

ASSESSING DETENTIONS OF JOURNALISTS IN MYANMAR, 2021-23



ICNL

INTERNATIONAL CENTER
FOR NOT-FOR-PROFIT LAW

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Executive summary

The Myanmar military launched a crackdown on media freedom as part of a *coup d'état* on 1 February 2021, persecuting journalists and rolling back a decade of legal reforms. ICNL has built a large case database of detained journalists, cross-corroborating multiple civil society monitoring efforts, and complementing them with an analysis of the legal status of cases.

Over the past two years and eleven months, the military has detained over 200 journalists from almost 100 media outlets, charging 160 with a crime under nine separate laws, mainly incitement, “false news”, and weaponized counter-terrorism provisions.

The military’s sham courts have ignored domestic and international law and disregarded due process, sentencing 76 journalists so far to a combined total of 335 years imprisonment, with individual terms up to 20 years long. At least 62 journalists were languishing in prison by mid-December 2023, causing a chilling effect across the media and presenting severe challenges to media outlets’ resources, capacity, and morale.

Despite all of this, Myanmar’s journalists and media outlets remain bravely committed to building a robust information ecosystem for a public desperately seeking to know the truth about military oppression.

Stakeholders, including the United Nations internationally and within Myanmar, should strengthen the support for detained journalists and the media, ensuring it adequately reflects their role as the oxygen of the ongoing movement for a return to democratization. Now is also the time for the development of reform proposals for a legitimate government to roll back the military’s attacks on the rights to freedom of expression and association.

206

Journalists detained



62

Still imprisoned by mid-Dec. 2023

76

Journalists sentenced to a combined **335 years in prison**



19%

Of convicted journalists given extreme sentences of **10 to 20 years in prison**



144

Journalists released so far, after an **average of 6 months** in prison each



90

Media outlets had journalists detained; **39 of them had journalists sentenced**



Women

Faced higher charge and conviction rates



Introduction

From the start of the February 2021 coup d'état, the Myanmar military tried to control an information ecosystem dominated by an anti-coup, anti-military, and pro-democratic narrative. At the core of this dissenting information ecosystem was Myanmar's independent media, a new generation of journalists accustomed to media freedom, and a public hooked on accessing truthful, diverse, and timely information, all facilitated by access to the internet.

The military's response was predictable, fluctuating between viciously savage and judicially punitive. Many media outlets were banned, their journalists detained, charged, and sentenced by sham courts to long terms of imprisonment under oppressive laws. Violence and torture were rife. The military ignored its substantive international and domestic obligations to respect the rights to freedom of expression and association, as well as other human rights.¹ Serious concerns were expressed at the highest levels of the international community.²

However, analysis beyond the number of journalists involved was scant and diminished as the coup dragged on and civil society resources declined.³ The purpose of this report is to establish a situational analysis on the deprivation of journalists' liberty two years and eleven months into the coup, based on cross-corroboration of civil society monitoring efforts and complemented by an analysis of the legal cases. The first part of the report examines journalists' legal cases during the period under review (February 2021 to mid-December 2023). The second part disaggregates the situation for women journalists, and the third part outlines the resulting impact on media outlets. The annex includes an analysis of Myanmar's modern history of media regulation and the related criminal law framework.

¹ Myanmar was not a State Party to the International Covenant on Civil and Political Rights or the International Convention Against Torture, but was a State Party to the Geneva Conventions and member of the United Nations with its Universal Declaration of Human Rights, some of which has become binding as international customary law. International standards relating to the right to freedom of expression were clarified in: United Nations Human Rights Committee (2011), "General Comment No. 34". Paragraph 7 stated that it applied to all parts of the State.

² United Nations Security Council (2022), "Resolution 2669".

³ For example, Reporting Asean published data until it closed its program.



The purpose of this report is to establish a situational analysis on the deprivation of journalists' liberty two years and eleven months into the coup, based on cross-corroboration of civil society monitoring efforts and complemented by an analysis of the legal cases.

Although the report focuses on deprivation of liberty, it includes a brief summary on page 19 of other human rights violations experienced by Myanmar journalists at the hands of the military.

