rights issues in the country. Moreover, since 2013, the Ministry of Social Welfare, with technical support from the Gender Equality Network, has been working on a bill to prevent violence against women.[23]

It must be noted that the government rarely conducts inclusive and meaningful public consultation sessions during the drafting process. This is particularly challenging since civil society is given a small role to play in the law-making process, which could lead to potential restrictions on freedom of expression and to problems with broader human rights issues in the country.

Summary and conclusions

Myanmar is a unique country in terms of internet usage and penetration. With the country being closed for many years, users had faced obstacles in access to the internet in terms of prices and infrastructure. But after 2012, when the government liberalised the telecoms market, these factors became less of an obstacle, and internet penetration has skyrocketed. Although usage has grown, the legal framework that enables the protection of civil rights and supports the use of the internet for civic engagement has proven to be lacking.

While freedom of expression is a constitutional right, it is still limited by vague and unspecific rationalisations such as union security, community peace and tranquillity, etc. In addition, Myanmar still criminalises defamatory speech. Moreover, defamation is contemplated not only in the Penal Code, but also in various other laws including the ones that govern the online space, such as the Electronic Transactions Law and the Telecommunications Law. The punishments are also inconsistent, with different penalties for defamation in different laws. With vague and problematic laws, particularly the Telecommunications Law, which leaves them open to the risk of misuse, there have been nearly a hundred cases of people being charged with criminal offences on account of their online speech within the short period of one year. This negative trend could continue since the parliament did not tackle the root of the problem in the Telecommunications Law during the amendment period, but rather did window-dressing.

Although Myanmar has shown potential growth in terms of access to the internet, the space still remains restricted for exercising freedom of expression online. The government and lawmakers should conduct a meaningful public consultation process, inviting comments and participation from diverse stakeholders, so that this problem may be addressed.

23 Ei Cherry Aung. (2016, 6 September). Bill to prevent violence against women "includes marital rape". *Myanmar Now*. www.myanmar-now.org/news/i/?id=3f7caa52-e222-4f12-b55e-45dee00c56d1

GLOBAL INFORMATION SOCIETY WATCH 2017 SPECIAL EDITION

UNSHACKLING EXPRESSION:
A study on laws criminalising expression online in Asia

Freedom of expression and opinion online is increasingly criminalised with the aid of penal and internet-specific legislation. With this report, we hope to bring to light the problematic trends in the use of laws against freedom of expression in online spaces in Asia.

In this special edition of GISWatch, APC brings together analysis on the criminalisation of online expression from six Asian states: Cambodia, India, Malaysia, Myanmar, Pakistan and Thailand.

The report also includes an overview of the methodology adapted for the purposes of the country research, as well as an identification of the international standards on online freedom of expression and the regional trends to be found across the six states that are part of the study. This is followed by the country reports, which expound on the state of online freedom of expression in their respective states.

With this report, we hope to expand this research to other states in Asia and to make available a resource that civil society, internet policy experts and lawyers can use to understand the legal framework domestically and to reference other jurisdictions.

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