

Sectoral Assessment

# Protecting the Future of Myanmar Media



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**ICNL**  
INTERNATIONAL CENTER  
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Sectoral Assessment

# Protecting the Future of Myanmar Media



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# 1. Introduction

Myanmar's revolutionary movement stands at a pivotal moment in the nation's history, in which opposition actors could have an unprecedented opportunity to redefine the State, establish democratic legal principles, and forge progressive practices. The reform of Myanmar's media regulation is not only imperative for safeguarding media freedom after years of oppression, but also for fostering robust and informed public engagement essential during potential transformative periods.

This thought paper contributes to the evolving discourse on democratizing Myanmar's media regulation. It begins by defining a human rights-based approach to media regulation and proceeds to offer a concise critique of past governmental and military regimes' approach to media regulation. Subsequent sections delve into elements of the regulatory framework, including constitutional guarantees for media rights, media-specific laws, general criminal laws often wielded against media, and the problematic effects of regulation on media. Each section elaborates on relevant international standards, assesses current regulations, and proposes reform options.

Through a comprehensive analysis of these elements, this paper endeavors to provide actionable insights and recommendations for Myanmar's media, revolutionary movement, and broader stakeholders, as they navigate the challenging journey towards cultivating a more democratic and inclusive media environment.

## METHODOLOGY

This paper utilizes a variety of sources, including datasets, desk research, legal analyses, and reflections on different perspectives from unstructured discussions with key informants. It draws upon past experiences from Myanmar's earlier reform endeavors, complemented by expert insights into international standards and best practices. The assessment and ranking of policy recommendations aim to foster further well-informed discussions.



The reform of Myanmar's media regulation is not only imperative for safeguarding media freedom after years of oppression, but also for fostering robust and informed public engagement essential during potential transformative periods.

## 2. Human Rights-based Reform

A new Myanmar government would stand at a historic crossroads, with the opportunity to pioneer a genuinely democratic, progressive, and enduring human rights-based approach to media regulation.

Human rights serve as a cornerstone of democratization. A human rights-based approach to regulation entails designing and implementing laws, policies, and practices in a manner that respects, protects, and fulfills human rights, prioritizing the centrality of individuals and communities in decision-making processes, while fostering equality, dignity, and empowerment for all.

A human rights-based approach to media regulation prioritizes foundational principles:

1. **Freedom of expression:** Media should enjoy the freedom to investigate, receive, and report on information and ideas of all kinds, free from censorship, and only restricted where expressly permitted by international law.
2. **Access to information:** Individuals should have unrestricted access to information disseminated by media, which, in turn, should have access to government and government-held information.
3. **Pluralism and diversity:** Individuals should have access to diverse voices and perspectives published by a variety of media that are free from monopolization and discrimination.
4. **Freedom of association:** Media should operate independently from government and vested interests, with the freedom to form and join unions, and have support from professional associations and civil society.
5. **Liberty and security:** Media outlets, journalists, and sources, including whistleblowers, should be free from arbitrary detention, threats, harassment, violence, and reprisals.

These principles not only represent democratic ideals but also constitute well-established international human rights norms, most of which are considered legally binding and obligatory on states, regardless of treaty ratification status.<sup>1</sup> International law also encompasses other crucial areas pertinent to media regulation, including anti-discrimination and fair trial rights. International law has been elaborated on by international mechanisms, courts, and expert sources in an authoritative collection of “international standards” for creating media regulation.<sup>2</sup>

### 3. Learning from Myanmar's Past Regulation

Crafting a sustainable and rights-based approach to media regulation necessitates a thorough examination of Myanmar's recent regulatory trajectory. Historically, changes in Myanmar media regulation have largely overlooked rights, instead favoring political expediency, power consolidation, and vested interests. Consequently, past approaches have resulted in media monopolization, censorship, propaganda, secrecy, legal threats, violent attacks, and information manipulation serving particular narratives or ideologies. This section provides a succinct outline of recent regulatory shifts, leading up to Myanmar's current circumstances.

#### REGULATORY TRANSITION INITIATED

In its 2008 constitution, Myanmar's military initiated a transition from a stringent censorship regime. The first quasi-civilian government of the military-backed Union Solidarity and Development Party (USDP), furthered this transition by enacting a tripartite of media laws: the News Media Law (2014), Printing and Publishing Law (2014), and Broadcasting Law (2015). Initially, these changes were welcomed for granting limited constitutional rights and basic media freedom protections, dismantling the Censorship Board, and reducing human rights violations more generally.<sup>3</sup> As a result, exiled media returned, new independent media emerged, a fresh cohort of journalists began work, and the quality and diversity of publicly available information noticeably improved.

However, the USDP's regulatory approach failed to address the chilling effects of Myanmar's criminal law framework.<sup>4</sup> The USDP's emphasis on establishing a "disciplined" democracy was evident in its communications regarding the limited nature of the regulatory transition. Publicly, it asserted that media often behaved "unethically" and the country was not ready for greater reforms beyond those granted in the tripartite of media laws.<sup>5</sup> Essentially, the USDP utilized the tripartite to cautiously alleviate certain regulatory constraints on media operations, while retaining the ability to invoke criminal laws against any media perceived as threatening the country's entrenched powers.<sup>6</sup>

#### REGULATORY TRANSITION STALLED

Upon assuming power in 2016, the newly elected National League for Democracy (NLD) government abandoned previous commitments to reform media regulation to align with international standards.<sup>7</sup> Instead, it opted to retain the military's propaganda ma-

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3 For more information on the general reduction in human rights violations, compare Universal Periodic Review reports 2011, 2015, and 2021: <https://www.ohchr.org/en/hr-bodies/upr/mm-index>.