METHODOLOGY

The report is underpinned by a case database aggregated from media monitoring, key informant interviews, and lists from 10 non-governmental and one inter-governmental organization, covering the period under review, February 2021 to mid-December 2023.⁴ Cases in both legal and extra-legal (military courts) processes were cross-corroborated to the extent possible under the circumstances, eliminating duplicates and sampling errors, and further researching contradictions.⁵ All deprivations of liberty were included regardless of whether they were lawful and followed due process or not.

Who was a “journalist” and would therefore be included in the case database was defined broadly according to international standards as any individual practicing or fundamentally supporting the practice of journalism.⁶ This included any individual who professed to be or was regarded by others (including a minority of others) as a journalist. Individuals were included regardless of whether they were associated with an independent media outlet, a “pro-military” outlet, or no outlet (freelancers or “citizen journalists”). A small number of former journalists were included because there was reason to believe that they were detained as suspected journalists.

Each journalist’s case was assessed under 61 data points, which were then investigated for trends and disaggregated in a gender analysis. Real numbers were used in the report to show scale, while rounded percentages were used to compare data.

4 The non-governmental organizations, which included both international and domestic civil society organizations, were unnamed for security reasons. The inter-governmental source was restricted-distribution research conducted by this report author, JM McElhone, and Myint Kyaw, with Grace Thu: UNESCO (2021), “Repression of journalists and media workers in post-coup Myanmar”.

5 ICNL stands in solidarity with journalists and media outlets in their exercise and defense of human rights and expresses gratitude to those individuals who input into the report.

6 United Nations Human Rights Committee (2011), “General Comment No. 34”, paragraph 44.

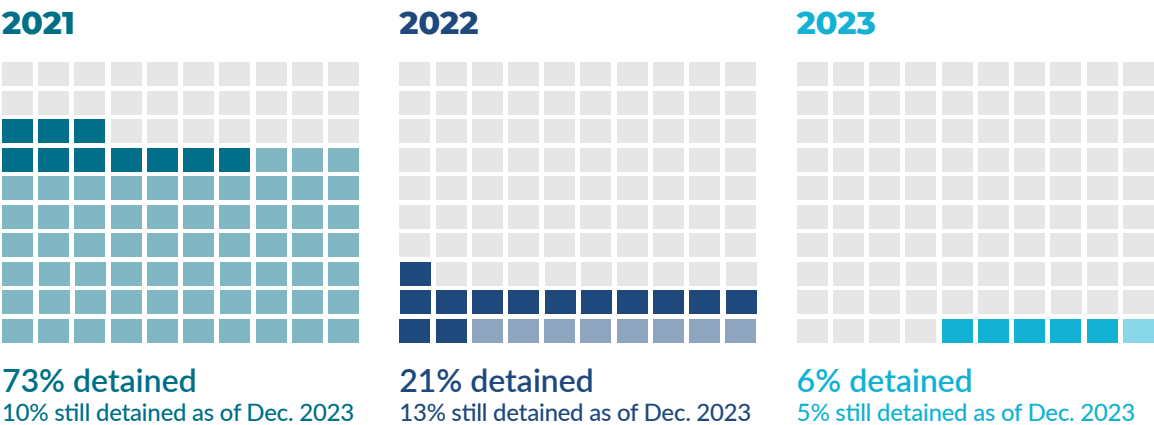
206 journalists detained

The military detained many journalists in an effort to control Myanmar’s information ecosystem, to keep the general public unaware of the crackdown, and deter more widespread dissent and insurrection.

Myanmar became one of the worst countries in the world in terms of detaining journalists soon after the coup started and has remained so since.⁷ At least 206 journalists were deprived of their liberty during the period under review (February 2021 until mid-December 2023), including six journalists who were detained multiple times. This figure is likely an underestimation as some detentions may have been unidentified or purposefully kept out of the public spotlight.⁸ Mass detentions had a severe chilling effect on freedom of expression, causing journalists and dissenters more generally to self-censor, hide, or leave Myanmar.

