http:// Myanmar

A case study on Internet freedom and responsible

investment in Myanmar's emerging Telecom scene

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Abstract

Myanmar is one of the least connected countries in the world, with an estimated Internet penetration at just over one per cent. The country was ruled by a rigid military regime for half a century, who had a firm grip on the media and brutally cracked down upon any political dissent. In 2011, in a surprise move, a process of reform and a transition towards democracy began under the leadership of President Thein Sein. As a result, foreign investment in the country's lagging telecom sector is now emerging. This thesis is a case study that partly aims to identify the major challenges facing Internet freedom as it relates to the human rights discourse and partly explores how two foreign telecom companies, Telenor and Ooredoo, are approaching responsible investment as they enter the country.

Methodologically, the study is based on interviews, some of which were conducted during a two months field visit in Myanmar in 2013, and thorough document analysis. The research concludes that the major challenges facing Internet freedom in Myanmar are a deficit legal framework and the absence of digital literacy, which has contributed to irresponsible practices of hate speech in the online environment. Both Ooredoo and Telenor demonstrate an awareness of the complexities in Myanmar, whilst Telenor has a stronger formal commitment to respecting human rights.

Keywords: *Myanmar, Burma, Internet freedom, human rights, telecom, CSR*

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Acknowledgements

This thesis is about Internet freedom. A telling example of the value of the Internet: without it this research would not have been possible. Firstly, for the obvious reason that I would not have a subject to investigate, but more importantly, I'm conducting research on events taking place in another country – physically very far away from where I am. I spend two months conducting field studies in Myanmar, but the majority of this writing has occurred in Sweden. Thanks to the Internet I have been able to source a great deal of local information at a distance and via email and Skype.

The future belongs to those who believe in the beauty of their dreams
- Eleanor Roosevelt

Abbreviations

CSR	Corporate Social Responsibility
GNI	Global Network Initiative
ICCPR	International Covenant on Civil and Political Rights
ICTs	Information and Communication Technologies
ISP	Internet service provider
ITU	International Telecommunication Union
MCIT	Ministry of Communications and Information Technology
MIDO	Myanmar ICT for Development
MPT	Myanmar Post and Telecommunication
NGO	Non-governmental agency
SIM	Subscriber identity module
TID	Telecommunications Industry Dialogue
TNCs	Transnational corporations
UDHR	Universal Declaration of Human Rights
UNGPs	United Nations Guiding Principles
USDP	Union Solidarity and Development Party
YTC	Yatanarpon Teleport Co.

1 Introduction

Over the last 20-30 years, Information and communication technologies (ICTs) have profoundly changed our world and revolutionized how information is accessed, stored and shared. In recent years we have witnessed the dynamic possibilities of digital communication in administering change and creating dialogue that bridges national borders. A whole new research field has emerged, ICT for development, which explores how various ICT tools serve to enhance education, health care, security, democratic participation etc. At the same time, more connectivity also risks exposing citizens to new threats of surveillance and control. In this regard, companies in the ICT sector play an important role in safeguarding users' fundamental freedoms and rights. Essentially, increased connectivity need to go together with the implementation of regulatory frameworks that protect these freedoms and rights, as enshrined in internationally recognized human rights documents.

Myanmar[1] is a country that in the last few years has undergone tremendous change while taking its first trembling steps towards democracy. After decades of authoritarianism and isolation, the nominally civilian government that took office in 2011 has embarked on a series of political and economical reforms. Up until recently, the regime has had a monopoly on the country's telecommunication and it's been excessively expensive and out of reach for most citizens to connect. This has lead to Myanmar being one of the least connected countries in the world. Now, all of that is about to change. In June 2013, after a long and competitive license bidding, Norwegian Telenor and Qatar's Ooredoo were awarded two highly sought after telecom operating licenses and are now preparing to launch operations in 2014.

1.1 Problem statement

The telecom reforms in Myanmar hold great potential to bring social and economic benefits. At the same time, with a notorious record of human rights abuses and ethnical and religious tensions, the emergence of increased connectivity can be seen as a test of genuine commitment to reform by the regime. This includes an adherence to the concept of Internet freedom and ensuring a legal framework that is in line with internationally recognized standards. In this context, companies that invest in Myanmar's telecom sector should also

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[1] In 1989, the ruling military junta changed the name of the state from Burma to Myanmar, claiming that it is more ethnically inclusive and without colonial baggage. Although many parties do not recognize the change, I have opted to use Myanmar throughout this thesis, as it is the name most widely used within the country.

ideally demonstrate commitment to effective human rights policies and procedures to avoid complicity in a complex market.

1.2 Aim of study and research questions

In light of the many changes that are currently happening simultaneously in Myanmar, the aim of this study is to examine the challenges facing Internet freedom as it relates to the human rights discourse and how two foreign telecom companies approach responsible investment as they enter the country.

Consequently, the thesis seeks to respond to the following questions

- What are the major challenges facing Internet freedom in Myanmar?
- How are Telenor and Ooredoo approaching responsible investment and best practice when entering Myanmar?

By developing knowledge around the abovementioned questions, the author wishes to contribute to a deeper understanding of the dynamics of Myanmar's emerging online media landscape, as well as the role of commercial telecom operators.

1.3 Disposition

This chapter will continue by outlining the utilized method and the material this study is based on. It then provides a broad overview of the research field and the limited scope to this thesis. Chapter 2 gives a brief background to Myanmar's history leading up to current events. It touches upon the dimension of ethnic and religious conflicts and puts the research in a context by providing a background on Internet under the military regime and the evolution of ICT in Myanmar. In chapter 3, the theoretical framework is presented, which essentially consists of internationally recognized human rights that relate to the concept of Internet freedom and links this to private corporations' role and responsibilities. A framework for the assessment of Telenor and Ooredoo's approach to best practice is also provided. Lastly, in chapter 4 the results are presented and analysed, followed by a discussion and some final remarks in chapter 5.

1.4 Method and material

1.4.1 Qualitative single case study

This study will be conducted as a qualitative case study. The choice of method is motivated by the ability to get an in-depth understanding of a certain topic. As an interpretive and inductive form of research, the single case study attempts to explore the details and meanings of experience and to identify important patterns and themes. The researcher typically gathers multiple forms of data through e.g. interviews, observations and documents, rather than relying on a single source. Establishing the significance and importance of themes or findings is crucial; the discussion should ideally link these themes explicitly to larger theoretical and practical issues.[2]

Based on the purpose of this thesis, I believe the single case study to be an appropriate approach for understanding and coming to grips with various aspects that interoperate on different levels in Myanmar. The circumstances of Myanmar are unique in that the country, until recently, has been more or less completely left behind the IT-revolution that has occurred in most other countries. The emergence of ICT is now happening simultaneously with the country's more general political transformation towards democracy. The fact that Myanmar jumps aboard the telecom scene when it is already rather mature gives the country leapfrog opportunities as the sector emerges, but also means that any form of more generalizing research approach risks missing important aspects.

1.4.2 Collection and analysis of empirical data

The qualitative empirical data of this study relies on of information collected partly from interviews and partly from document analysis. In addition to this, I was able to make spontaneous observations during my field visit in Myanmar in September and October 2013.

The material is analysed with an interpretive approach that relies on internationally recognized articles and conventions on freedom of speech and privacy, as well as several documents submitted to the UN General Assembly by the present Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A sector specific implementation guide on the UN Guiding Principles on Business and

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[2] Creswell, W. John. *Qualitative inquiry and research design: Choosing among five traditions*. 3 ed. Thousand Oaks, CA: Sage, 2013, p. 45.

Human Rights has guided the course for the second research question. In short, my ambition has been to benchmark Myanmar's and the examined telecom companies current standards with internationally recognized best practice.

1.4.2.1 Interviews

One of the facets of qualitative research is the gathering of up-close information by actually talking directly to people and seeing them behave and act within the context of their natural setting. I have conducted seven interviews with selected local informants in Myanmar, mainly in the field of journalism but also representatives of civil society organizations, and two interviews with representatives from the examined telecom companies. I have also been able to source some information via email-contact with various knowledgeable people.

The interviews were conducted in English with a semi-structured, flexible and open-ended approach. My aim has been to balance the specific themes that I wanted to cover while at the same time allowing informants to speak and elaborate freely.[3] I mostly got hold of my informants through research online and by making contact via email or phone to set up an interview. In Myanmar, I targeted people who have considerable knowledge on Myanmar's media landscape, both online and offline, and experience with the notion of freedom of expression in the country. The reason for this being I believed it to be the most suiting approach to complement information I could read myself up to speed with. In retrospect, I wish I had used an interpreter at times since English proficiency varied. However, I do feel that the interviews, combined with the document analysis, have given me broad and varied data. In the results and analysis chapter I have included quotes representative of themes that emerged. For ethical reasons, the narrators of some quotes remain undisclosed. However, all informants are listed in the adjoined Appendix.

1.4.2.2 Document analysis

Throughout the course of this research, I have collected information from mainstream media, policy documents, reports and online materials. I have also studied laws related to the ICT-sector in Myanmar. For the telecom companies, I have scanned their respective websites and, when available, examined their policy documents, corporate responsibility guidelines etc.

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[3] Bryman, Alan. *Samhällsvetenskapliga Metoder*. 2 ed. Malmö: Liber AB, 2011, p. 301.

These materials have both served as a source to inform and help me formulate relevant questions for my interviews, and as sources in themselves in the search for answers to my research questions. Obviously, there is no guarantee that something is true just because it is online or in the paper. To increase validity, I have used a wide array of different sources and have also been able to verify data in the interviews conducted.

1.5 Previous research

There is not a lot of research on Myanmar in relation to Internet freedom or the telecom industry. In 2008, Mridul Chowdhury published a research paper that examines the role of the Internet during Myanmar's Saffron Revolution. It describes how Internet users and activists, despite high risks, uploaded images and videos anonymously to the Internet in an effort to spread information to the outside world – and how the government responded by finally shutting down the Internet completely. The paper concludes that because of the high level of arrest and torture, very few people within Myanmar have dared using the Internet in efforts of dissent and that most activism has been conducted by exiled Burmese.[4]

There are a number of reports conducted by non-governmental organizations and analyst firms that describe the state of current developments within the country. One key piece is a report by Human Rights Watch titled *Reforming Telecommunications in Burma – Human Rights and Responsible Investment in Mobile and the Internet*. It was published in May 2013, just prior to the Myanmar government awarding Telenor and Ooredoo operating licenses. It deals much with concerns that arise from a human rights perspective as well as current legal loopholes. This thesis draws parallels to and complements some of those findings, most significantly by following up on changes that have occurred over the last year and by describing Telenor and Ooredoo's approach.

When it comes to ICT, there is a large body of research on its implications for human rights and democracy. China, with its notorious "Great fire wall", is a popular case to study. In his dissertation *The Internet in China, Unlocking and Containing the Public Sphere*, Johan Lagerkvist writes

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[4] Chowdhury, Mridul. The Role of the Internet in Burma's Saffron Revolution. September 1, 2008. Berkman Center Research Publication No. 2008-8. Available at http://bit.ly/1w3a9Mp (accessed May 20, 2014).

Policymakers in all sorts of political systems share concern about the increasing importance of online behaviour and attitudes of individuals who sometimes feel so strongly about something they encounter online that this sentiment also translates into collective action offline. Where democracies and dictatorships differ is in the role of the state, that is, in their respective views of the appropriate actions and decisions to be taken.[5]

There is also a variety of research and reports on how ICT innovations are improving service delivery in sectors such as healthcare, agriculture, education and governance, which has contributed to a widespread belief in the democratic potential of ICTs.[6] Overall, various actors have seized on Internet's potential to spur democratization, not least in wake of the Arab Spring in 2011. However, the great gaining in the form of access to information and freedom of speech also presupposes that no restrictions are imposed upon the use of the Internet. Taylor C. Boas and Shanthi Kalathil comment that the State plays an essential role in the development of the Internet in authoritarian regimes and in conditioning the ways it is used by societal, economic, and political actors. While new communications technologies help expand the field of public discussion, these same technologies can be controlled when governments want them to be. This, they mean, may lead Internet users to avoid politically sensitive material online and companies may refrain from challenging censorship policies because it is more profitable to cooperate with the authorities.[7]

In 2011, Evgeny Morozov continued on this track with his book *The Net Delusion*. Morozov expresses scepticism about the popular view that the Internet is helping to democratize authoritarian regimes, arguing that it could also be a powerful tool for engaging in mass surveillance, political repression, and spreading nationalist and extremist propaganda. He criticizes what he calls "The Internet Freedom Agenda" of the US government, finding it naive and even counterproductive to the very goal of promoting democracy through the Web. What Morozov is essentially saying is that many authoritarian regimes have already established a very active presence online and rely on rapidly expanding panoply of tools and tactics to suppress dissent. Thus, democracy champions of the West need pay attention to how dictators control the web because it is the only way to identify and put pressure on western corporations that make such control possible.