4 Committee for the Protection of Journalists (CPJ) (2023), "Myanmar archives".

5 Irrawaddy (2020), "The Untouchable Articles in Myanmar's Constitution".

6 The author has previously written an unpublished paper on the USDP government's use of several traditional military war tactics when designing the media regulatory framework.

7 Frontier Myanmar (2016), "Pe Myint: 'A government needs to inform the people'".

chinery, including the Ministry of Information and state-controlled print and broadcast media. Additionally, the NLD deferred the implementation of the Broadcasting Law (2015), indefinitely postponing license allocation and perpetuating State control and monopolization of television and radio services.<sup>8</sup>

Despite continued advocacy by media and civil society for aligning regulations with international standards, the NLD increasingly adopted a hostile stance toward media, echoing the military's assertion that the government must control "unethical" media.<sup>9</sup> The NLD's actions, including the enactment of a sixth criminal defamation law, drafting a draconian cybercrime bill, and dropping media freedom pledges from its election manifesto, undermined prospects for regulatory reform.<sup>10</sup>

## TRANSITION REVERSED

The failure of consecutive governments to reform media regulation in line with international standards left the military unhindered in weaponizing Myanmar's legal framework to suppress the media after seizing power in the 2021 coup. Exploiting the lack of robust human rights safeguards in existing laws, the military revoked media licenses, detained journalists arbitrarily, and shut down television channels. Subsequently, the military implemented "Amendments" and issued executive "Orders" to impose even harsher and more disproportionate punishments, further restricting media freedom.<sup>11</sup>

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8 Irrawaddy (2016), "Incoming Info Minister Pe Myint: 'I Will Ensure Press Freedom'". Mizzima and Democratic Voice of Burma (DVB) did not have their own broadcast licenses issued under the Broadcast Law (2015) but were temporarily allowed to operate on channels licensed to the state media.

9 RFA (2020), "Myanmar NGOs Urge Reform of Defamation Laws Used to Silence Critics"; Irrawaddy (2018), "The NLD and the Media: A Once Cozy Relationship Turns Icy"; East Asia Forum (2019), "The hardening grip of Myanmar's soft media repression".

10 The sixth criminal defamation law was the Law Protecting the Security and Privacy of Citizens (2017). International standards favor civil defamation laws and regard criminal defamation laws as disproportionate. For more information on the cyber bill, see: ICNL (2021), "Myanmar: Draft Cyber Security Law and Other Threats to Fundamental Freedoms". For more information on the manifestos, see: Free Expression Myanmar (2020), "Manifesto comparison tool".

11 "Orders" and "Amendments" are placed in quotation marks because they are *de jure* unlawful as the military's Declaration of a State of Emergency was itself invalid under the military's own Constitution (2008), as well as under the strict requirements of international law. For further information, see: ICNL (2021), "Unlawful Edicts: Rule by Decree under the Myanmar Tatmadaw". The military also issued secretive "Directives" to control the organization of protests, silence media reporting at sensitive times, shutdown internet access, and target surveillance interception. For more information, see: Freedom House (2023), "Myanmar". Several of the military's Orders established a new system of military tribunals with jurisdiction over particular laws, including media laws, in townships that the military had placed under martial law. For more information, see: Free Expression Myanmar (2023), "Myanmar military's 'justice' system".

## 4. Remaking the Constitution

After the coup began, the revolutionary movement marked a significant turning point in Myanmar's trajectory by announcing the abolishment of the military's Constitution (2008) and replacing it with the temporary Federal Democracy Charter (2021), setting the stage for constitutional reform discussions crucial for safeguarding media freedom in accordance with international standards.<sup>12</sup> This section examines the necessary considerations for such reform.

### CONSTITUTIONAL STANDARDS<sup>13</sup>

International standards require that a constitution guarantee a comprehensive right to freedom of expression, a cornerstone for effective media regulation.<sup>14</sup> This encompasses several legal elements including that every individual and legal person, without discrimination, has the right to seek, receive, and impart information and ideas of any kind regardless of frontiers and using any medium. Essentially, this protects the right of journalists and media outlets to investigate, obtain from sources, publish and disseminate information and ideas, including those which may be critical, controversial or shocking, online or across borders, and via media that can include print and broadcasting.

The right also includes a “three-part test” for permissible restrictions, wherein limitations must be justified on the exhaustive grounds of protection of others’ rights (e.g. threats), others’ reputations (e.g. defamation), national security, public order, public health, or public morals. Even when legitimate, restrictions must also be clearly defined by law, necessary to achieve the objective pursued, and proportionate.

Additionally, a constitution must guarantee other human rights crucial for enabling media freedom, including, for instance, a comprehensive right to freedom of association, containing a similar three-part test to prevent undue restrictions.<sup>15</sup>

### MYANMAR'S CONSTITUTION

The military's Constitution (2008) precipitated the start of a transition to a “disciplined” democracy and incorporated multiple human rights guarantees, including rights to freely express and publish, to develop literature and arts, and to form associ-

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12 Irrawaddy (2021), “Myanmar's Shadow Government Vows a New Constitution and End to Dictatorship”.