The following table shows that half of journalists detained were captured during the first three months of the coup, and a majority by the end of 2021 (73%). Some remained in prison at the end of the period under review. Detentions reduced in 2022 and 2023, most likely because journalists who were not detained were either operating in exile or in hiding. The last detention during the period under review was in December 2023.

Detained Journalists by Year & Percentage Still Detained



62 JOURNALISTS CURRENTLY DETAINED

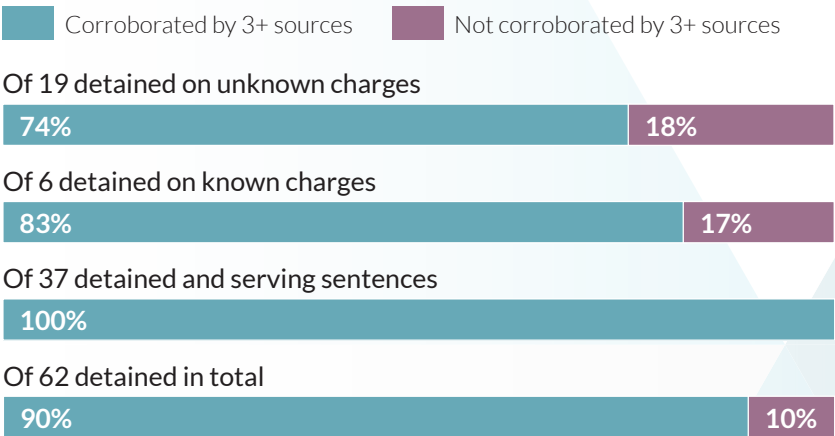
The military was holding 62 journalists in detention in mid-December 2023. This figure included 19 journalists detained on undetermined charges (31%), six facing identified charges (10%), and 37 who had been convicted and were serving prison sentences (60%).

7 “Committee to Protect Journalists (2021), “302 journalists imprisoned”. Committee to Protect Journalists (2022), “363 journalists imprisoned”.

8 Some families and media outlets may have not publicized an individual’s case, perhaps believing that coverage could worsen their situation, or to hide an individual’s hidden work history, or to try informal solutions, such as bribing the police for a lesser charge.

Most other media monitors reported fewer detained journalists in mid-December 2023, ranging from 45 to 55.⁹ However, each monitor’s list was different and all missed or excluded individuals that others included.¹⁰ Differences were due to challenges in establishing identities, credentials, and situations, caused by information blackouts and security concerns. There were also methodological differences. For example, some monitors excluded journalists regarded as “pro-military”. ICNL used international standards definitions and focused on cross-corroboration for verification. For example, the following table shows that for currently detained journalists, most cases were corroborated by three or more sources (90%), with slight differences depending on the stage of each individual’s case.¹¹ Those cases with fewer sources were relatively new cases.

Journalist Detentions
Corroborated by 3+ Sources



9 The case database aggregated lists from 10 non-governmental and one inter-governmental organization. The only exception was Reporters Without Borders (RSF), which publicized an outdated list of 67 journalists, at least 10 of which had previously been released.

10 Monitors used different in-house criteria and methodologies, and some used imprecise definitions. Reliance on professional judgment and personal networks were common. Some monitors relied heavily on other monitors without cross-corroboration. Security concerns and information blackouts meant research was very difficult. The inherent risk in these approaches was that individuals would be excluded or overlooked.

11 Journalists unassociated with specific media outlets, such as freelancers, stringers, or “citizen journalists” were harder to cross-corroborate, presumably because without an employer or colleagues they had fewer support networks. The label “citizen journalist” is used by some to describe journalists working inside Myanmar who were not journalists before the coup began, or who have not received significant formal journalism training, or who are not working under a formal contract to one media outlet.



Most other media monitors reported fewer detained journalists in mid-December 2023, ranging from 45 to 55. However, ICNL identified 62 detained journalists using international standards definitions and focused on cross-corroboration for verification.