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[5] Lagerkvist, Johan. *The Internet in China, Unlocking and Containing the Public Sphere*. Lund: Media-Tryck, 2007, p. 22.

[6] See e.g. Broadband Commission. Reports and Documents. http://bit.ly/TDqNn8 (accessed May 20, 2014).

[7] Boas, C. Taylor and Kalathil, Shanthi. *Open Networks, Closed Regimes: The Impact of the Internet on Authoritarian Rule*. Washington, DC: Carnegie Endowment for International Peace, 2003, pp. 136-137.

Finally, there is an abundance of research on corporate social responsibility (CSR). In relation to the telecom sector, Global Network Initiative (GNI) provides many resources. GNI is a partnership between ICT companies, academia and civil society organisations that aims to support a common approach to protecting and advancing free expression and privacy online, while also monitoring corporate behaviour. On GNI's website one can find a list of connected academic institutions such as Berkman Center for Internet & Society at Harvard University, U.C. Berkeley School of Information and Nexa Center for Internet & Society, that publish plenty of research within this field.[8] Internet scholar Rebecca MacKinnon is the founding board member of the GNI and author of *Consent of the Networked: The Worldwide Struggle for Internet Freedom*, whose thoughts and research on Internet freedom will be elaborated on in the theoretical chapter.

1.6 Delimiting the Research Scope

Because of time constraint and for practical reasons, some limitations pertain to the research scope. Important to mention, since much research on Internet freedom relates to the democratic discourse; my ambition is not to provide any deep analysis with regards to this in the Myanmar context. As Internet penetration is still at an extreme low, any research on democratising practices in the online environment would exclude a majority of the population. It is also worth noting that the Internet did not play a significant role in the process leading up to the current political transformation, although it is likely that insurgencies across the Arab world spurred proactive measurements. Rather, my ambition has been to study some of the early road bumps that Internet freedom in Myanmar is facing as the telecom scene now emerges. However, Internet freedom and democracy are overlapping concepts that impregnate each other, thus – the dichotomy between freedom and control that is touched upon in the thesis will naturally relate to this, albeit not being the core purpose.

Furthermore, the thesis focuses on laws most relevant to Myanmar's telecommunications and ICT sector, and does not provide a comprehensive treatment of Myanmar's legal system, constitution or domestic legislation of the foreign telecom companies.

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[8] See Global Network Initiative, Participants. http://bit.ly/1iHM6sb (accessed May 20, 2014).

2 Background Myanmar

Before Myanmar, Burma at the time, gained independence in 1948, it was part of the British colonial empire. Following a coup led by former military general Ne Win, the country was under rigid military control by different generals from 1962-2010. During democracy uprisings in 1988, General Saw Maung staged a coup and formed the State Law and Order Restoration Council (SLORC). In November 1997, SLORC renamed itself to the State Peace and Development Council (SPDC).[9] Throughout the years under the juntas, Myanmar has become one of the world's most impoverished countries and continuous reports of severe human right violations have emerged.[10] Pro-democracy protests have been violently suppressed; in 1988 security forces killed thousands of people and more recently in 2007, during the "Saffron revolution", hundreds of peacefully protesting monks and civilians were brutally cracked down upon.

In 2010, general elections were held for the first time in over two decades and military-backed *Union Solidarity and Development Party* (USDP) claimed victory. Shortly after, long-time political opposition detainee Daw Aung San Suu Kyi was released. Optimism spread across the country and the globe, but the manoeuvre was also met with suspicion as leaked documents revealed a scrutinously orchestrated strategy by the military. According to these documents, the junta had come to view China's emerging geopolitical influence as a threat, hence a growing need to improve relationships with the West.[11] Nevertheless, the 2010 elections meant the military began to assign more power to a nominally civilian government, who consequently has embarked on a series of democratic reforms. These developments have contributed to rapid improvements in Myanmar's foreign relationships. Sanctions imposed by the EU and the US have to a large degree been eased and foreign investors are now flocking to the country with its rich natural resources and estimated 55 million potential consumers. President Thein Sein made visits to the US, Europe, and Australia in 2013, assuring to continue the reform process, and several prominent political figures have also visited the former pariah state.

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[9] For a more exhaustive description of the years under military control see e.g., Steinberg, I. David. *Burma/Myanmar What Everyone Needs to Know*. 2 ed. New York: Oxford University Press, 2013, p. 63 ff.
[10] See e.g. Human Rights Watch http://www.hrw.org/burma and Amnesty International http://www.amnesty.org/en/region/myanmar (accessed May 20, 2014).
[11] Lintner, Bertil. Realpolitik and the Myanmar Spring. *Foreign Policy*. November 30, 2011. http://atfp.co/1mfMUJO (accessed May 20, 2014).

2.1 Ethnic and religious conflicts

The history of post-colonial Myanmar has been one of constant conflict between the army and ethnic minority groups such as Kachin, Shan, Chin, Karen, Mon. These and other groups have long wanted to form some federal structure or virtual autonomy from central control.[12] According to a report by the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, ceasefire agreements have been signed between the government and 14 ethnic armed groups by March 2014. The Kachin Independence Army (KIA) and the Ta'ang (Palaung) National Liberation Army (TNLA) are the two remaining major armed conflicts.[13]

In addition, religious tensions have increased over the last decades. Clashes between ethnic Rakhine Buddhists and Rohingya Muslims erupted in June 2012, with riots and deadly violence spreading to other parts of the country.[14] A controversial anti-Muslim movement called 969, led by monk Ashin Wirathu, has further fuelled Buddhist nationalism. There are roughly 800 000 Rohingya in Myanmar, most living in Rakhine state, of which an estimated 140 000 currently live in internally displaced camps.[15] Some have been in Myanmar for centuries while others arrived in recent decades. Regardless, Myanmar authorities consider them undocumented immigrants and do not recognize them as citizens or as one of its 135 accepted ethnic groups.[16] As a result, Rohingya are de jure stateless, according to the 1982 Burmese Citizenship law.[17]

2.2 The Internet under the military

During the military rule, the regime had a firm grip on the media and a long tradition of widespread surveillance, extensive censorship and infringing on freedom of speech. A special Cyber Warfare Division within the secret police force was created to track online criticism.[18]

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[12] Steinberg. *Burma/Myanmar What Everyone Needs to Know,* p. 166.
[13] UN Human Rights Council. Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana. UN doc. A/HRC/25/64, para 33. March 12, 2014. Available at http://bit.ly/1hi7LI4 (accessed May 23, 2014)
[14] BBC News. Q&A: Communal violence in Burma. January 24, 2014. http://bbc.in/1oL61f5 (accessed May 20, 2014)
[15] UNHCR. Myanmar country operations profile 2014. http://www.unhcr.org/pages/49e4877d6.html (accessed May 20, 2014).
[16] IRIN. Briefing: Myanmar's Rohingya crisis. November 16, 2012. http://bit.ly/1odXTGL (accessed May 20, 2014)
[17] UNHCR. Burma Citizenship Law. October 15, 1982. http://www.refworld.org/docid/3ae6b4f71b.html (accessed May 20, 2014).
[18] Havely, Joe. When States Go To Cyber-War. *BBC News Online*. February 16, 2000. http://bbc.in/1p8233e (accessed Ethay 20, 2014).

Anonymous Internet use was practically impossible during this era; cybercafé owners were required to register users names, identification numbers and addresses.[19] The military used foreign-purchased hardware and software to control and block online content.[20] Most notably; journalists, bloggers and other citizens were continually subjected to unduly torture and lengthy prison sentences.[21] Because of this, using foreign hosted proxy sites to access blocked websites became increasingly common.[22] Free e-mail sites such as Hotmail and Yahoo were banned, forcing people instead to buy accounts from tightly controlled government providers.[23] Likewise, international VoIP (Voice over IP) calls made via applications such as Skype and Gtalk were prohibited under a government directive in March 2011. The measure was apparently aimed at protecting revenue earned from international phone calls made over the state-owned telecom.[24] At one point during the 2007 uprisings, in a drastic move, the junta decided to shut down the Internet entirely and partially for several weeks.[25]

In 2010, a new Internet infrastructure that allocated Internet users to two main networks was initiated – one reserved for the government and one for the public. This digital segregation meant that authorities were able to partially or totally block the public's access without affecting access for the government or military.[26] According to interviews with ICT experts conducted by Freedom House in 2011, the state would also occasionally apply bandwidth caps to prevent the sharing of video and image files, particularly during politically sensitive times.[27]

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[19] OpenNet Initiative Blog. Burmese Regulations for Cybercafés Stringent as Expected. July 2, 2008. http://bit.ly/1icoKvE (accessed May 20, 2014).
[20] OpenNet Initiative. Internet Filtering in Burma in 2005: A Country Study. October 2005. http://opennet.net/studies/burma (accessed May 20, 2014).
[21] Human Rights Watch. Burma's Forgotten Prisoners. September 16, 2009. http://bit.ly/1tv5Oze (accessed May 20, 2014).
[22] Crispin, Shawn. Burning Down Myanmar's Internet Firewall. *Asia Times*. September 21, 2007. http://bit.ly/1jN9g5r (accessed May 20, 2014).
[23] The Guardian. The great firewall of Burma. July 22, 2003. http://bit.ly/1opG4C9 (accessed May 20, 2014).
[24] Soe, Aung Myat. Government Bans Internet Overseas Calls. *Mizzima*. March 16, 2011. http://bit.ly/1l8ONWC (accessed May 20, 2014).
[25] Pallister, David. Junta tries to shut down Internet and phone links. *The Guardian*. September 27, 2007. http://www.theguardian.com/world/2007/sep/27/burma.technology (accessed May 20, 2014).
[26] Reporters Without Borders. Junta Uses Internet Upgrade to centralize and reinforce online controls. November 10, 2010. http://bit.ly/1l8P37V (accessed May 20, 2014).
[27] Freedom House. Freedom of the Net 2011, A Global Assessment of Internet and Digital Media, April 18, 2011, p. 79. http://www.freedomhouse.org/sites/default/files/FOTN2011.pdf (accessed May 20, 2014).

2.3 The emerging telecom sector

According to International Telecommunication Union (ITU), the UN's specialized agency for ICTs, Myanmar is one of the world's least connected countries.[28] ITU's latest available statistics from 2012 estimates Internet penetration at just over one per cent and mobile subscription at approximately ten per cent.[29] These figures have probably increased since and could be misleading based on the availability of Internet in urban cafes that enable multiple users at one access point. Beside poor infrastructure, a key reason for marginal penetration is the prohibitively expensive rates implied by the state monopoly. For example, according to findings by Open Technology Fund in 2012, the average cost of acquiring and activating a smartphone was $563,[30] which is a staggering number considering United Nations data put gross national income per capita at $1144 in 2011.[31]

Historically, the Myanmar government has not trusted foreign involvement in the sensitive ICT sector. Communication, and the Internet, has been a commodity trapped under state control. However, the regime's commitment to economic development in the realm of ICTs became evident when they in 2005 established an ICT Master Plan, suggesting a vision for "e-Myanmar 2030: Incorporation into Global Information Society" and a 3-stage roadmap. The 3-stage roadmap outlined: "Stage 1 (2006-2010) will be the fundamental stage in establishing the foundation for e-Myanmar. Stage 2 (2011-2020) will be the development phase of e-Myanmar when the ICT sector of Myanmar takes off and rapidly grows based on the foundations laid on Stage 1. Stage 3 (2021-2030) will be the completion phase."[32] In 2006 the government began building Myanmar's largest IT development, Yatanarpon Cyber City, located in the northwest part of the country.[33] However, the roadmap has not exactly played out as planned. In reporting on the project's progress, the Ministry of Communications and Information Technology (MCIT), formely known as Ministry of Communications, Posts and Telegraphs, wrote

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[28] International Telecommunication Union. Measuring the Information Society. 2013, p. 39 ff. http://bit.ly/1ev2Q5J (accessed May 20, 2014).