13 For a more comprehensive and authoritative collection of international standards relating to the right to freedom of expression, see: United Nations Human Rights Committee (2011), “General Comment No. 34”. The United Nations has not yet produced a similar general comment on the right to freedom of association, but for a summary of relevant standards, see: ICNL (2023), “Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association”.

14 Article 19, International Covenant on Civil and Political Rights (1966).

15 Article 22, International Covenant on Civil and Political Rights (1966). Article 22 also refers directly to the Freedom of Association and Protection of the Right to Organise Convention (1948) which defines the elements of the right in detail. For more information on other constitutional rights, see: United Nations Office of the High Commissioner for Human Rights (2018), “Human Rights and Constitution Making”.



ations.<sup>16</sup> However, its limited guarantees did not prohibit censorship, protect media freedom, or provide for access to information. The vague guarantee for the freedoms of expression and association did not contain most of the aforementioned necessary legal elements, including the three-part test, and the rights could be restricted when contradicting *any* existing law or threatening vague notions of “solidarity” or “tranquility.”

The Federal Democracy Charter (2021), while framed as a political document, contains constitutional elements, replaces the military’s Constitution (2008), and may be the basis for a future constitution.<sup>17</sup> The human rights section contains 38 economic, social, ethnic, labor, and child rights, reflecting the interests of those involved in its development.<sup>18</sup> However, it does not guarantee freedoms of expression or association, apart from a single but vague commitment to media freedom.<sup>19</sup> It also omits other human rights relevant to media regulation including liberty and security of person, fair trial, freedom of movement, privacy, freedom of assembly, participation in public affairs, life, and freedom from torture.

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16 Articles 354(a), 365, and 354(c).

17 The Federal Democracy Charter (2021), Part 1, was published by the Committee Representing the Pyidaungsu Hluttaw (Union Parliament) in March 2021 and was framed as a precursor to a transitional constitution. However, the Federal Democracy Charter (2021) contains constitution-like text listing national values, guiding principles, and human rights commitments, and was published on the same day as the Committee “abolished” the military’s Constitution (2008), presumably filling the resulting vacuum. For more information, see: International Idea (2022), “Myanmar’s Federal Democracy Charter: Analysis and Prospects”. A revised version of the Federal Democracy Charter (2021), Part 1, was adopted alongside Part 2 in 2022 by the National Unity Consultative Council. Further parts have not been published or adopted. For more information, see: National Unity Consultative Council (2022), “Federal Democracy Charter”.

18 The National Unity Consultative Council includes 16 members from civil society organizations. Of these, seven members are from strike organizers, three are from labor unions, three are from women’s rights groups, one is from a social integration group, and one represents a group of political activists. The Council also includes eight members representing ethnic groups. The National Unity Government’s Minister for Human Rights may also have been involved and is a specialist in child rights. There are no Council members from civil society organizations with a specific mandate to focus on civil and political rights.

19 Article 42 of the Federal Democracy Charter (2021) includes two of the aforementioned legal elements of the right to freedom of expression, and only guarantees these for the media, and not for everyone.



The Federal Democracy Charter’s (2021) human rights section contains 38 economic, social, ethnic, labor, and child rights, reflecting the interests of those involved in its development. However, it does not guarantee freedoms of expression or association, apart from a single but vague commitment to media freedom.

## REFORM OPTIONS



A new constitution should reflect the democratic movement's aspirations by comprehensively guaranteeing all fundamental human rights, including freedoms of expression and association as the foundations of media freedom. The guarantees should include all of the aforementioned legal elements and override all existing and superseding laws.

Adopting *verbatim* texts on freedoms of expression and association from Articles 19 and 22 in the International Covenant on Civil and Political Rights (1966) would demonstrate an unwavering commitment to democracy, transparency, and accountability, and signal genuine change from the partial reforms of past governments.<sup>20</sup> Articles 19 and 22 offer sufficient flexibility to Myanmar's specific context and adopting them would empower Myanmar's courts to look beyond decades of repressive domestic case law to authoritative international standards in future judgements.<sup>21</sup>

Alternatively, drafting a bespoke text specific to Myanmar could offer a customized approach. However, this also carries the risk of an eventual text disregarding one of the aforementioned legal elements, prompting future problems and a need for a constitutional amendment. Protracted discussions on drafting such a text may spark disputes among vested interest groups, fostering resentment, eroding public distrust, and jeopardizing overarching democratic goals.<sup>22</sup>

Drafters should also consider enshrining additional human rights commonly found in contemporary constitutions, including:

- **Right to media freedom:** This provision may encompass a prohibition on censorship. Given the potential for future governments to interfere directly or indirectly in media, establishing an explicit right to media freedom alongside freedom of expression offers an additional layer of protection.
- **Right to information:** Access to information laws promote transparency and accountability, crucial for addressing corruption and fostering development. Embedding this right in the constitution prioritizes transparency as a national imperative and helps prevent future governments from promoting secrecy.
- **Right to internet:** With the internet's growing significance in development, recognizing access to the internet as a fundamental right in the constitution underscores the nation's forward-looking vision and ensures marginalized communities are not left behind.

<sup>20</sup> Article 19 guarantees the right to freedom of expression. Article 22 guarantees freedom of association.

<sup>21</sup> Using the exact same language to set domestic regulation would also ease the government's conformity with the [International Covenant on Civil and Political Rights \(1966\)](#), once ratified.

<sup>22</sup> See for example, the experience of Nepal and its constitutions adopted in 1990 and 2015.