ARBITRARY DETENTION

Most if not all of the cases involving journalists were arbitrary and therefore a violation of the right to liberty under international law.¹² Journalists were not informed of the reasons for their detention, there were no grounds for detention, the grounds for detention were illegal, the procedural rights of the journalist were not respected, or the journalist was not brought before a judge in a reasonable amount of time. The arbitrary deprivation of journalists' liberty has been declared a "crime against freedom of expression" by United Nations mechanisms.¹³ Arbitrary detention could in some cases be considered a war crime.¹⁴

The military did not abide by either global due process standards or Myanmar's own procedural laws and rules throughout the process of detaining journalists.¹⁵ Detained journalists were never brought before a court in their initial period of detention and had no access to a lawyer. Each journalist was usually held in a police station immediately after being detained before being taken away to a military interrogation center. Their colleagues and families were often unaware of where they had been taken or why. Each journalist was held in a military interrogation center for a period lasting between two days to two weeks before being transferred to prison. Journalists were incarcerated nationwide but with concentrations in Insein Prison in Yangon (33%), as well as Ohbo Prison in Mandalay, Myitkyina Prison in Kachin, Patheingyi Prison in Ayeyarwady, Taung Lay Lone Prison in Shan, and Thayarwaddy Prison in Bago (27% combined).

Some journalists' family members were detained too, either to force a journalist at large to hand themselves in or to pressure a detained journalist to confess to a crime. In at least two cases, the military detained journalists' young children, interrogating them for several days.¹⁶ The military also threatened to harm captured journalists' families if the journalist did not confess and help with investigations into other journalists, sources, and networks.¹⁷

TARGETING JOURNALISM

The military used arbitrary detentions in an effort to attack journalists with the aim of censoring all media coverage critical of the coup. The following table shows that in most cases in which a journalist was deprived of their liberty, there was probable cause to believe that the journalist was very likely targeted because they were a journalist

12 International Covenant on Civil and Political Rights, Art. 9.

13 United Nations Office for the High Commissioner for Human Rights (2012), "Joint Declaration on crimes against freedom of expression".

14 See: Rome Statute of the International Criminal Court, Art. 8 for war crimes, and Art. 7 for crimes against humanity. See also: United Nations Human Rights Committee (2011), "General Comment No. 34", paragraph 23.

15 For further information about the judicial system under the military, see: FEM (2023), "Myanmar military's 'justice' system".

16 Myanmar Now (2021), "Junta forces in Yangon detain and interrogate journalist's 7-year-old daughter".

17 Radio Free Asia (2023), "The reporter who went through the hell of the interrogation room".

(70%).¹⁸ In most other cases there was reasonable suspicion to believe that they were likely detained as a journalist (26%).¹⁹ A cause for detention unrelated to journalism was established in just a few cases (4%).²⁰

The military arbitrarily detained many journalists who were documenting protests and conflicts, in an effort to suppress information about the violent crackdowns from reaching the wider public. Half of detained journalists were captured while reporting on protests against the military (50%). The military also captured journalists in raids on their homes (24%) and on their offices (4%). Some journalists were detained after being summoned to police stations (5%). When adjusted for population size, a journalist was four and a half times more likely to be detained in an area experiencing significant conflict.

Most detained journalists were from Myanmar except for five foreign journalists (2%). The majority of journalists detained were comparatively junior employees such as reporters and photojournalists (83%), many captured while actively reporting.²¹ A minority were more senior employees, such as editors (6%). The military also searched for and detained the media leadership in an effort to censor entire media outlets. A large minority detained were owners, CEOs, chief editors, and publishers (11%).

3 JOURNALISTS TORTURED TO DEATH

In general and in its treatment of journalists, the military violated the absolute prohibition on torture under international law.²² Freed journalists consistently reported widespread torture and different forms of cruel, inhuman, or degrading treatment suffered while under detention. The military has tortured to death at least three journalists since the coup

18 Probable cause was established through the *prima facie* facts of the case. For example, probable cause would have been established if a photojournalist was detained while documenting a protest.

19 For example, it was reasonable to suspect that a journalist who was individually targeted for detention while at home, and then later charged under a law often used against journalists, was detained because of their work.

20 For example, being detained while making a speech at a protest.

21 This included journalists working on staff contracts and journalists regularly employed under other contractual agreements, such as stringers and freelancers or “citizen journalists”.