[29] International Telecommunication Union. Percentage of Individuals Using the Internet, 2000-2012. Available at http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx (accessed May 20, 2014).

[30] Open Technology Fund. Internet Access and Openness 2012. February 2013. http://bit.ly/QEiFAC (accessed May 20, 2014).

[31] UN Statistics Division, Myanmar. http://bit.ly/1sIMhLg (accessed May 20, 2014).

[32] Information accessed in May, 2014 on the website of Ministry of Communications, Posts and Telegraphs (http://www.mcpt.gov.mm/mcpt/ict-master-plan.htm), now known as Myanmar Ministry of Communications and Information Technology (MCIT). It seems the website of the "old" Ministry has been taken down recently.

[33] China View. Companies from 4 Countries to Invest in Myanmar Cyber City Project. September 12, 2007. http://bit.ly/1mRGBQ4 (accessed May 20, 2014).

Contrary to the optimistic expectations, the ICT environment after 2005 was not favourable to Myanmar. Economic sanctions and global economic recession caused difficulties in import, export, and foreign investment. Therefore, Myanmar is falling behind from global ICT development due to a lack of supply in Ministry of Communications and Information Technology equipment and facilities.[34]

With this background, it is not surprising that attracting foreign investments in the ICT sector has become a top priority under president Thein Sein. In June 2013, the government awarded licenses to Norway's Telenor and Qatar's Ooredoo to provide telecommunication services in Myanmar, including mobile and Internet services. The winners have set a target date of 2016 to expand the mobile telephone network to reach 80 per cent of the entire population.[35] Both winners have also promised to significantly reduce costs of mobile and Internet services.[36] Beside the two foreign companies, two licenses have also been appointed to local operators, one being Yatanarpon Teleport Co (YTC) which will reshape itself from a majority state-owned firm to a public company.[37] The other one is Myanmar Post and Telecommunication (MPT) who, under the Ministry of Communications and Information Technology, has been the sole telecom operator and has also functioned as regulator.[38]

In February 2014 it was announced that the World Bank will provide US$31.5 million from the International Development Association (IDA) for a project aimed at reforming the telecom sector in Myanmar. When the plans were first revealed, the World Bank received substantial criticism for their approach to the project and lack of consultation with civil society. In a letter to the World Bank, signed by 61 civil society organizations, concerns were expressed over the World Bank's failure to support fundamental risk assessments, safeguards, and legal reforms that must precede telecom expansion. The civil society organizations urged the World Bank to press the Myanmar's government to repeal laws that restrict people from exercising their freedoms and to develop laws and regulations to control how the government and service operators are able to collect, process, and share data

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[34] Supra note 32.
[35] Boot, William. Investors in Burma Telecom Sector Face 'Corrupt, Crony Practices': Report. *The Irrawaddy*. September 18, 2013. http://bit.ly/1nJdpHY (accessed May 20, 2014).
[36] Myanmar Ministry of Communications and Information Technology, Myanmar. Joint Press Release with Telenor Myanmar and Oreedoo Myanmar. January 30, 2014. http://bit.ly/1l8WTOU (accessed May 20, 2014).
[37] Song, Sophie. Myanmar's Telecom Landscape Gets Complicated With A Military-Backed Joint Venture Set To Compete With Telenor And Ooredoo. *International Business Times*. August 1, 2013. http://bit.ly/1mUHt1S (accessed May 20, 2014).
[38] Eleven Media. Yatanarpon Public Company to be awarded telecom licence. February 6, 2014. http://bit.ly/1nJf3JB (accessed May 20, 2014).

in line with international human rights standards.[39] After this, the World Bank issued a statement exclaiming "the project will take an integrated approach to the development of the Information, Communication and Technology (ICT) sector by creating the enabling policy and the regulatory and legal environment for a competitive telecommunications market."[40] The project also aims to help reform the government-owned MPT into a private entity and establishing an independent telecoms regulator.[41]

[39] U.S. Campaign for Burma. Civil Society in Burma Expresses Human Rights Concerns about World Bank Telecom Project. January 23, 2014. http://bit.ly/1jHNvE2 (accessed May 20, 2014).
[40] World Bank. Myanmar Moves Toward Connectivity for All. February 6, 2014. http://bit.ly/1iT37Gn (accessed May 20, 2014).
[41] Ibid.

3 Theoretical backdrop: Linking Internet freedom and the telecom sector

3.1 Internet freedom

Internet freedom has many possible meanings: it can refer to freedom *within* the Internet, by utilizing it as a means for freedom of speech, political organization and freedom to seek and to hold information. It can also mean freedom *from*: freedom from interference, surveillance and censorship. Or it can mean freedom to *connect*: that is, freedom to accessibility by a deregulated and cost efficient market, which goes hand in hand with freedom of the Internet through an *open and free* architecture and governance.[42] Accordingly, Internet freedom includes both negative and positive obligations. In relation to human rights, the Internet has the potential to influence a range of issues both in the realm of civil and political rights (first generation) and social, economic and cultural rights (second generation). Up until now, the debate has essentially focused on rights in the first category, namely *freedom of speech* and the *right to privacy*. It has, however, become more common with voices advocating Internet access to be considered a human right,[43] with several countries amending their legal frameworks along those lines.[44]

Myanmar has not ratified the two core human rights conventions, namely the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR), which together with the Universal Declaration of Human Rights (UDHR) make up the International Bill of Human Rights. Nevertheless, Myanmar is a member of the UN General Assembly since 1948 and voted in favour of the UDHR. While UDHR is not legally binding it has widespread global influence and has for long by many international lawyers believed to form part of customary international law.[45]

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[42] MacKinnon, Rebecca. *Consent of the Networked: The Worldwide Struggle for Internet Freedom*. New York: Basic Books, 2012, p. 188.
[43] Internet Rights and Principles Coalition. The Charter of Human Rights and Principles for the Internet. http://internetrightsandprinciples.org/site/charter/ (accessed May 20, 2014).
[44] Centre for Law and Democracy (CLD). A Truly World-Wide Web: Assessing the Internet from the Perspective of Human Rights. April 2012, p. 6 ff. http://bit.ly/1lsAVrN (accessed May 20, 2014).
[45] Humphrey, John Peters. The Universal Declaration of Human Rights: Its History, Impact and Juridical Character. In *Human Rights: Thirty Years After the Universal Declaration*. Ramcharan, G. Bertrand (ed). The Hague: Martinus Nijhoff Publishers, 1979, p. 21.

3.1.1 Freedom of speech

Freedom to hold, seek and express information is upheld as a crucial component of a vital democracy. Article 19 in UDHR – the right to freedom of expression and information – holds a prominent status and is often seen as the very foundation and enabler of many other rights:

> 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.[46]

By explicitly providing that everyone has the right to express him or herself through *any media*, this right was drafted with foresight to include and to accommodate future technological developments.[47] Yet, the right to freedom of expression is not absolute. Some speech is so dangerous that states are exceptionally required to prohibit it under international law. Article 20 of the ICCPR – the prohibition on war propaganda and on hate speech – states "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."[48] Restrictions are only allowed to protect people from objective harm like discrimination and violence, and not to protect people's feelings or their beliefs. There are also other conventions that prohibit certain expressions and information such as child pornography, direct and public incitement to commit genocide and incitement to terrorism.[49]

Article 19(3) of the ICCPR lays down the conditions which *any restriction* on freedom of expression must meet. To be legitimate, a restriction to freedom of expression must: first, be prescribed by law; second, pursue a legitimate aim, such as respect of the rights or reputations of others, protection of national security, public order, public health or morals; and third, the restriction should be necessary to secure the legitimate aim and meet the test of proportionality.[50]

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[46] UN Universal Declaration of Human Rights, Art. 19. December 10, 1948. http://bit.ly/1bD6w35 (accessed May 20, 2014).
[47] UN Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La rue. UN doc. A/HRC/17/27, para 21. May 16, 2011. http://bit.ly/QD35W5 (accessed May 20, 2014)
[48] OHCHR. International Covenant on Civil and Political Rights. http://bit.ly/Jz4HwZ (accessed May 20, 2014).
[49] UN Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN doc. A/66/290, p. 8 ff. August 10, 2011. http://bit.ly/1idu5ml (accessed May 20, 2014).
[50] Supra note 48.

3.1.2 The right to privacy

Article 12 of the UDHR reads:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspon-
> dence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the
> law against such interference or attacks.[51]

The right to privacy has long been neglected by the United Nations' human rights mechanisms. However, in June 2013 the entire discourse changed dramatically when Edward Snowden, the former National Security Agency (NSA) contractor, publicly revealed the US government's surveillance practices. Privacy International, an NGO fighting for the right to privacy, stated "the importance of the Snowden revelations cannot be overstated, as they finally gave us the evidence of what we had most feared: that governments acting with scant attention to legal protections, are using invasive techniques to collect as much as they can, while compromising the systems that we all rely upon."[52] In November 2013, the UN General Assembly voted in favour of adopting a resolution on the Right to privacy in the digital age, which became the first major statement by a UN body on privacy in more than two decades.[53]

A problem with the right to privacy is that its specific content was not fully developed by international human rights protection mechanisms at the time of its inclusion in the above-mentioned human rights instrument. The lack of explicit articulation of the content of this right has contributed to difficulties in its application and enforcement.[54] The right can be subject to restrictions or limitations under certain exceptional circumstances. This may include State surveillance measures for the purposes of administration of criminal justice, prevention of crime or combating terrorism. However, such interference is permissible only if the criteria for permissible limitations under international human rights law are met. Hence, there must be a law that clearly outlines the conditions whereby individuals right to privacy can be restricted under exceptional circumstances, and measures encroaching upon this right must be taken on the basis of a specific decision by a State authority expressly empowered by law to do so, and must respect the principle of proportionality.[55]

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[51] UN Universal Declaration of Human Rights, Art. 12. December 10, 1948. http://bit.ly/1oovrBY (accessed May 20, 2014).
[52] Privacy International. The State of Privacy. 2014, p. 5. http://bit.ly/1ebRS7S (accessed May 20, 2014).
[53] UN Department of Public Information. Third committee approves text titled "Right to privacy in the digital age". UN doc. GA/SHC/4094. November 25, 2013. http://bit.ly/1qzqacP (accessed May 20, 2014).
[54] UNESCO. Global Survey on Internet Privacy and Freedom of Expression. 2012, p. 51. http://bit.ly/1l9bEkV (accessed May 20, 2014).
[55] Supra note 47, para 59.

3.2 The growing influence of private corporations

As a network of networks, the Internet is a global platform which has no overarching or universal jurisdiction. No single entity governs the totality of the Internet; governance is provided by different constituents and institutions operating in very different jurisdictions.[56] Because of this and the fact that the infrastructure of the Internet largely depends on private entities, what we are seeing is a situation where decisions about the online sphere are frequently taken by private companies. Content that is potentially illegal can be taken down or blocked as this is seen as a form of self-censorship by Internet service providers (ISPs) or other intermediaries. Pressure from law enforcement agencies for greater controls, combined with a lack of legal protections for freedom of expression and privacy online, undoubtedly puts ICT companies in a complex situation. Concerns over national security and criminal activity have spurred governments' increased reliance on communications surveillance technologies. In order to not misuse such technology, national laws that regulate what constitutes as necessary, legitimate and proportional interception is key.