## 5. Addressing Myanmar's Media Laws

A new Myanmar government aiming to lay strong foundations for a modern and enduring democracy will need to address the country's tripartite of media laws and craft a legal framework fit for the future. This section examines pertinent international standards, evaluates existing regulations, and presents reform options.

### REGULATORY STANDARDS<sup>23</sup>

According to international standards, governments should refrain from enacting special laws regulating print media, online media, or journalists, as they are often misused for censorship. Media should never be compelled to obtain any form of media-specific licenses. Governments must not temporarily or permanently ban or suspend print media or online media or journalists, or block them online, because doing so establishes a media licensing system in effect. Moreover, media-specific laws on content regulation are deemed unacceptable. However, media may be regulated by laws of general application such as business, labor, or tax regulations, as well as general criminal laws applicable to any business or person.

International standards advocate for the establishment of independent self-regulatory mechanisms such as press councils to raise media standards and address media content issues like unprofessional or inaccurate reporting. While press councils address public concerns about media content, they do not absolve business or individual liability under general civil and criminal laws for more serious transgressions.<sup>24</sup>

An exception to the “no special laws” principle pertains to broadcast media regulation due to the limited number of television and radio channels possible. The government has a responsibility to craft regulations ensuring that an independent body such as a broadcast council fairly awards licenses to operate these limited channels to media that are professional, independent, impartial, and representative of a diverse society. The regulations should include due process for when and how the broadcast council sanctions license-holders for contravening licensing rules. Broadcasting regulations may also establish public service media in a diverse media space alongside commercial and community media.

Governments may enact regulations that protect media rights too, fostering an environment conducive to media freedom. These include laws protecting journalists' sources and whistleblowers, with enhanced safeguards against police searches and seizures.

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<sup>23</sup> For a more comprehensive and authoritative collection of international standards relating to the right to freedom of expression, see: United Nations Human Rights Committee (2011), “General Comment No. 34”. The United Nations has not yet produced a similar general comment on the right to freedom of association, but for a summary of relevant standards, see: ICNL (2023), “Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association”.

<sup>24</sup> For example, fraud or inciting violence.

## MYANMAR'S TRIPARTITE MEDIA LAWS

The News Media Law (2014) adopted by the military-backed USDP government was initially perceived by many as a step towards enabling media freedom. At first glance, the Law purported a rights-based approach, aiming to protect media freedom, prohibit censorship, and outline several media rights.<sup>25</sup> However, upon closer examination, the Law reveals significant inadequacies. It lacks comprehensive protection for the aforementioned legal elements of the right to freedom of expression, which is vital given the weakness of the constitutional guarantee, and fails to include all basic journalistic rights.<sup>26</sup> The rights given are conditional and subject to unspecified laws and regulations, offering no recourse to remedy for media in case of rights violations.<sup>27</sup> Additionally, the Law imposes vague media-specific content rules and criminal sanctions, alongside establishing a government-appointed press council tasked with devising a code of conduct and sanctioning media.<sup>28</sup> The military has not amended the Law since the coup started but has appointed and controls all members of the press council.

The USDP adopted the Printing and Publishing Law (2014) alongside the News Media Law (2014).<sup>29</sup> The Printing and Publishing Law (2014) professes to protect freedom of expression, but, given the weakness of the constitutional guarantee, lacks comprehensive protection for all of the aforementioned legal elements as well as remedies for violations.<sup>30</sup> Moreover, the Law establishes a government-controlled media licensing system for both print and online media enabling arbitrary rejection or revocation of licenses on vague grounds of “dishonesty,” together with vague content rules that allow for government seizure.<sup>31</sup> The military amended the Law in 2023, exacerbating its flaws by broadening the grounds for which the government may refuse or revoke licenses.<sup>32</sup>

The Broadcasting Law (2015), while closer to international standards compared to its counterparts, still has shortcomings. Despite recognizing important guiding principles such as freedom of expression, regulatory independence, diversity, and competition, it retains licensing for government-controlled broadcasters, including military-controlled channels.<sup>33</sup> The Law establishes a broadcast regulator with members who, while proposed by parliament and subject to minimum standards and public feedback, are

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25 Objectives (Article 3), prohibition on censorship (Article 5), and media rights (Articles 4-7) including freedom to criticize the government, access information from diverse sources, conduct investigations, and publish findings, and be protected from arbitrary detention, communications interception, or equipment seizure.

26 For example, the listed rights do not include protection for sources.

27 Articles 3 and 4.

28 Articles 9, 12 to 26.

29 The law repealed the colonial-era Press (Emergency Powers) Act (1941) and the deeply authoritarian Printers and Publishers Registration Law (1962).

30 Article 3.

31 Articles 4 to 7, 12 to 14, 8 to 10.

32 Article 6.

33 Articles 2(h), 4(b), 38(d) and 61-62.

ultimately chosen by the government, and, once appointed, are “advised” by a government regulator, compromising their independence.<sup>34</sup> The military amended the Law in 2021 and 2023, expanding its scope to include internet-based broadcasting, and introducing harsh penalties for broadcasting online and offline without a license.<sup>35</sup>

## REFORM OPTIONS



A new government has several avenues to address the shortcomings of the tripartite media laws and bring them in line with international standards, including repeal, replacement, or amendment.

