

## **FEM Submission to IPI on the situation of the right to freedom of expression and surveillance**

Free Expression Myanmar - an independent, non-partisan, non-profit civil society organisation (CSO), is registered as a human rights organisation in Myanmar. The vision of the organisation is to help Myanmar in building a country where decision-makers, particularly the State, are influenced and accountable to the people most affected by their decisions. With this vision, FEM conducts activities to change knowledge, attitude and behaviours of decision-makers.

This written submission of FEM to the International Parliamentary Inquiry (IPI) covers freedom of expression and surveillance issues happening in Myanmar since the staging of a coup by the military on February 1, 2022. The statement aims to draw the attention of the national, regional and international communities to human rights issues that Myanmar people are encountering and to encourage relevant actors to take effective and reasonable actions.

On 1 February 2021, the Myanmar military staged a coup against the National League for Democracy (NLD) government by using a ground that the results of the November 2020 general election were invalid. Although the military initially announced to return the power after one year, the coup has been in place for more than a year. To overthrow the military, people both inside and outside of Myanmar have been using several methods both offline and online. However, the military has been continuously oppressing people's anti-coup activities, taking away the lives of several individuals, harming socio-economic aspects of people and degrading the country's already stumbling human rights situation. In terms of human rights violations, due to the military's oppression, people in Myanmar have lost almost all of their right to freedom of expression since the beginning of the coup.

### **I. Fading of Freedom of Expression in Myanmar after Feb 1, 2021**

The violations of people's rights to freedom of expression and information in Myanmar have been witnessed not only in offline settings but also online.

For the coup, the military started its censorship on February 1, 2021 by occupying the country's state-owned broadcasting station, forcing international and domestic TV channels to go off air, turning off the entire population's access to the internet and local phone lines before declaring its seizing of the power via the military-owned television channel. In addition, people's access to information became worse when the military disbanded news agencies and blocked social media platforms. The military announced on February 8, 2021 that it had cancelled or revoked licences of prominent media agencies – such as Mizzima, Democratic Voice of Burma (DVB), Khit Thit Media, Myanmar Now and 7Day News. The military's actions did not end with that cancellation, and it even raided media agencies and confiscated computers and digital equipment. The raids and arrests are still happening, and the military has expanded its oppression upon media agencies in ethnic areas as well. The military also prohibited some contents and prohibited news

organisations from using the terms such as “coup”, “the regime” or “the junta”. To discourage the military and to express their anti-coup opinions, people both inside and outside of Myanmar have used several methods such as the Civil Disobedience Movement (CDM) and thousands of mass protests, arts campaigns, pots and pans campaigns and so on. However, the military have taken away people’s right to express their stands and beliefs by using violent tactics and turning peaceful activities of people into bloody battlefields.

After the traditional censorship, the military expanded its censorship to the online world. Even before taking their disappointments and claims against the coup on streets, people first expressed their dissents on social media platforms, particularly Facebook (for all audiences) and Twitter (for international audiences), and conducted anti-coup campaigns. As the military started practising military-grade oppressions, social media platforms became important for documenting violence against protesters. Knowing the power of social media for anti-coup activities, the military extended its censorship from offline to online by ordering internet service providers to block access to several websites and famous social media channels such as Facebook, Twitter and Instagram less than a week after the coup. Moreover, the military also introduced the first stage of an “intranet”, where mobile users have access only to whitelisted applications. Furthermore, the military practised several intermittent kill-switch shutdowns and repeatedly blocked the internet at nights (from 1am to 9am) to prevent protesters and media from disseminating information about its unlawful activities and human rights violations. However, there were suspicions that the military might be using nightly shutdowns to install new tech. The military’s another attempt in online censorship was making all ISPs (Myanmar Post and Telecommunication, MyTel, Ooredoo and Telenor/now ATOM) to increase their call charges and internet data prices in December, 2021 to block information sharing among people. The military was able to conduct those internet shutdowns and online censorship easily without having to own sophisticated technologies because it could threaten decision-makers of ISPs residing in the country by force or by using existing laws. Despite these repressions, instead of turning away from expressing their opinions and beliefs, people of Myanmar looked for alternative means.

## **II. Responses of People**

People’s responses to the military’s censorship can mainly be found in three forms. First, as a counter-action to the blocking of social media platforms and websites, people have educated each other to use Virtual Private Network (VPN) to access the restricted platforms and websites in order to access information, express opinions and communicate with each other. The user rate of the Psiphon app increased from around 6,000 before the coup to almost 2 million users within 48 hours after the coup. The availability of free VPNs indicates the limitations in the power of the military to control the access to certain websites and social media platforms.

Second, people also looked for alternative platforms to continue their communication and anti-coup activities. Some people adapted themselves to use encrypted applications like Signal to carry out their social and economic activities and share secretive messages. One more application that became popular among people was Telegram; however, the optional encryption function of the application has been imposing drawbacks on users. The third one is the most significant means that has been helping people not only to receive information but also to disseminate information in a scenario where lives of professional journalists

are at stake. Due to the increasing crackdowns on professional journalists, people's role to document and report evidence of the military forces' rights violations that they witness to restricted (but reliable) media agencies which went completely online due to the aforementioned raids and arrests. The military is aware of the tactics that people have been adapting, thus, has started practising surveillance means to express people's right to freedom of expression more.