In a research paper comparing corporate data retention policies and companies specific practices in handing over user data to law enforcement and national security agencies, Christopher Soghoian documents a wide variance in terms of how much user information is retained, how it is stored, and precisely how it is shared with government agencies. What this means is that companies actually have a great deal of choice when it comes to their relationship with government agencies. Another part of the problem is, when people choose their broadband provider, mobile phone service, web-hosting service, social networking service, or personal e-mail provider, company policies and practices in dealing with government surveillance are rarely considered. Part of the reason is that it is very difficult for an ordinary person to know what each company is doing and to compare company practices in a meaningful way.[57] In the Internet age, it may be inevitable that corporations and government agencies have access to detailed information about citizens, but without transparency and accountability on the use of this information, democracy will be eroded.[58]

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[56] Puddephatt, Andrew. Mapping Digital Media: Freedom of Expression Rights in the Digital Age. April, 2011, p. 9. http://osf.to/1mm8vAS (accessed May 20, 2014).
[57] Soghoian, Christopher. The Law Enforcement Surveillance Reporting Gap. April 10, 2011. Available at http://dx.doi.org/10.2139/ssrn.1806628 (accessed May 20, 2014).
[58] MacKinnon. *Consent of the Networked: The Worldwide Struggle for Internet Freedom*, p. 81.

3.3 Corporate social responsibility

Current international law does not impose civil responsibility on transnational corporations (TNCs) meaning that corporations cannot be prosecuted before international criminal courts. However, it is still a highly contested issue whether human rights obligations apply to corporations. On one side of the spectrum are those, such as eminent human rights authority Louis Henkin, who claim that ever since the UDHR was adopted in 1948, there has been a legal basis for saying that international law imposes human rights obligations on TNCs. In this connection, one needs to recall that the UDHR itself is often treated as customary international law. Henkin focuses on the wording of a passage in the UDHR that he argues extends its reach to TNCs. In the proclamation, the UDHR describes the principles as: "a common standard for all peoples and all nations, to the end that *every individual and every organ of society*, keeping this Declaration constantly in mind, shall /…/" (emphasis added).[59] John Ruggie, who served as the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, contests the idea that TNCs are directly bound by international human rights law. Although he agrees with Henkin's argument that the UDHR reaches TNCs as organs of society, Ruggie's view is that this is not as law but rather as aspirations and a set of "moral claims".[60]

The concept Corporate Social Responsibility (CSR) has thus emerged as a response to the lack of a legally binding framework, with a multitude of guidelines, recommendations and codes of conduct. It is important to note that these are all in essence voluntary instruments. In 2011, the UN Human Rights Council unanimously adopted the Principles on Business and Human Rights, developed under the guidance of John Ruggie. The UN Guiding Principles (UNGPs) affirm the duty of all states to *protect* against human rights abuses, the responsibility of all companies to *respect* human rights, and where protection gaps exist, the need to ensure access to effective *remedies*.[61] The framework is not a compliance mechanism, but a risk management tool to support businesses in developing internal policies and processes to ensure that their conduct is consistent with international human rights standards. To move

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[59] Henkin, Louis. The Universal Declaration at 50 and the Challenge of Global Markets. *Brooklyn Journal of International Law*, No. 25. 1999, pp. 17-25.

[60] UN Human Rights Council. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. UN doc. A/HRC/4/35, para 37. February 19, 2007. http://bit.ly/1mVjBvh (accessed May 20, 2014).

[61] UN Human Rights Council. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. UN doc. A/HRC/17/31, para. 6. March 21, 2011. http://bit.ly/1oLVf8v (accessed May 20, 2014).

in the right direction, companies in various sectors need to work together and engage in multi-stakeholder approaches, including involvement from civil society and home governments.

3.3.1 International best practice for telecoms

For the telecom industry, there are a few different sources that aim to guide companies on how to best respond to human right issues. This research has taken inspiration partly from the work of GNI in collaboration with the Telecommunications Industry Dialogue (TID), a consortium of telecommunication companies. In March 2013, GNI and TID published a set of principles that address the issues of privacy and freedom of expression as they relate to the telecommunications sector. Influenced by the UN Guiding Principles, they explore the interaction and boundaries between a governments' duty to protect human rights and the responsibility of telecommunications companies to respect human rights.[62] Furthermore, in 2011 the European Commission assigned two independent, non-profit centers for business and human rights to develop an ICT-sector specific guide on the implementation of the UN Guiding Principles.[63] The guide, which was released in June 2013, offers practical advice on how to implement the principles in day-to-day business operations and covers six areas:

1. Policy commitment that embeds respect for human rights
Companies should develop a policy that entails how they aim to handle human right issues that may arise in relation to its operations. These should preferably be based on internationally recognized principles, such as the UN Guiding Principles, and be approved at highest level in company. It should be targeted to the market it operates in and communicated internally and externally.

2. Assessing human rights impacts
Companies should conduct human rights impact assessment that identifies potential negative impact on human rights which they may contribute to directly and/or indirectly. This includes building a systematic approach to continuous assessment and drawing on local expertise.

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[62] Telecommunications Industry Dialogue. Guiding principles. http://bit.ly/1gAzXFF (accessed May 20, 2014)
[63] European Commission. ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights. 2013. http://bit.ly/1hio1sH (accessed May 20, 2014)

3. Integrating and Acting (government requests)

Governments may make a range of requests to ISPs to provide information about customers and users for legitimate law enforcement purposes, to block or remove content, to block access for a single or multiple users. These requests can be critical to a state's ability to meet its duty to protect human rights, individual users and intellectual property. However, unless companies have robust processes in place for handling such requests, it can risk "over complying" and act on requests that are illegal and not in line with international human rights law. Therefore, companies need to have strong systems in place that enable effective response. This includes having qualified personnel that deal with requests and efficient guidelines.

4. Tracking performance

Companies should track their response to actual and potential human rights impacts to evaluate how effectively they are being addressed, for example how government requests are handled. This sort of tracking is important for insight into compliance and for continuous improvement.

5. Communicating performance

Companies should provide appropriate transparency and accountability, for example through formal reporting on how it addresses government requests and percentage of compliance. This is especially appropriate for companies operating where significant risks can arise for misuse of their service.

6. Remediation and grievance mechanisms

Finally, companies should establish effective grievance mechanisms for stakeholders who may be negatively impacted by their activities, in order that grievances may be detected early and remediated.

4 Results and Analysis

In this chapter, the major challenges that this research has identified for Internet freedom in Myanmar will be presented and analysed in accordance with internationally recognized best practice. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, will here be referred to simply as The Special Rapporteur. The two foreign telecom companies' role is integrated where appropriate and their approach to best practice is assessed in the last section.

4.1 The fundamentals of access

Even if some groups and activists are advocating for Internet access to be considered a human right, the UN has not yet endorsed it as such. However, the Special Rapporteur has reiterated that States have a positive obligation to promote the enjoyment of the right to freedom of expression and the means necessary to exercise this right, which includes the Internet.[64]

Internet has the potential to facilitate economic development and the enjoyment of a range of human rights, but this clearly prerequisites access. In 2013, civil society organization Myanmar ICT for Development (MIDO) hosted Myanmar's first conference on Internet Freedom, in which they emphasized that "Internet freedom is not just a question of lifting the ban on certain sites. It also requires allowing wider and faster access."[65] As Internet penetration is currently at an extreme low in Myanmar, the telecoms ambition of reaching 80 per cent of the population by 2016 and their promise of significantly reducing the costs represents a major paradigm shift. Yet, there are some hurdles in the context of accessibility that need to be addressed.

4.1.1 Infrastructure

According to the World Bank, about 73 per cent of the population in Myanmar lack access to electricity. Consumption of electricity is one of the lowest in the world – 20 times less than the world average. The existing power infrastructure can only meet about half of the current demand, resulting in frequent blackouts and rationing of the electricity supply.[66] The lack of

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[64] Supra note 49, paras 61, 69.
[65] Aung, Htoo. Myanmar's Internet freedom in the spotlight. *Myanmar Times*. May 13, 2013. http://bit.ly/1lJlzMZ (accessed May 20, 2014).
[66] World Bank. Myanmar Overview. February 2014. http://bit.ly/1vUxsYH (accessed May 20, 2014)

electricity represents a challenge, but one that should be manageable. Both Telenor and Ooredoo are working to create mobile networks that rely on different power sources beside electricity, such as solar panels and diesel.[67] As for citizens' abilities to use electronic devices, although there is a lack of electricity in rural areas, many people have a small solar panel or a car battery that meet this demand. That is not to say everyone; it is probable that alternative solutions will develop, such as "charging stations" or the like.

In addition, to roll out a mobile network across Myanmar it is necessary for the telecom operators to buy or rent small plots of land and roof top sites throughout the country to set up telecommunication installations. Land rights have historically been a highly inflammatory issue in Myanmar – the military has a track record of illegal land confiscations and dominant businesses have often used coercion and paid inadequate compensation for land.[68] Although two important land laws were passed in 2012, which guarantee more individual ownership rights, there is still no comprehensive land-use policy. In addition, under Myanmar's 2008 constitution, the state is the ultimate owner of all land and natural resources.[69] Particularly in rural parts of the country it may prove difficult to establish who owns land or has customary usage rights, who should be consulted and how to obtain free, prior and informed consent.[70] In response to this, Telenor has established a set of principles and measures, detailing how to acquire the necessary land and rooftops for telecommunication installations.

> As for land issues, we're heavily involved in at the moment to figure out on local level who owns land, who to lease property from.. this is a key area and we have a team on the ground in each state working to establish a dialogue and establish principles. We have a defined, we have a definition of what we deem to be appropriate land which has to do with for example how long the current owner needs to have owned it and that kind of thing.. and that's going to be difficult.[71]

Ooredoo showed an awareness of the complexity surrounding the acquiring of land and a commitment to refrain from complicity in this realm. They also pointed to experience from

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[67] Phone interview with Tor Odland, Telenor, May 2014.
[68] Human Rights Watch. Untold Miseries: Wartime Abuses and Forced Displacement in Kachin State. 2012, pp. 29-33. Available at http://bit.ly/Rk9KEF (accessed April 15, 2014).
[69] Farmlandgrab.org. Land grabbing as big business in Myanmar. March 8, 2013. http://bit.ly/1gqdxMv (accessed May 20, 2014).
[70] Asian Human Rights Commission. Myanmar at risk of land-grabbing epidemic. June 6, 2012. http://bit.ly/StP91V (accessed May 20, 2014).
[71] Phone interview with Tor Odland, Telenor, May 2014.

working in other complex markets and on the outlooks have not found reason for overly concern.[72]

It is probable that the two foreign companies will do their utmost to prevent illegal land seizures, as such a scenario if it came to public knowledge would have a devastating impact on their reputation. When it comes to the two local operators, YTC and MPT, the former is to be reshaped from a majority state-owned firm to a public company and the latter is said to be established as a private entity and in turn partner with Japanese firm KDDI.[73] In 2013, MPT entered a joint venture with army-backed Myanmar Economic Corporation (MEC), who under the brand MECTel began selling cheaper SIM-cards and top-up vouchers, operating on MPT's network spectrum. MEC was one of the two major conglomerates and holding companies operated by the military during Myanmar's military-era economy and were regularly granted lucrative import or domestic production monopolies. The sudden emergence of MECTel took many by surprise and their future role in Myanmar's telecoms sector is far from clear.[74] One can only hope that the World Bank's assistance in developing the rules and regulations of the new Telecommunication law and restructuring MPT into a private entity will secure a level playing field.

Concerning the government's history of bandwidth capping, fortunately such interference seems to be an issue of the past with interruptions now being mostly due to poor infrastructure. In late summer of 2013, an underwater cable was damaged which caused major connectivity problems for several weeks.