The Printing and Publishing Law (2014) stands out as the most problematic law in the tripartite, as it essentially establishes a government-controlled system for licensing media, in violation of international standards. Amending or replacing the Law would not be effective because it lacks any provisions useful or necessary for effective media regulation in a democracy. Therefore, the most effective course of action is to repeal the Printing and Publishing Law (2014) entirely.

The News Media Law (2014) is currently flawed, functioning more as a tool for government oppression rather than as a safeguard for media rights. While repealing it would have minimal negative repercussions, a more constructive approach may involve introducing a new regulatory framework aligned with international standards to protect media freedom during the transition to democracy. This new framework should encompass a comprehensive right to freedom of expression, incorporating the three-part test, along with prohibitions on licensing and censorship, and provisions safeguarding freedoms of association, access to information, and protections for sources and whistleblowers. Options for achieving this include amending the existing law to incorporate these rights while eliminating provisions related to content regulation and the press council, or entirely replacing the law with a new “Media Freedom Law” – a preferable option allowing for a comprehensive legal overhaul.

<sup>34</sup> Articles 5 to 30.

<sup>35</sup> Articles 2(a) and 96 to 99. A maximum of five years imprisonment.



While repealing the News Media Law would have minimal negative repercussions, a more constructive approach may involve introducing a new regulatory framework aligned with international standards to protect media freedom during the transition to democracy.

Concerns about removing mechanisms in the News Media Law (2014) to address unprofessional or inaccurate reporting can be addressed by empowering the Independent Press Council established in Chiang Mai in 2023 to hold media accountable. Additionally, policies supporting media professionalization, journalism training, including in universities, and the financial resilience of media outlets, including through equitable allocation of government advertising, can contribute to improving media standards. Enhancing government-media relations, organizing media conferences, and implementing communication policies across all departments can facilitate journalists' access to accurate information.

The Broadcasting Law (2015), despite recent amendments by the military, remains the least problematic of the tripartite laws. Aligning it with international standards through amendments is a viable option that avoids taking the unnecessary step of full repeal or replacement. However, swift action is necessary to ensure public access to independent television and radio channels essential for public engagement during the transition to democracy. A staged amendment process could first nullify—not repeal—the military's amendment, and then later facilitate public consultation on a comprehensive amendment covering broader issues like privatizing government-controlled media or transforming some into public service broadcasters.<sup>36</sup>

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<sup>36</sup> Nullification means that the legal provision never existed and therefore neither did any defined rights, responsibilities, or offenses included within. It means that what the military did was illegitimate and unlawful at the time. Repealing is opposite in that it legitimizes the lawfulness of the original provision but says that it no longer exists or is no longer enforceable.



## 6. Reforming Criminal Law

Any democratic reform of media regulation would be insufficient without reform of Myanmar's antiquated criminal law framework. A new government should prioritize the modernization of colonial-era legislation and reverse decades of authoritarian lawmaking. This section outlines key international standards, assesses Myanmar's current criminal law landscape, and presents reform options.

### CRIMINAL LAW STANDARDS<sup>37</sup>

According to international law, any restriction on freedom of expression within criminal provisions must adhere to the aforementioned three-part test: it must be lawful, necessary, and aimed at achieving one of several legitimate objectives.<sup>38</sup> Successful prosecutions must demonstrate a speaker's intent, the likelihood of serious harm, and a direct, immediate relationship between the expression and the risk of harm.

Freedom of expression may be curtailed to protect public order or national security, often covered in Myanmar under treason, sedition, official secrets, or states of emergency.<sup>39</sup> Restrictions on national security grounds must have the genuine purpose and demonstrable effect of protecting a country's existence or territorial integrity against the use or threat of force, or a country's capacity to respond, rather than shield a government from embarrassment, exposure of wrongdoing, or suppressing unrest. Court restrictions intended to protect public order, such as contempt of court, must be demonstrably necessary to maintain orderly proceedings without impinging on legitimate defense rights.

Restrictions may be permitted for protecting a person's reputation from false statements of fact, referred to as defamation.<sup>40</sup> Any restriction must narrowly target factual statements, excluding offense, opinion, or satire, and be necessary to prevent serious and measurable harm to a reputation. The threshold for defamation involving public figures should be high to preserve democratic discourse, while public bodies and symbols should not be protected by defamation laws. Remedies should be civil only.

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37 For a more comprehensive and authoritative collection of international standards relating to the right to freedom of expression, see: United Nations Human Rights Committee (2011), "General Comment No. 34". The United Nations has not yet produced a similar general comment on the right to freedom of association, but for a summary of relevant standards, see: ICNL (2023), "Relevant Sources of Law on Article 22 ICCPR: Right to Freedom of Association".

38 Protection of others' rights (e.g. threats), others' reputations (e.g. defamation), national security, public order, public health, or public morals.

39 For more information, see: Article 19 (1996), "Johannesburg Principles on National Security, Freedom of Expression and Access to Information".

40 "Fake news" is not listed as a legitimate aim because it is vague and subjective. Democratic countries may use defamation restrictions to address untrue statements, but only if those statements are factual, intentionally false, and result in actual harm to a deserved reputation. For more information, see: Free Expression Myanmar (2019), "Defamation? International standards and Myanmar's legal framework".