### **III. Digital Surveillance**

The military is developing its surveillance capacities both offline and online to destroy people's collective actions. Digital surveillance tools and surveillance capacity of the country was developed a lot more under the NLD government's term (2015 - 2020). Though the country is still lack of adequate legal mechanisms to guarantee people's privacy and security, the military even had necessary surveillance services and dual-use tools from intelligence agencies within the NLD administration to beat down community leaders, opposition political party members, journalist and students under the name of "the maintenance of state's security and stability as well as non-disintegration of the military". Some digital surveillance activities that the military has been using after the coup are as follows.

First, the military has been using the police force's social media monitoring team to track activities and posts of people, particularly celebrities and social influencers. However, the military has no technology to match Facebook users with physical addresses, and it has to rely on informants and information from the General Administration Department. The military's surveillance does not end with social media monitoring. As a second means, a new cybersecurity team, which was established before the coup, has been working with telecom operators to track specific people's phone conversations, texts and geolocation data. Furthermore, the regime asked ISPs to implement layer-7 firewalls in April 2021 while giving state security personnel access to more advanced features for filtering and intercepting traffic as well as classifying data. In using this interception method, the military has set specific words (e.g., protests and revolutions) to track. The military can easily track individuals through interceptions, who are not away from their registered houses, because everyone in Myanmar had to register their mobile SIM-cards with their National Registration Cards in 2020. Besides the systematic surveillance and interception activities, the military's forces also carry out random checks on people's phones on major roads and streets to monitor people's social media presence.

To facilitate the military's interception activities, Myanmar has the lawful interception clause that allows telecom companies to record and transfer the data to the so-called authorities, and this activity does not need any warrants. The military's draft cybersecurity law, which received backlash from several stakeholders, requires that all online service providers keep all user data inside Myanmar and enable the government to censor content or access user data. The secretly amended Electronic Transactions Law also included clauses that were originally meant for the Cybersecurity Bill. Before, the interception activity was carried out mainly with telecom operators which have direct connection with the military. Now, the Myanmar branch of Norway's Telenor was handed over to the military-affiliated Shwe Byain Phyu company and Qatar's Ooredoo is thinking about selling its Myanmar branch. With all four potentially falling under the direct control of the military, Myanmar people's right to freedom of expression, even their lives, are under severe threats.

#### **IV. Post-Censorship Effects**

Hence, people looked for alternative ways to escape the military's censorship activities, and the military upgraded its action into digital surveillance. Despite the presence of both censorship and surveillance threats, many people are still active in expressing their anti-coup opinions while some others have been forced to practise self-censorship. There is self-censorship because people being targeted under the military's censorship and surveillance activities almost always end up with having to face arbitrary arrests, detention, tortures, death, and so on.

Journalists, who refused to follow the military's news restrictions, faced arrests and detentions. At least 35 journalists have been arrested after the coup. Since February 2021, the military killed 2,131, arrested 1,48,98, and detained 3,068 individuals, and many of them were arrested and detained for exercising their right to freedom of expression by using offline and online measures that the military cannot tolerate. In the digital sphere, since March 2021, the military has been arresting its opponents with high social media presence under the name of spreading fake news and threatening the peace and stability in the community on social media. For this, Article 505 and 505-A of the Penal Code are widely used, and the military-controlled media channel and newspapers have been announcing lists of people who are being entitled for arrest warrants together with their names, home addresses and Facebook URLs. Moreover, the military keeps surveilling people's profiles and their contacts even after their release, and some reported that the military installed malware mobile phones of those detainees.

All those activities of the military reflect its willingness to impose fear among people and makes people practise self-censorship. The drawbacks for individuals who oppose the military's censorship and surveillance activities are that they have to give up their civil liberty rights while facing potential threats to their physical integrity rights.

#### **V. Recommendations**

The role of international state actors in protecting people in Myanmar from the military's cruel tactics to violate people's right to freedom of expression is crucial because every legal and judiciary institution in the country is under the military's control and there is no concrete force to reduce violations against people's access to information and freedom of expression. As a response to the military's activities, the foreign state actors have been condemning inhumane activities of the military, funding research and training projects, and educating people, etc. The supports are useful and effective; however, what Myanmar people need right now, amid this chaos, is something that is more realistic and produces immediate results. Regarding this, FEM would like to recommend state actors to implement following activities in restoring people in Myanmar's access to freedom of expression.

- To convince Ooredoo, the only telecom operator that is still independent from the military's direct control, not to leave the country or sell it to a military-affiliated company without a heightened human rights due diligence.

- To encourage social media companies to provide special features that can guarantee users' privacy strongly, for people in Myanmar.
- To urge VPN service providers in respective countries to offer affordable licensed-version VPN services to people in Myanmar.
- To prohibit respective companies from selling dual use digital surveillance tools to the military and make them accountable for human rights violations that their tools have been causing.
- To fund and support independent media agencies, which were banned by the military and are relying on donations to continue their reporting activities online.

FEM would also like to urge technology companies,

- (For Ooredoo)
  - To reconsider the option to leave the country which could damage its international reputation, and choose the way that will not harm the security and rights of people in Myanmar including its employees.
  - To narrowly interpret the military's orders and use means, that are least destructive to users, in implementing them, and refrain from participating in the military's human rights violations.
- (For Surveillance Tool Sellers)
  - To stop providing the military with surveillance tools and share means to protect oneself from being vulnerable to the tools with civil society organisations and people in Myanmar.

See FEM's website and [Freedom of the Net 2021](#) and 2022 (which will be published soon) reports for further information.