> So when there was something important happening or some important visitor visiting Internet was slow and people couldn't upload photos, for example during the by-election or election /…/ But now it's not too much. They blamed it on our under water cable (laughs) but that could be true because our under water cable /../ the operating life span of that is almost expired so it's not really functioning very well"[75]

4.1.2 Digital literacy

Access not only requires an Internet connection, in addition people need some skills and training. Myanmar's education system suffered serious deterioration under the years of

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[72] Skype interview with Nicholas Swierzy, Ooredoo. May 2014.
[73] Cellular News. Japan's KDDI Expected to Take Over Management of Myanmar Network. May 13, 2014. http://bit.ly/1jeFtOk (accessed May 20, 2014).
[74] Consult Myanmar. Uncertainty over law clouds Telecom tender. June 2, 2013. http://bit.ly/1p2h86a (accessed May 20, 2014).
[75] Undisclosed interview, October 2014.

repression. During student uprisings in 1996, the Junta decided to shut down the University of Yangon and it was only reopened in late 2013.[76] For this reason, and because the country has been so closed in general, the massive potential for ICT to enhance education has been almost completely untapped. While Facebook is tremendously popular in Myanmar, and for many seem to equal the Internet, most people lack the skills for using the Internet on a broader scale and have had to "piece together what they know about the web mostly by word of mouth".[77] The Special Rapporteur encourages States to provide support for training in ICT skills, which can range from basic computer skills to creating web pages.[78] Thus, including Internet literacy in school curricula for example would provide the younger generation with knowledge on how to use the Internet for educational purposes and also contribute to combating irresponsible practices.

In several interviews, concerns surged that the government is prioritizing growth in the telecom sector only for economical reasons – to increase foreign investments and trade. While it is difficult to assess details of the government's ICT Master Plan, one can only hope that once infrastructure is in place, other benefits than commercial ones will be harvested, such as implementing ICT in the education system. Internet access allows students and teachers to keep up-to-date with the latest developments and issues related to their fields of education. These benefits attained from Internet usage directly contribute to the human capital of States and therefore, access to the Internet will be an important element for educational progress in Myanmar.

4.1.3 Language barriers

> Our main obstacles to access was the infrastructure and the price, so the people didn't get to use /…/
> but now our main obstacles is not infrastructure anymore as the telecoms are coming in. Our main
> obstacles we think might be the content, for there isn't many content written in Burmese.[79]

With few languages dominating the online environment, language barriers can be a further impediment to access. There are over 100 different languages spoken in Myanmar. Burmese, which is the official language, is spoken by approximately two thirds.[80] English proficiency varies greatly, but is generally not widespread even in more urban areas.[81]

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[76] Htun, Manaw. Yangon University reopens after two decades of forced closure. December 6, 2013. *Demotix*. http://bit.ly/1t4chiL (accessed May 20, 2014).

[77] Bosker Bianca. Facebooking After Dictators: What Happens When A Country Escapes Near Internet Darkness. April 21, 2014. *HuffPost Tech*. http://huff.to/1iDbqUp (accessed May 20, 2014).

[78] Supra note 49, para 45.

[79] Undisclosed interview, October 2014.

Telenor is working actively under the vision 'Internet for All' to increase information available in the languages of the countries they operate. For example in Thailand, Telenor has partnered with the Wikimedia Foundation and the Thai Wikimedia community to kick-start a comprehensive translation campaign in order to boost the quality and quantity of information written in Thai online, and on Wikipedia in particular.[82] In Myanmar, Telenor has started a monthly event, Net Monday, which invites young entrepreneurs, early tech adopters and bloggers to join in discussions with global and local tech partners on how to create 'Internet for All'.[83] These are certainly good and much needed initiatives. However, the government also needs to support educational efforts that will provide people with knowledge on how to access and publish information online, and support civil society initiatives in this realm. Open Myanmar Initiative is a non-profit organization that is working for transparency and increased access to information in Myanmar, and describes the situation accordingly

> Most people on the web found the largest content in Burmese language in social networking sites such as Facebook. If anyone don't know English, he/she will become no more than a Facebooker on the web /.../ We need more objectivity and responsibility than social networks. That's why we are developing our website filled with parliamentary contents, mostly in Burmese language. With no local content on web, even a mobile revolution is nothing.[84]

In the long term, the government should try to make as much governance information as possible available in minority languages as well, in an effort to promote and protect these in line with the principles enshrined in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[85] Having access to the Internet in ones primary language allows people who are disadvantaged, discriminated or marginalized to obtain information, assert their rights and participate in the public debate concerning social and political changes. Ensuring that marginalized groups in Myanmar receive effective digital literacy training will be critical to strengthen their voice.

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[80] Ethnologue. Languages of the World. Myanmar. http://bit.ly/1pkyPLQ (accessed May 20, 2014).
[81] Author's own observations during a two months field visit, speaking to a great variety of people from different parts of the country.
[82] Telenor. dtac ignites mass translation efforts for Thai Internet. April 11, 2014. http://bit.ly/1qmUwvr (accessed May 20, 2014).
[83] Facebook. Telenor - Internet for All. April 16, 2014. https://www.facebook.com/telenorinternetforall (accessed May 20, 2014)
[84] Email communication with Htin Kyaw Aye, Deputy Research Director, Open Myanmar Initiative. May 2014.
[85] UN Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN doc. A/HRC/14/23, para. 60. April 20, 2010. http://bit.ly/1t4dVAP (accessed May 20, 2014).

4.2 The problem with hate speech

Since the demise of censorship, Myanmar has been grappling with spiteful and inflammatory speech on blogs, web forums and Facebook pages. Fabricated news and falsified images have come from several accounts with unknown identities.[86] Rohingya have been heavily targeted and commenters seem particularly enraged that Western countries and the United Nations are highlighting the Rohingyas' plight. Ooredoo, being a company from Muslim Qatar, are also receiving negative attention. For example blogger "Hla Oo", who claims to be a retired Burmese expat, describes an initiative by Ooredoo to train 30,000 women as mobile retail agents in following terms

> They see the program as a Trojan horse to Islamize young Burmese-Buddhist women as already the Northern Arakan in Western Burma has been swallowed up by the illegal Bengali-Muslims or so-called Rohingyas with the generous monetary support from widely-hated OIC of which Qatar the sole owner of OOREDOO is a founding member nation.[87]

The nationalist 969-movement, led by monk Ashin Wirathu, has been pinpointed for its role in spreading anti-Muslim sentiment, urging Buddhists to boycott Muslim businesses, to avoid marrying them, hiring them or selling property to them. There are also conspiracy theories that ethnic and religious frictions could be spurred by military hardliners as a pretext for maintaining a dominant role in Myanmar politics.[88]

> These are some observations from which we can assume that it is controlled by a group, also because on some Facebook pages it is obvious that they are distributing hate speech systematically. And also when they upload some material on social media, they got many likes and shares on Facebook in just a few minutes which proved that they are doing this in a group and they have background support.[89]

Indeed, the events playing out in Myanmar are complex and there are no easy answers. The country is experiencing changes associated with the Internet in a matter of months rather than years, as has been the case with most other countries. In particular, the problem seem to lie in

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[86] See e.g. Khine, Chan Myae. In Burma, Facebook becomes a hotbed of extremism. *Asian Correspondent.com*. April 9, 2013. http://bit.ly/1vYoERt; Fuller, Thomas. Internet Unshackled, Burmese Aim Venom at Ethnic Minority. June 15, 2012. *The New York Times*. http://nyti.ms/1gZYV7d (accessed May 20, 2014).

[87] Hla Oo's Blog. OOREDOO Mobile: OIC's Trojan Horse From Qatar? May 11, 2014. http://bit.ly/1vYqi5D (accessed May 20, 2014).

[88] Fisher, Jonah. Anti-Muslim monk stokes Burmese religious tensions. August 29, 2013. *BBC News*. http://www.bbc.com/news/world-asia-23846632 (accessed May 20, 2014).

[89] Irrawaddy. Interview with Nay Phone Latt: Hate Speech Pours Poison Into the Heart. April 9, 2014. http://bit.ly/1k7LMsc (accessed May 20, 2014).

the nature of the Internet, with its reach, speed and anonymity amongst a population that has yet to grow familiar with the concept of free expression. Myanmar, like many other countries from the Asia-Pacific region, has criminal law provisions against hate speech in its Penal Code. Section 505 reads: "Whoever makes, publishes or circulates any statement, rumour or report /…/ c) With intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community /.../ shall be punished with imprisonment which may extend to two years, or with fine, or with both."[90] However, authorities seem to lay low on the issue. "The law enforcement turns a blind eye on even public hate speech. It's more than a social problem. To defy this exploitation of society, the society must have a great immunity but we still don't have."[91]

In his last report as the Special Rapporteur on the situation of human rights in Myanmar, from March 2014, Tomás Ojea Quintana writes

> The relationship between proscription of hate speech and the flourishing of freedom of expression should be seen as complementary. The Special Rapporteur is concerned that the Government is not fulfilling its international human rights obligation to tackle incitement to violence based on national, racial or religious hatred. Community-based, political and religious groups have been conducting, with impunity, well organised and coordinated campaigns of incitement to discrimination, hostility and violence against Rohingya and other Muslim minorities. The Government has a duty, under international human rights law, to investigate the nature and extent of the harm caused to persons and groups as a result of hostility and violence incited on the basis of racial or religious hatred, and to hold the perpetrators to account with proportionate punishments.[92]

When it comes to law enforcement, it is important to remember that prohibited expression under article 20, paragraph 2, of the ICCPR only covers advocacy and/or propaganda, that constitute *incitement* to one of the three listed: discrimination, hostility or violence. Thus, advocacy of national, racial or religious hatred is not a breach of article 20, paragraph 2, of the Covenant on its own. Such advocacy becomes an offence only when it also seeks to provoke reactions on the part of the audience and there is a very close link between the expression and the resulting risk of discrimination, hostility or violence. In this regard, context is central to the determination of whether or not a given expression constitutes

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[90] Online Burma/Myanmar Library. The Penal Code, Section 505 (c). May 1, 1861. http://bit.ly/THzmO2 (accessed May 20, 2014).
[91] Undisclosed interview, May 2014.
[92] Supra note 13, para 21.

incitement.[93] This, in turn, requires an independent judiciary that operate as a safeguard against arbitrariness and protection to rule of law, which is not yet the case in Myanmar.

Furthermore, guarding information flow in an ever-expanding online environment has proven difficult. The most common method of restricting certain types of prohibited expression on the Internet is through the blocking of content. In this regard, the Special Rapporteur reiterates that States should provide full details regarding the necessity and justification for blocking a particular website, and determination of what content to block should be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences to ensure that blocking is not used as a means of censorship.[94] In reality, many governments that try to counter "bad" speech online delegate the job to private intermediaries who are under no legal obligation to uphold citizens' rights to free expression and privacy.[95]

While content screening and blocking of web sites and social media may pose necessary in serious instances of hate speech and for national security reasons, it must never dodge the deeper issue of racism and alienation experienced in a country. Governments play a key role in promoting efforts that focus on addressing the root causes of such expression and implementing strategies of prevention. The government's public expression of condemnation of communal violence is a start but more need to be done.[96] Meantime, counter speech is indeed one of the strongest assets that civil society has to facilitate change. In this regard, it's encouraging that a group of Myanmar activists launched a campaign in April 2014 to tackle hate speech in its various forms. Panzagar, literally "flower speech", is a movement set up by Nay Phone Latt, a free speech advocate and executive director of MIDO, who spent nearly four years in jail for writing about the monks' protests in 2007 and cyclone Nargis in 2008.

> Everyone has right to free speech but not to spread dangerous hate speech, we need to moderate ourselves without control by others. Both restrictive laws and hate speech are dangers to freedom. I have seen hate speech on social media but the impact is not only on the Internet, sometimes, it spreads into society outside. /…/ If people hate each other, a place will not be safe to live. I worry about that most for our society. In some places, although they are not fighting, hate exists within their heart because they have poured poison into their heart for a long time, it can explode in anytime.[97]

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[93] Supra note 49, para 28.
[94] Supra note 49, para 38.
[95] MacKinnon. *Consent of the Networked: The Worldwide Struggle for Internet Freedom*, p. 90.
[96] United Nations. Secretary-General's opening remarks to the Group of Friends of Myanmar. July 10, 2013. http://bit.ly/1m7bATb (accessed May 12, 2014).
[97] Supra note 89.