Restrictions may also apply to expressions inciting discrimination, hostility, or violence based on national, racial, or religious grounds.<sup>41</sup> However, such restrictions must be narrowly defined and should not shield belief systems or institutions from criticism.<sup>42</sup>

Freedom of expression may be restricted to protect non-discriminatory morals that are widely held by the vast majority of the public, including young and old, men and women, and multiple social, philosophical, and religious traditions, and not just the declared morals of one portion of the public or a powerful demographic group.<sup>43</sup>

## MYANMAR'S CRIMINAL LAWS

Over the past three years of the coup, at least 157 journalists faced prosecution under the archaic Penal Code (1861), a relic of colonial oppression which was wielded against many more journalists before the coup.<sup>44</sup> This legislation, initially crafted to stifle dissent against colonial rule, contains provisions such as sedition that starkly contradict democratic principles and are not legitimate grounds for restricting freedom of expression.<sup>45</sup> Furthermore, provisions in the Code like criminal defamation, while ostensibly aiming for legitimacy, are fraught with vagueness and disproportionately punitive measures.<sup>46</sup> The Code lacks adequate safeguards for freedom of expression throughout.<sup>47</sup>

In a bid to tighten its grip on power, the military regime amended the already repressive Penal Code (1861) in 2021. Amendments to the treason provision expanded its scope to encompass any form of expression—violent or otherwise—advocating for the military's overthrow, subjecting offenders to the disproportionate penalty of death.<sup>48</sup> Similarly, the sedition clause, originally intended to criminalize disaffection toward the government, was broadened to encompass disaffection towards the military.<sup>49</sup>

The military also added a new provision, Article 505A, in the 2021 amendment, criminalizing causing fear, spreading false news, and agitating for an offense against government employees. Since its inception, this vague provision has been used to pros-

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41 Article 20, *International Covenant on Civil and Political Rights* (1966). Expression of discriminatory hate towards people, commonly known as "hate speech" may be restricted but only in the worst cases. For more information, see: Article 19 (2015), "[Hate Speech Toolkit](#)".

42 United Nations OHCHR (2013), "[Rabat Plan of Action](#)".

43 United Nations Human Rights Committee (2011), "[General Comment No. 34](#)". For instance, it may be legitimate to criminalize the dissemination of certain extreme sexually-explicit imagery because almost everyone would regard it as immoral. However, it would not be legitimate to criminalize the dissemination of non-extreme sexually-explicit imagery to adults to protect the professed moral values of a particular community. For more information, see: Sharma and Bleich (2019), "Freedom of expression, public morals, and sexually explicit speech in the European Court of Human Rights".

44 ICNL (2024), "[Journalist Detentions in Myanmar](#)".

45 Article 124A. Sedition is encouraging disaffection, contempt, disloyalty, enmity, or hatred of government, which could apply to a great variety of normal democratic debate. Four journalists have been prosecuted under 124A since the coup began.

46 Article 505(b) and 499. Four journalists have been prosecuted under 505(b) since the coup began.

47 For instance, while Article 499 includes some exceptions to defamation, truth is not an absolute defence.

48 Article 121.

49 Article 124A.



ecute at least 136 journalists, imposing disproportionately severe penalties on many.<sup>50</sup> None of the harms included in the provision are legitimate under international standards. For instance, feelings of fear are common responses when media cover serious news. Falsity is often subjective and governments should not be arbiters of truth. Agitation is too vague a behavior to show a causal link between an expression and a crime.<sup>51</sup>

The Counter-Terrorism Law (2014) has been amended by the military regime since the onset of the coup, further tightening its grip on power. At least 22 journalists have been prosecuted under the Law,<sup>52</sup> which criminalizes vague acts of “persuasion and propaganda” without requiring a direct and immediate link between a particular expression and an act of terrorism.<sup>53</sup> Additionally, the military has exploited the Law’s ambiguous definition of terrorism to target opposition groups by including the National Unity Government in the list of proscribed terrorist organizations.<sup>54</sup>

The Unlawful Associations Act (1908) has been wielded against journalists, with at least six facing prosecution during the early stages of the coup.<sup>55</sup> The Act, purportedly aimed at safeguarding national security, criminalizes the vague “promotion” of groups deemed unlawful by the government, lacking essential safeguards against misuse.<sup>56</sup>

A criminal defamation provision in the Telecommunications Law (2013) has been used to prosecute at least 11 journalists since 2021, and many more journalists prior to the coup.<sup>57</sup> While protecting reputation is a legitimate aim, the Law’s vague defamation provision and disproportionate sanctions invite abuse.<sup>58</sup>

50 ICNL (2024), “Journalist Detentions in Myanmar”. For more information about Article 505A, see: Free Expression Myanmar (2022), “505A: Act of revenge”.

51 International standards state that government officials should tolerate greater criticism than ordinary people, to enable democratic debate and accountability.

52 ICNL (2024), “Journalist Detentions in Myanmar”.

53 Article 3.


54 ICNL (2023), “Impact of Counter-Terrorism Measures in Myanmar”.

55 ICNL (2024), “Journalist Detentions in Myanmar”.

56 Article 17.

57 ICNL (2024), “Journalist Detentions in Myanmar”. For more information about prosecutions before the coup, see: Free Expression Myanmar (2017), “66(d): No real change”.

58 Article 66(d).



At least 22 journalists have been prosecuted under the Counter-Terrorism Law, which criminalizes vague acts of “persuasion and propaganda” without requiring a direct and immediate link between a particular expression and an act of terrorism.

As Myanmar already possesses multiple criminal defamation laws of general application in other statutes, this provision is additionally redundant.<sup>59</sup>

Numerous other criminal laws pose threats to media in Myanmar. To date, at least 10 journalists have been prosecuted under five other criminal laws since the onset of the coup.<sup>60</sup> Furthermore, several other criminal laws remain dormant but carry potential risks as tools of repression.<sup>61</sup> There are also issues relating to procedural laws that have repeatedly undermined freedom of expression, for instance, the evidentiary rules relating to electronic evidence that are often manipulated to strengthen prosecution of media.<sup>62</sup>

## REFORM OPTIONS



Aligning Myanmar's criminal law framework with democratic principles demands considerable effort, not only to reverse the military's recent amendments affecting media but also to address colonial-era laws and legislation adopted during past decades of military rule. A new government should consider repealing, replacing, or amending criminal laws to bring them in line with international standards.

The most expedient option entails enacting a new law explicitly safeguarding media freedom while overriding all existing and superseding laws. This approach would reduce the urgency of amending each of the country's numerous criminal laws, as all future prosecutions under any criminal statute would be subject to the new legislation. A potential model could be the aforementioned "Media Freedom Law," guaranteeing comprehensive rights that build upon those outlined in the News Media Law (2014) while fully adhering to international standards and providing adequate remedies for violations. Such legislation would incorporate at its core a fundamental requirement for all criminal cases against media to pass the three-part test.

Alternatively, a broader approach could involve enacting a "Human Rights Law" encompassing all of Myanmar's international human rights obligations. This mirrors the approach taken by Myanmar's former colonizer, the British government, with the adoption of their Human Rights Act (1998).<sup>63</sup> The Act was designed to enforce international legal obligations, supersede conflicting laws, and ensure new legislation com-

59 Claims that the law did not need clarification of "defamation," or any safeguards to protect freedom of expression, because these were already included in the Penal Code (1861), were not substantiated in courts in practice. For more information, see: Free Expression Myanmar (2017), "[66\(d\): No real change](#)".

60 Electronic Transactions Law (2004), Explosive Substances Act (1908), Export and Import Law (2012), Immigration Act (1947), Natural Disaster Management Law (2013).

61 For instance, the military has used the Official Secrets Act (1923) to prosecute political leaders but not journalists. Previous governments used the Act against media.

62 Evidence Act (1872) and Law Amending the Myanmar Evidence Act (2015).

63 The Human Rights Act (1998) was adopted by a new government that wanted to demonstrate their progressive democratic credentials. It incorporates the international obligations found in the European Convention on Human Rights (1953) into the UK's domestic law. For more information, see: Equality and Human Rights Commission (2018), "[The Human Rights Act](#)".

plied with human rights. A Human Rights Law may include a section guaranteeing rights specific to media, such as the protection of sources.

A second option involves prioritizing criminal law reforms, with the government systematically amending, repealing, or replacing laws over time. While comprehensive, this approach necessitates extensive consultation and parliamentary processes. Prioritization should focus on laws conflicting most with international standards and carrying disproportionate penalties. However, there would be a significant risk of ongoing prosecutions of media under other laws while reforms progress, potentially undermining the government's intent to align the legal framework with international standards. To expedite this option, a new government could first propose a bill nullifying—not repealing—all military amendments, effectively restoring Myanmar's legal landscape pre-coup.<sup>64</sup> While this would mitigate some of the most adverse elements of Myanmar's criminal laws, it would not suffice to halt all illegitimate cases against media.



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<sup>64</sup> Nullifying a legal provision means it never existed, erasing defined rights, responsibilities, or offenses. This implies the military's actions were illegitimate. Repealing acknowledges the provision's legality but declares it defunct or unenforceable.

## 7. Remediating Cases

Reforming media regulations is crucial but only part of ensuring media freedom. Equally important is addressing the widespread impunity for military violations of journalists' human rights. Both initiatives are indispensable for fostering a truly free media. This section outlines international standards, summarizes violations, and offers potential avenues for remedy.

### REMEDIAL STANDARDS<sup>65</sup>

In accordance with international standards, States are obligated to ensure that individuals claiming to be victims of human rights violations have equal and effective remedies, including access to justice, irrespective of the ultimate responsibility for the violation.<sup>66</sup> This entails conducting effective, prompt, thorough and impartial investigations into such claims, and supporting international investigations alongside.<sup>67</sup> States must prosecute alleged perpetrators without favor and in accordance with domestic and international law, and facilitate international judicial processes.<sup>68</sup> Victims are entitled to adequate, effective, and prompt reparations, which may include restoring their freedom and property, compensating for economic losses, providing rehabilitation, issuing public apologies, and implementing measures to prevent recurrence.<sup>69</sup>

### MYANMAR CASES

Since the coup began in 2021, more than 200 journalists have been detained, with 59 still held as of March 2024, including 24 awaiting trial and 35 serving sentences.<sup>70</sup> Military-controlled courts handed down an average sentence of five years, with nearly a quarter of journalists facing 10 to 20-year stretches.<sup>71</sup> Of those released, 44 were granted parole or completed their sentences, while over 100 were released without conviction. Many journalists have faced substantial violence at the hands of the military, including harassment and intimidation, assaults and beatings in public, attacks on their homes and families, and torture while being held in detention.<sup>72</sup> As many as 10 journalists have

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65 For more information, see: United Nations Office for the High Commissioner for Human Rights (2005), "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law".

66 "Victim" includes the immediate family or dependents of the person who suffered harm.