4.3 Cyber attacks, privacy and security

In 2013, several journalists who regularly cover Myanmar-related news received warning messages from Google that their email accounts may have been hacked by state-sponsored attackers. The Google warning said "we believe that state-sponsored attackers may be attempting to compromise your account or computer" and "it's likely that you received emails containing malicious attachments, links to malicious software downloads, or links to fake websites that are designed to steal your passwords or other personal information."[98] Among these were journalists from Eleven Media, who also have had their website hacked and material deleted. Eleven Media was the first domestic news group to report objectively about the war in Kachin State. Zaw Ye Naung, broadcast and online media editor of Eleven Media Group, has said he has no idea who has been targeting Eleven Media's site, with the IP addresses traced to places as diverse as Hong Kong, the United States, China, and Russia.[99]

There are different opinions and speculations as to whether the Eleven-Media attack was State sponsored or not. One interviewee said they didn't believe that the Eleven-attack was State sponsored. "Myanmar is still in a very transitional context and it is sometimes hard to read what is going on. But the authorities have not engaged in the reform processes that they have simply to revert to this type of crude measure."[100] Journalist and author Bertil Lintner, who for many years has been reporting on Myanmar, is of a different opinion. "The attack on Eleven Media (and attempts at intimidation of the journalist who filed the report from Kachin State, which prompted it) was not just state-sponsored, it was carried out by the MI (secret police). The journalist had agents following him around for several days after his story appeared."[101] Using the term "state sponsored" is also somewhat problematic in this regard.

> No I don't know exactly whether government support or not, you know, because some ministers are reformist, they genuinely love their nation, they want to do something for the country.. I do understand. But some of the cabinet members or some person they're not like them, so maybe they are pulling back, so and also in government side there's two groups: hardliners and softliners, reformist and extremist /.../ so that is very complicated.[102]

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[98] Crispin, Shawn. Increasing Cyberattacks Threaten Free Press in Burma. *MediaShift*. February 25, 2013. http://to.pbs.org/1hkYtLl (accessed May 20, 2014).
[99] Macaraig, Ayee. Internet in Burma: Using a New Tool to Change Old Laws. *The Irrawaddy*. September 6, 2013. http://bit.ly/1lAcBV8 (accessed May 20, 2014).
[100] Email communication with Toby Mendel, May 2014.
[101] Email communication with Bertil Lintner, May 2014.
[102] Undisclosed interview, October 2013.

When a cyber-attack can be attributed to the State, it clearly constitutes inter alia a violation of its obligation to respect the right to freedom of expression and privacy. Although determining the origin of cyber-attacks and the identity of the perpetrator is often technically difficult, it should be noted that under international law States have an obligation to protect individuals against interference by third parties that undermines the enjoyment of the right to freedom of opinion and expression. This positive obligation to protect entails that States must take appropriate and effective measures to investigate actions taken by third parties, hold the persons responsible to account, and adopt measures to prevent such recurrence in the future.[103]

Highly sophisticated tools for both targeted communications surveillance and mass communications surveillance is becoming increasingly available. What sort of information governments collect about their citizens is surrounded by extreme secrecy and usually only comes to public knowledge through whistle blowers, such as Edward Snowden in US. According to research by Citizen Lab in 2011, surveillance technology manufactured by the U.S. based company Blue Coat Systems was detected on the Yatanarpon Teleport ISP in 2011.[104] Like most other countries, one can assume that the Myanmar government still is and will continue to use such surveillance equipment. The Special Rapporteur acknowledges that concerns about national security and criminal activity may justify the exceptional use of communications surveillance technologies. However, national laws regulating what would constitute the necessary, legitimate and proportional State involvement in communications surveillance are often inadequate or non-existent.[105] Myanmar's new Telecommunications Law, which was approved in October 2013, is the key legislation in this regard. However, the implementing rules and regulations which will spell out in detail how the government will go about in terms of legal intercept are still pending for approval at the time of writing.

The new Telecom Law sets out that acquiring a SIM-card will require registration based on national ID. Both Telenor and Ooredoo say that they are approaching customers' privacy in Myanmar in an industry standard manner, where information about the use of personal data is presented during the registration process.[106] In this regard, a key issue is informed consent, with consumers being presented with clear and easily understandable

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[103] Supra note 47, para 81.
[104] The Citizen Lab. Behind Blue Coat: Investigations of Commercial Filtering in Syria and Burma. 2011. http://bit.ly/MjUjtx (accessed April 14, 2014).
[105] UN Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN doc. A/HRC/23/40, para 3. April 17, 2013. http://bit.ly/1ot3aYJ (accessed May 20, 2014).
[106] Skype interview with Nicholas Swierzy, Ooredoo, May 2014.

information on how their data will be used and shared before they provide it.[107] This includes the telecom companies duty not to make unauthorized disclosures on personally identifiable information and restrictions on secondary use. The fact that Myanmar does not have explicit privacy data legislation is troublesome, not just because the right to privacy and anonymity is essential for individuals to express themselves freely but also from a security point of view. Nay Phone Latt and MIDO are pushing for the passage of a cybercrime law to address hacking, phishing, and online theft. "Cybercrimes will increase in the near future and if somebody committed the cybercrime, there will be victims /…/ We need a cyber law and cyber police who are very skillful in ICT."[108]

4.4 Insufficient legislation

The space for political debate is far greater than at any time in Myanmar's recent history, yet with the transition incomplete, the legal framework has changed little. This is true both in the realm of ICT and the media industry as a whole. In February 2014, Reporters Without Borders released their "World Press Freedom Index 2014" which ranked Myanmar 145th out of 180 countries. The report said that Myanmar's reforms had "run out of steam" and that the regime has failed to implement any media legislation that complies with international standards.[109] While the government has done little to stifle hate speech, they decided to ban a TIME magazine issue in June 2013, fronting a story about the controversial Buddhist monk U Wirathu.[110]

> As you know, my country has for so long time, let say half century under military regime, all that now is civil government, but all civil government members are all members of the old regime /.../ so their mind-set and thinking way, behaviour, everything is influenced by old thinking, old processes, old regime, so they think they should control a little bit and also we're facing a lot of plots, making plots by some hardliners who don't want to see the totally independent or free press because they have worry for their survival, wealth and power, everything[111]

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[107] Supra note 44, p. 25.
[108] Supra note 99.
[109] Reporters Without Borders. World Press Freedom Index 2014, p. 18. February 12, 2014. https://rsf.org/index2014/data/index2014_en.pdf (accessed May 20, 2014).
[110] Democratic Voice of Burma. Burma bans Time Magazine's 'Buddhist Terror' edition. June 26, 2013. http://bit.ly/1grBfYY (accessed May 20, 2014).
[111] Undisclosed interview, October 2013.

Myanmar was ruled without a constitution for two decades after 1988. The new constitution, drafted by the junta and approved in a flawed 2008 referendum, does not guarantee freedom of expression. Section 354 simply states that *every citizen* may exercise the rights "to express and publish their convictions and opinions" if they are "not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity, or public order and morality."[112] According to an assessment of the constitution by Toby Mendel and Esben Harboe, there are several serious shortcomings: Firstly, under international law, States are required to extend protection of human rights to everyone, not just citizens. Secondly, it only protects the right to express oneself, and not to seek and receive information and ideas. Third, the concept of "community peace and tranquillity" is too broad to justify a restriction on freedom of expression. Political criticism, for example, may well undermine tranquillity, but is clearly protected speech under international law. Finally, under international law, restrictions to freedom of expression must also be 'necessary' to protect a legitimate interest, which is entirely missing from the current constitution of Myanmar.[113]

Similar overly broad wordings are also found in the Penal Code Section 505(b): "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... shall be punished with imprisonment which may extend to two years, or with fine, or with both."[114] On May 5, 2014, human rights defender Ko Htin Kyaw was arrested and charged under the Section while delivering a speech and distributing leaflets criticizing the Myanmar government and calling on members of parliament to resign.[115] Another antiquated law, the Official Secrets Act of 1923, was used in February 2014 by the regime to charge and arrest four Unity Weekly journalists and their CEO for publicizing investigative journalism into what they claimed was a secret chemical weapons factory.[116] The Official Secrets Act makes it an offense to possess, control, receive or communicate any

[112] Burma/Myanmar Library. Constitution of the Republic of the Union of Myanmar (2008) – English. http://bit.ly/1oPimPg (accessed May 20, 2014).
[113] Mendel, Toby and Harboe, Q. Esben. Analysis of the Guarantees of Freedom of Expression in the 2008 Constitution of the Republic of the Union of Myanmar. Report/Centre for Law and Democracy. August 2012, pp. 6-7. http://bit.ly/1k4IJAj (accessed May 20, 2014).
[114] Online Burma/Myanmar Library. The Penal Code, Section 505 (b). May 1, 1861. http://bit.ly/THzmO2 (accessed May 20, 2014).
[115] Amnesty International. Urgent Action. May 9, 2014. http://bit.ly/TD7rOY (accessed May 23, 2014).
[116] ALTSEAN-BURMA. Legislative Reform in Burma: One Step Forward.. Two Steps Back. March 21, 2014. http://bit.ly/1h09kQs (accessed May 20, 2014).

document which may affect Myanmar's sovereignty, foreign relations, or security.[117] Bertil Lintner claims that the State is replacing old-style censorship with a more sophisticated approach to silence critics and to re-monopolize the media sector.

> I call it Singapore style. An increasing number of journalists are being sued for libel and defamation or for reasons which the regime can claim are "only legal issues", nothing to do with "suppression of free speech." The old state-run media has been replaced with what they call "public service media" (Swedish SIDA helped them with that...) but it's the same thing. Their "public service media" (newspapers, radio and TV) is also mainly financed by the state, which makes it difficult for privately owned media to compete with them.[118]

4.4.1 Flawed ICT laws

There are still several ICT laws on the books that urgently need to be brought into line with international human rights standards. While actual enforcement may vary, many provisions are overly broad and impose disproportionately harsh penalties. The government's first attempt to restrict Internet freedom was through the Computer Science Development Law (1996). This law require citizens to obtain prior permission from MCIT for importing, keeping or using computers and related equipment, and for setting up a computer network. Failure to register a computer or a network is punishable from seven up to 15 years in prison and a possible fine.[119] It seems this is one of the laws that are not actively enforced.[120] However, the provision is still highly problematic since it enables authorities to resume enforcement anytime should they please.

The Electronic Transactions Act was imposed by Myanmar's former military junta in 2004 to counter the growing influence of the Internet. Under section 33, Internet users faced prison terms up to 15 years for "(a) doing any act detrimental to or (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 tranquility or national solidarity or national economy or national culture*".[121] Nay Phone Latt, who himself was sentenced under this Act, asks "What is the meaning of receive? The mail in your inbox is not 'receive'. Everybody can send to your inbox if they know your e-mail address but it's not your responsibility. So we need to

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[117] International Center for Not-for-Profit Law. Official Secrets Act, Section 3(c). Apr. 2, 1923. http://bit.ly/1ogfduG (accessed May 20, 2014).
[118] Email communication with Bertil Lintner, May 2014.
[119] WIPO. Computer Science Development Law. September 20, 1996, para 32, 33, 35. http://bit.ly/Sxci3F (accessed May 20, 2014).
[120] Based on author's conversations and observations during two months field study in Myanmar.
[121] WIPO. Electronic Transactions Law. April 20, 2004. http://bit.ly/1lAlDBr (accessed May 20, 2014).

define what is the meaning of receive, what is the meaning of send, what is the meaning of distribute."[122]

The Electronic Transactions Law is currently being amended, although there is criticism that the process is taking too long. According to the World Bank, the Electronic Transaction Law is being revised to reflect good practice and is largely modelled on the UN Model Law on Electronic Commerce (1996) and the UN Model Law on Electronic Signatures (2001).[123] Up until this point no substantial changes have been implemented; in October 2013, the lower house of parliament approved a bill with some amendments, but mostly focused on clauses concerned with sentencing offenders by adjusting prison terms to three years minimum and seven years maximum.[124] MIDO has joined together with Myanmar Computer Federation and other stakeholders in an effort to influence these amendments.

> Maybe you have heard from some people that there are lots of public opinion callings on different laws, like NGO laws, human right commission law regulation, a media law, but then not really much follow up and action were taken from that /../ so we kind of felt the same way for the Electronic Transaction Law but then we have to you know just go in and do our part, because we had actually included many things like consumer protection rights and everything for the telecom law but then not many of our advices were taken, just some.[125]

4.4.2 Telecommunications law

The highly anticipated Telecommunications Law was signed into law by President Thein Sein on October 8, 2013 and repeals the antiquated Myanmar Telegraph Act (1885) and Myanmar Wireless Telegraphy Act (1934). There are some provisions that are of concern from a human rights point of view, for example in sections 75 and 76, the law establishes obligations for licensees to cooperate with requests from the State to obtain any information or communications that may adversely affect the security of the State, or for public interest, without giving adequate guidance as to what constitutes "security" or "public interest". The Special Rapporteur warns that vague and unspecified notions of "national security" have become an acceptable justification for the interception of and access to communications in many countries.[126] According to section 77 in the law, the Ministry may, with the approval of

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[122] Supra note 99.
[123] World Bank. Myanmar - Telecommunications Sector Reform Project. 2014. http://bit.ly/1ngLqAf (accessed May 20, 2014).
[124] Aung, Shwe. Lower house approves amendments to Electronics Act. *Democratic Voice of Burma*. October 23, 2013. http://bit.ly/1t6Xnbl (accessed May 20, 2014).
[125] Interview with Htaike Htaike Aung. Program Manager, MIDO, October 2013.
[126] Supra note 105, para 58.

the government, direct the licensee to suspend the telecommunications in situations of public emergency. Although telecom service providers are subjected to such regulations in many other countries they operate in, there are few meaningful checks and balances on the government's powers in Myanmar. In this regard, it should be taken into account that Myanmar's constitution and State Protection Law grant the government broad powers to declare public emergencies.[127]

Furthermore, the law stipulates a National Telecommunications Advisory Committee to be formed by the MCIT, for the purposes of making recommendations and suggestions concerning technical standards, consumer protection and telecommunications development policy and related issues. The Committee will comprise representatives of the ICT industry, licensees, consumer groups, industry experts and the Department of Telecommunications.[128] The Department of Telecommunications, serving under MCIT, is the central body and the executive arm until a commission is set up within two years that will take over regulatory matters.[129] It is to be seen whether MCIT lives up to this promise. As expected, civil society representatives would rather had seen an independent regulator from the start.

> "Firstly, there is a central body and then mediation committee. So the central body, in the Law it says that it has to be headed by the Ministers and his appointed people /.../ Mediation committee is fine but we don't find any reasons there should be a central body, you know, watching over the people"[130]

In drafting the license agreement and the law, the government sought independent advice, including from the World Bank and management consultancy Roland Berger. Since the law was passed, a set of implementing Rules and Regulations have been in preparation that will provide more details in areas such as licensing, access and interconnection, infrastructure sharing (spectrum), competition and tariffs.[131] On November 4, 2013, a draft of the rules and regulations were published, followed by a consultation organised by World Bank advisors. The consultation allowed interested parties such as the four licensee winners Ooredoo, Telenor, MPT, YPT and other industry players to comment. Overall, getting the law and complementing rules and regulations in place has been a long-drawn-out process. Both Telenor and Ooredoo say that the law that has now been approved is in line with what they

[127] Online Burma/Myanmar Library. State Protection Law (1975) http://bit.ly/1jJm1xX (accessed May 20, 2014).
[128] Telecommunications Law (Draft). October 8, 2013, para 74. http://bit.ly/1nFvwgR (accessed May 20, 2014).
[129] Ibid, para 86.
[130] Undisclosed interview, October 2013.
[131] Ministry of Communications and Information Technology. Proposed Licensing Rules. November 4, 2014. http://bit.ly/1hMERj9 (accessed May 20, 2014).

expected and in accordance with industry standard, but that they are waiting for the rules and regulations to be approved before they know exactly what lies ahead.

> The rules and regulations are a very important piece of legislation that we need to have in place /.../ Telenor has taken part in the dialogue and given input on wordings, for example relating to legal intercept /.../ at the outlet and starting point of this, these were spelled out both in the license bid process and also in the Telecommunications law so we are hopeful these will turn out good as well.[132]

In 1996, the World Trade Organization published a reference paper on best practice within regulatory frameworks for market liberalisation of basic telecommunications services.[133] Rob Bratby, an international telecoms and technology lawyer, has benchmarked Myanmar's draft rules with the reference paper and concludes that they meet international criteria in most areas.[134] However, according to Bratby, the provision of universal service lacks details. To prevent digital division among populations and to ensure that even remote areas that lack market incentives for investment can get access, the Special Rapporteur encourages States to consider the possibility of subsidizing Internet services and the necessary hardware to facilitate access.[135] Myanmar's Telecom law does stipulate in paragraph 54 "The Ministry shall in the interest of the general public establish and supervise a Fund, for fulfilling the basic telecommunications requirements throughout the country" so it would have been desirable had the rules and regulations elaborated on this. In terms of allocation and use of scare resources, the reference paper requires that scarce resources (spectrum, numbers, and rights of way) are allocated and used in an objective, timely, transparent, and non-discriminatory manner. Bratby means that rights of way are not meaningfully addressed in the law or draft regulations. Considering the challenges associated with land rights in Myanmar, it may be that the issue was not detailed to prevent delaying the process. However, since the draft was published the finalized rules and regulations, as mentioned, have been long due and it is possible that right of way is addressed more specifically when they finally leave office.

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[132] Phone interview with Tor Odland, Telenor, May 2014.
[133] World Trade Organization. Negotiating group on basic telecommunications. April 26, 1996. http://bit.ly/Sxr0ri (accessed May 20, 2014).
[134] Bratby, Rob. Putting Myanmar's proposed telecom rules on global stage. December 2, 2013. ZDNet. http://zd.net/1h0uI82 (accessed May 20, 2014).
[135] Supra note 49, para 65.

4.5 Telenor's and Ooredoo's approach to best practice

4.5.1 Policy commitment that embeds respect for human rights

Telenor has a Group Policy on Human rights, which has been approved at highest level and is applicable across all operations.[136] However, the policy is not targeted specifically to Myanmar, one of the recommendations in the UNGP sector specific implementation guide. While Telenor do not publish their policy document, it is said to describe Telenor's commitment to respect human rights and is based on the UNGPs.[137] The essence of Telenor's approach can be found on their website but the company should make the full policy publicly available as set out by the UNGPs implementation guide and the Telecommunications Industry Dialogue, which Telenor is a founding member of. It can also be questioned how well the policy is communicated internally as Telenor's Head of corporate communications in their Asian markets could not respond regarding it's existence or not.[138]

Ooredoo do not have a specific policy commitment that embeds respect for human rights, but state that it is something they have in the pipeline and are in talks with external consultants about.[139]

4.5.2 Assessing human rights impacts

Telenor conducted a human rights impact assessment before entering Myanmar, which they say "formed the basis for our key focus on human rights issues related to supply chain sustainability, privacy and freedom of expression, land rights and conflict areas, as well as wider sustainability challenges like corruption, employees' safety and security, and the environment."[140] In relation conflict zones they say

> Conflict areas in general, conflict zones.. our way to work with it (in Myanmar) is to have a network of what we call state refer officers, people who are representing Telenor out in the states and have dialogues on multiple levels and they are now conducting a series of hundreds of town hall meetings across the country to create dialogue with both local population, local government, local state government, the ethnic fractions and so forth so people understand what is Telenor network, how

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[136] Email contact with Sidsela Nyebak, Telenor, May 2014.
[137] Ibid.
[138] Phone interview with Tor Odland, Telenor, May 2014.
[139] Skype interview with Nicholas Swierzy, Ooredoo. May 2014.
[140] Telenor. Social responsibility report 2013. http://bit.ly/1jhn43p (accessed May 20, 2014).

will it benefit them, what are the challenges for them, what is the impact and talking about things like land rights and building an understanding that for us there's of course no interest in taking any side in the conflict.[141]

When it comes to reviewing business relationships, Telenor require responsible business conduct from all their suppliers in accordance with their Supplier Conduct Principles.[142] In 2008, disclosure of hazardous working conditions, pollution and underage labour at five of Telenor's tower-producing suppliers in Bangladesh became a wakeup call for company.[143]

> We have to do a lot of training with our suppliers; some were turned away because they wouldn't agree with our principles. That's one area that we take very seriously and we think that on the one hand it sits well with our long term approach to investment and kind of business building because when you first get involved in corruption you can easily end up in situations that are very difficult to manage but when you keep a clean approach, things may take a bit more time to solve but you're also better in the long run.[144]

Ooredoo say that they integrated human rights aspects as part of a larger social and environmental impact assessment. The company is in a process of establishing more routines concerning human rights in Myanmar and say that it is in their interest to make sure that people are not negatively impacted by their operations.[145] In an interview Reuters did with Ooredoo's country CEO Ross Cormac, he said that the company would reach 97 per cent of the population within five years, and that subcontractors would negotiate with ethnic armed groups to extend the network into territory under their control.[146] In summary, it seems both companies are drawing on local expertise and have taken human rights into consideration before entering Myanmar, although Telenor are more systematic in their approach.

4.5.3 Integrating and acting

As for Telenor's process of handling government requests, the company state on their website "when working with governments Telenor is committed to avoid misuse of our products and services and handle requests professionally, recognising there are a number of factors to

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[141] Phone interview with Tor Odland, Telenor, May 2014.
[142] Telenor. Supply Chain Sustainability, Our approach. http://bit.ly/1tz4wTY (accessed May 20, 2014).
[143] Telenor. Improving HSSE standards - the case of Bangladesh. http://bit.ly/1jJw0TH (accessed May 20, 2014).
[144] Phone interview with Tor Odland, Telenor, May 2014.
[145] Skype interview with Nicholas Swierzy, Ooredoo. May 2014.
[146] Ferrie, Jared. Myanmar state-owned telecom likely to take Japanese partner. January 10, 2014. http://reut.rs/1n4DrZl (accessed May 20, 2014).

consider."[147] They also state that they consciously consider human rights in connection with network shutdown requests and work to ensure a safe and respectful digital environment, yet refrain from censorship. Telenor "acknowledge that difficult human rights issues must be dealt with on a case-by-case basis, and the appropriate responses to human rights challenges cannot always be easily extracted from the UN Framework or other relevant sources. Telenor also believe that dialogue between governments, the industry, NGOs and others has great value when facing human rights challenges".[148]

> We're a dealing with thousands of intercept request every day in all our companies across the world so we have a pretty significant experience with manning these that usually involves a team that deals with government requests /…/ we have a trusted support system that provides the warrants and orders, we provide training to our people and this usually works out pretty well when it comes to handling requests of data. The other dimension is what you call these network shutdowns.. we've only been in one country where that happens a lot of and that is Pakistan where they're used to prevent bombs during major religious rallies, this has not been a major problem in most of our other countries.. We don't know what the case will be in Myanmar, what I can say is that we have a very good experience with working with the government and help them understanding the impact of shutting down. There's a major impact of shutting down network kind of business wise for an economy, for local people, security, education, health.[149]

Telenor state on their website that they shall comply with applicable laws and regulations: "In the event that there are differences between such laws and regulations and the standards set out in our Code of Conduct, the highest standard consistent with applicable local laws shall be applied."

> We have a global legal counsel and also local legal counsel that help us interpret and use laws and we also provide feedback. Part of the issue with for example legal intercept is that.. why you see these guiding principles coming together and the industry working together is that its important to kind of come invited as an industry for global governance because all countries manages in different ways and its very difficult, one of the most difficult dimensions is to on the one hand relate to the established global principles on human rights and then weight them against local laws as an operator.

As for Ooredoo, the company has been in the spotlight in the past for pleasing the Qatari government's Internet censorship request by blocking Skype services, and by using

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[147] Telenor. Human rights, Respect. http://bit.ly/1t7hx5b (accessed May 20, 2014).
[148] Ibid.
[149] Phone interview with Tor Odland, Telenor, May 2014.