67 For instance, the United Nations Independent Investigative Mechanism for Myanmar.

68 For instance, universal jurisdiction cases in foreign domestic courts as well as the International Criminal Court.

69 States should enforce domestic and foreign reparation judgments, establish national reparation programs, and facilitate victim claims. Guarantees of non-repetition encompass civilian oversight of security forces, judicial independence, protection of professionals, human rights education, adherence to ethical norms, conflict resolution mechanisms, and legal reforms to prevent future violations.

70 ICNL (2024), "Journalist Detentions in Myanmar".

71 ICNL (2024), "Journalist Detentions in Myanmar".

72 United Nations Independent Investigative Mechanism for Myanmar (2024), "Three years of widespread, systematic violence in Myanmar and the evidence against perpetrators is mounting".

been killed.<sup>73</sup> Some journalists have had their property confiscated, their careers effectively ended, and they and their families forced into financial ruin. There have been no investigations into abuses inside or outside prison, and perpetrators continue to carry out further human rights violations with complete impunity.

## REMEDIAL OPTIONS



Remedying human rights violations against the media demands significant resources and time. A new government should prioritize violations that require urgent attention to prevent further harm while also developing longer-term solutions for those requiring more comprehensive consideration.

Immediate action should prioritize the release of detained journalists. Historically, Myanmar's governments have halted prosecutions and released political prisoners, including journalists, by granting amnesties or pardons to those convicted.<sup>74</sup> However, such measures only conditionally restore freedom and legitimize convictions, and should only be used if there is a commitment to quash convictions at a later date. A preferable option would be to nullify convictions entirely.<sup>75</sup> The government could do this by petitioning the Supreme Court to grant a writ of *habeas corpus* to declare convictions unlawful and release journalists immediately.<sup>76</sup>

Another pressing task will be to prevent future detentions, prosecutions, and harassment of journalists until media regulations, including criminal provisions, undergo reform. Given that government officials, including military, have been responsible for most complaints against journalists, and for supporting prosecutions, it necessitates fostering a new environment of democratic openness. A new government could issue an executive directive affirming its commitment to upholding media freedom and directing all government officials

Immediate action should prioritize the release of detained journalists. ... [the] preferable option would be to nullify convictions entirely.

<sup>73</sup> ICNL (2024), "Journalist Detentions in Myanmar".

<sup>74</sup> Constitution (2008), Article 204. Code of Criminal Procedure (1898).

<sup>75</sup> Nullifying renders the conviction null and void, implying that the military's actions were illegitimate and unlawful from the outset. Conversely, pardoning legitimizes the lawfulness of the original conviction while declaring it no longer applicable.

<sup>76</sup> Constitution (2008), Article 378. Union Judiciary Law (No. 20/2010). Law on the Application for Writs (No. 24/2014).

to comply accordingly.<sup>77</sup> It could also affirm that any complaints against the media should be submitted to the aforementioned independent press council.

The next step would be to launch a long-term initiative addressing past impunity for crimes against media. A new government may already be considering establishing a general commission tasked with achieving truth, reconciliation, justice, and accountability. This commission could include a specific component focused on addressing crimes against media, either as a subgroup or as a separate but linked entity, following consultation with media representatives. The commission should operate on two tracks: investigating and holding perpetrators accountable, and providing remedies for affected journalists. Given the likely restraints on time, investigations should focus first on the most severe violations against individuals. Remedies may include nullifying criminal convictions, returning seized property, compensating for economic losses and violence endured, providing psychosocial support and retraining, and issuing public apologies on behalf of the State. The commission could also be responsible for selling the military regime's ill-gotten gains to fund compensation.

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77 In light of a trial on atrocity crimes at the International Court of Justice, the former NLD government issued an executive directive ordering government employees, security forces, and military personnel to partake in anti-hate speech campaigns and abstain from propagating "hate speech" or inciting violence. Radio Free Asia (2020), ["Myanmar Anti-Hate Speech Orders Aimed at Halting Discrimination Against Rohingya"](#).



## 8. Conclusion

Myanmar's revolutionary movement stands at a historic crossroads, offering a unique opportunity to spearhead a transition to genuine democracy, steering clear of the shortcomings of previous government efforts marked by slow, marginal, and incomplete reforms. Crucial to this endeavor is the alignment of media regulation with international standards, facilitating a free press that empowers public participation in the transition and ensures accountability.

Efforts to harmonize media regulations with international standards demand considerable attention. Swiftly adopting a bill to nullify the military's amendments and instituting a new constitution with comprehensive human rights guarantees are pivotal initial steps. However, genuine reform also requires substantial amendments to laws like the Penal Code (1861), Counter-Terrorism Law (2014), and News Media Law (2014). A more expeditious and potent solution aligned with democratic aspirations could involve enacting a new law, such as a "Media Freedom Law" or a "Human Rights Law," overriding existing and superseding legislation while repealing undemocratic laws like the Printing and Publish Law (2014).

While legal reform is time-consuming, a new government can take other measures to proactively reshape a democratic environment and expand public discourse. Government entities can embrace the democratic spirit by altering attitudes and behaviors. Encouraging transparency, collaborating with the media, and redirecting grievances to the independent press council rather than the courts can foster positive change.

The proposals outlined in this thought paper, though not exhaustive, pave the way for more informed participation in policymaking. Unlike previous reforms that lacked consistent and in-depth consultations, engaging civil society, legal experts, and international collaborators will allow Myanmar to draw upon collective expertise, creating media regulation that resonates with the aspirations and values of its people.



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