Internet filters to block websites considered inappropriate.[150] Ooredoo say they have processes and routines for legal intercept in all countries they work in. In the case of Myanmar, it is still unclear exactly how the relationship with government will look like as it depends on the pending rules and regulations. "It depends on how many departments we will have to deal with. Sometimes it's just one, sometimes there can be ten so it's really too early to say at this point. In general we try to follow business standards and we will train staff when it is clear what sort of regulations there will be."[151] Ooredoo also have legal counsel with whom they consult with regarding local laws.

4.5.4 Communicating and tracking performance

As for communication and transparency, Telenor's website provides a lot of information on their approach to human rights and the company's commitment. In terms of formal reporting and accountability, Telenor report to the UN Global Compact[152] on human rights and on their sustainability performance in accordance with the guidelines of the Global Reporting Initiative,[153] a sustainability framework that deals with organizations economic, environmental and social impacts. As of 2013, Telenor also publishes a separate sustainability report as part of their annual report. When it comes to tracking performance, Telenor say that this is part of how they follow up policy implementation. "We work based on a due diligence risk approach where continuous improvement is the key focus. For example, in our work with human rights in the supply chain we monitor closely and make follow-up plans with suppliers."[154] In Myanmar, random audits will be carried out across the supply chain to verify that Telenor's set standards are followed.[155] In terms of disclosing data on government requests Telenor say

> We report on government requests to a limited extend, we have reported in media a couple of times of network shutdowns in Pakistan. It's kind of the industry that defines how we go about doing it and regulations around disclosure, what are you allowed to disclose in terms of those requests. It

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[150] See Calderaro, Andrea. Connecting Myanmar: telecom reform and political transition. *Open Democracy*. February 6, 2014. http://bit.ly/1n4EF6N; Briggs, Rory. HRW warns telecoms contractors against surveillance, censorship. *Mizzima*. June 28, 2014. http://bit.ly/1lMPvdX (accessed May 20, 2014).
[151] Skype interview with Nicholas Swierzy, Ooredoo. May 2014.
[152] UN Global Compact. 2012 Communication on Progress. Available at http://bit.ly/TI8L3o (accessed May 20, 2014).
[153] Telenor. Reporting In-line with GRI`s Guidelines. http://bit.ly/1nhdof7 (accessed May 20, 2014).
[154] Email contact with Sidsela Nyebak, Telenor, May 2014.
[155] Telenor. In Focus: Sustainable business in Myanmar, land rights. http://bit.ly/1otyRB0 (accessed May 20, 2014).

take a little time but we also have a shared interest, it's a good thing for us that people understand what kind of level of requests we get and so over time I think we will see it but it's not there yet.[156]

In the interview with Ooredoo, they reiterate that disclosure of information depends on regulations but that they are transparent as far as allowed.[157] At the time of this writing, there is virtually no information on Ooredoo's website on how the company approaches human rights. Ooredoo is not a partner to the Telecommunication Industry Dialogue nor UN Global Compact. On Ooredoo's website there is one page on corporate governance titled "Principles" at which one can read

> What is corporate governance? Although the phrase is widely used, there is no universally agreed-upon definition. Stated most simply, corporate governance can be defined as the system by which a company is directed and managed. It comprises the structure, rules and policies for making decisions concerning corporate affairs and achieving the objectives of an organization.[158]

In the annual report, under the corporate governance section, Ooredoo state that the company "aims to be a leader in corporate governance and ethical business conduct by maintaining best practices, transparency, and accountability to its stakeholders. This includes a commitment to the highest standards of corporate governance, by regularly reviewing the governance structures and practices in place to ensure their effectiveness and consistency with local and international developments."[159] It is interesting that the ambition to maintain best practice within transparency and accountability is spelled out, as well in relation to the above mentioned definition of corporate governance, while yet maintaining such a low profile on human rights issues. Purportedly, the term stakeholder seems to be rather narrowly interpreted.

4.5.5 Remediation and grievance mechanisms

Telenor human rights principles state that they *resolve* issues when identified and *support* remediation.[160] Telenor has established a hotline to compliance throughout the Group in which all communications are treated confidentially. Telenor Myanmar has also established a local grievance hotline that us effective since February 2014 according to their website. In

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[156] Phone interview with Tor Odland, Telenor, May 2014.
[157] Skype interview with Nicholas Swierzy, Ooredoo. May 2014.
[158] Ooredoo. Principles. http://bit.ly/RnuADb (accessed May 20, 2014).
[159] Ooredoo. Annual report 2013. http://bit.ly/1ogzOyZ (accessed May 20, 2014).
[160] Supra note 147.

addition, there is an Internet contact address to which external parties may report grievances related to sustainability issues.[161] Ooredoo state that establishing grievance mechanisms in Myanmar is something they have in the pipeline.[162]

[161] Telenor. In Focus: Sustainable business in Myanmar. http://bit.ly/1ke7WZY (accessed May 20, 2014).
[162] Skype interview with Nicholas Swierzy, Ooredoo. May 2014.

5 Discussion

This thesis set out to explore the current major challenges that are facing Internet freedom in Myanmar and how Telenor and Ooredoo are approaching responsible investment in the country. Regarding the former, a number of themes have been identified. A lack of digital literacy, coupled with very little information available in Myanmar languages, has resulted in a lot of people equalling the Internet to social networking sites. As the country is also struggling with ethnic and religious tensions, this has created a situation where inflammatory hate speech is spreading rapidly in the online environment. To some extent, some of this speech may fall under the category of incitement to discrimination, hostility or violence, which States are required to prohibit in law. However, most of the people I interviewed in Myanmar did not opt for combatting hate speech through legal means. Firstly, the context in which this hate speech occurs should be considered. As mentioned earlier, Myanmar is experiencing rapid changes associated with the Internet while the population is still grappling with newly found freedoms. Secondly, when implementing filtering and blocking online there is an overwhelming risk that content which does not constitute incitement to one of the three categories is de facto censored. Third, any restriction on freedom of expression must be prescribed by law, but since the judicial system in Myanmar lacks independence there are no safeguards against arbitrariness and protection of rule of law. It seems, what is more urgently needed at this time are efforts that shed light on the underlying causes and promote national reconciliation.

From a human rights perspective it has become evident in this research that an overarching challenge for Internet freedom, but also for the country at large, is the unsatisfactory legal framework. It is difficult to say at this point if the regime is really committed to a democratic transition and an increased affirmation of human rights. On the one hand, efforts are being made to pass foreign investment legislation and play in the hands of the West by installing a national human rights commission. On the other hand, the recent reintroduction of antiqued laws that infringe on basic human rights imposes serious doubts on the entire reform process. Given Myanmar's history of rigid controls over information and communication, it is perhaps not surprising that the government has not abolished flawed laws that govern the ICT sector. However, seeing how some journalists and activists have recently been charged for simply using their right to freedom of expression raises concern for the future of Myanmar's netizens as well. As long as these laws are used, it is unlikely that

people are going feel comfortable openly discussing anything, which is a serious setback to the enjoyment of the freedom of expression, online and offline.

Concerning the new Telecom Law, it appears to fall some way short of what could have been hoped for from a perspective of international best practice. The law evidences a continued centralized, top-down approach to the ICT sector. It remains to be seen if the finalized rules and regulations will administer for legal intercept in a necessary, legitimate and proportional manner. It is clear however that securing an independent regulatory commission will be important to oversee the business of telecommunications in Myanmar. A further impediment for securing Internet freedom is the lack of clear laws that deal with the right to privacy and protections of personal data, which is not unique for Myanmar. Recent events, the Snowden revelations in particular, underscore the need to embed laws and remedies in rights-based principles for Internet policy making at both national and international level.

At the moment, Telenor and Ooredoo are busy building thousands of transmitting towers across the country and in doing so, try to navigate amidst the complexities surrounding land rights and conflict zones. The two companies are well aware that they have the world's eyes on them. Indeed, Myanmar's deficient historical records on human rights and widespread corruption makes it a high risk context. Companies responsibility to respect human rights does not change in this environment, but it usually takes more effort and requires more attention at every step of the process. Telenor and Ooredoo originate from two very different countries and it seems they differ quite significantly in their corporate culture, or corporate governance if you will. While Ooredoo seem to be more assertive in their marketing efforts and are trying to counter any negative impact from anti-Muslim sentiments, Telenor seem to be more occupied with building a solid foundation for their roll-out by engaging with various stakeholders.

It became evident in the "best practice" assessment that Telenor has a leading edge when it comes to publicly showing a commitment to respecting human rights. While tools and frameworks offer useful guidance, including specific advice, no single set of tools can be sufficient to prevent abuses from occurring. Nevertheless, implementing proactive measures and relying on internationally recognized principles makes Telenor better prepared should adversaries come their way. It is yet to be seen how Telenor and Ooredoo will respond to government intercept requests, but with Myanmar being such a novice country to the concept of human rights, the companies should consider adhering to independent, third-party monitoring. Transparency and accountability is key for demonstrating credibility in their commitment to free expression and privacy rights. Finally, considering MPT's previous

prominent role in the country's telecommunications, the transformation to a private entity should also be closely monitored, especially since the government will continue to be a large shareholder.

5.1 Concluding remarks

Myanmar is undergoing many important and remarkable changes that would had been hard to imagine just 6 years ago, when the regime in their vigorous suspicion of the outside world waited long before accepting foreign relief after Cyclone Nargis, which caused catastrophic destruction and took over 130,000 lives.[163] Based on Myanmar's centrally crafted blueprint, the ICT Masterplan, there should be no doubt that the government is eager to harness Internet's potential for strengthening the state's institutional capacity. Undeniably, Myanmar's current transition requires systematic support from the international community, including in the form of technical assistance and capacity development. While enormous financial investments are now being poured into the telecom sector by both private companies and the World Bank, safeguarding a legal framework that is in line with international human rights is critical for democracy to take root. It is worth reiterating that increased connectivity does not automatically translate into more freedom and less state control, with China being the most evident example. Hence, while the telecom reforms may represent unprecedented opportunity, it is still capable of being harnessed and directed by the central government to serve its own purposes should current developments reverse.

This research has been an effort to provide a snapshot of Myanmar's online environment at this important time in history and in a context where very little research exists. The field for further research is wide open. Deeper case studies on developments in the regulatory framework and follow-up on corporate practices once operations are up and running are topics of future research, as well as ethnographic studies on Internet use in Myanmar now that penetration is bound to rise significantly. Studies on Internet's political and democratic impact will most certainly also be conducted.

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[163] Jakarta Post. Bush says world should condemn Myanmar. May 13, 2008. http://bit.ly/1txlUbQ (accessed May 20, 2014).

Appendix: Informants

Toe Zaw Latt. Bureau Chief, Democratic Voice of Burma. Personal interview, October 2013.

U Ko Ko. Chairman, Yangon Media Group. Member of the Interim Press Council. Personal interview, October 2013.

Soungoo koko. Senior Editor, Myanmar Egress Capacity Development Center. Personal interview, October 2013.

U Zaw Thet Htwe. Journalist, House of Media & Entertainment. Member of the Interim Press Council. Personal interview, October 2013.

Htaike Htaike Aung. Program Manager, Myanmar ICT for Development (MIDO). Personal interview, October 2013.

Hnin Wut Yee. Programme & Outreach Manager, Myanmar Centre for Responsible Business. Personal interview, October 2013.

Kyaw Min Swe. Chief Editor, The Voice Weekly. Member of the Interim Press Council. Personal interview, October 2013.

Nicholas Swierzy. Chief Strategy Officer, Ooredoo Myanmar. Skype interview, May 2014.

Tor Odland. Head of External Communication, Telenor Group Asia. Phone interview, May 2014.

Sidsela Nyebak. Manager, Group Corporate Responsibility, Telenor. Email contact, May 2014.

Bertil Lintner. Author and journalist who has published extensively on Myanmar. Email contact, May 2014.

Htin Kyaw Aye. Deputy Research Director, Open Myanmar Initiative. Email contact, May 2014.

Toby Mendel. Executive Director, Centre for Law and Democracy. Email contact, May 2014.

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