22 A peremptory norm of general international law (*jus cogens*). See: International Court of Justice (2009), “Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal).”

Targeted Because of their Journalism

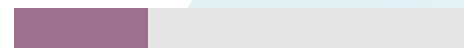
70%

Very likely (probable cause)



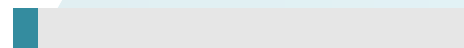
26%

Likely (reasonable suspicion)



4%

Unlikely



started.²³ The military has been accused of committing and condoning torture for decades, including 102 allegations against commander-in-chief and coup leader, Min Aung Hlaing, alone.²⁴ It does not appear that any individual has been investigated or brought to justice following allegations of torture or mistreatment of journalists. Impunity has remained rife.

Military interrogation centers used a range of methods intended to dehumanize and extract forced confessions from journalists. These methods included beatings, stabbings, stress positions, burnings, electric shocks, and mock executions.²⁵ The military also resorted to sexual violence against women and men journalists.²⁶ Several media observers believed that interrogators first and foremost wanted to inflict harm and extracting a confession was secondary.²⁷ In most cases, military interrogators also demanded information about detained journalists' peers and networks, as well as their journalistic sources.

Standards in civilian prisons were little better than military interrogation centers, with extremely poor food and housing, medical treatment denied, and torture endemic.²⁸ An unknown number of people, perhaps including journalists, also died in prison from Covid-19 due to significant overcrowding and a complete lack of medical care.²⁹

23 Another two journalists were likely tortured to death by other actors. See for example: Committee to Protect Journalists (2023), "[10 Journalists and Media Workers Killed in Myanmar](#)".

24 Columbia Law School's Human Rights Institute (2023), "[Under whose command?](#)".

25 Amnesty International (2022), "[Myanmar: Detainees tortured to crush opposition to coup](#)".

26 Frontier Myanmar (2022), "[I reported on the military's abuses, and then I became a victim](#)".

27 Key informant interviews with four media leaders carried out on 28 September 2023.

28 AAPP (2022), "[Political Prisoners Experience in Interrogation](#)".

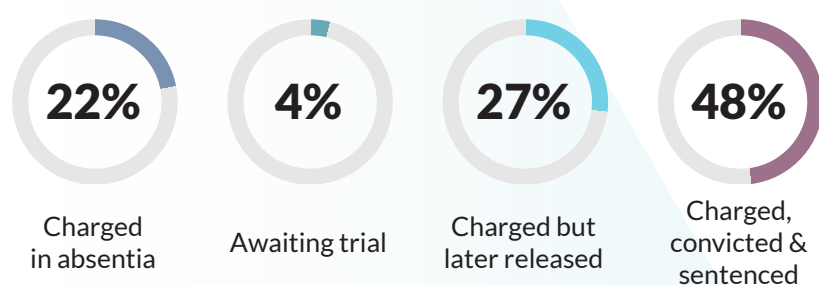
29 PBS (2021), "[There was no break – it was constant](#)".

160 journalists charged with a crime

The military brought charges against journalists to give a pretense of due process to arbitrary detentions as part of a wider charade to justify their legitimacy to govern.

The military charged at least 160 journalists with a crime during the period under review.³⁰ A further 17 journalists were awaiting charges while being held under detention. The following table shows that a minority of charged journalists were later released (27%), compared to almost half who were tried and convicted (48%). It is unclear whether the charges had been dropped against those released.

Current Situation of Charged Journalists



Not every detained journalist was charged. A substantial minority of the 206 journalists detained since the coup started were later released without charge (39%). Media observers noted that detained journalists were fearful of being charged because charges meant lengthy trials, high conviction rates, and longer prison time.³¹ Journalists facing likely charges were concerned about being charged under more punitive provisions with extremely disproportionate sentences of over 10 years.

213 CHARGES UNDER NINE LAWS

Myanmar has a wide range of laws that violate international guarantees for the rights to freedom of expression and association (see Annex I). The 160 charged journalists faced a combined total of 213 charges under 24 criminal provisions in

³⁰ More may have been charged *in absentia* but the military stopped publishing arrest warrants and charges lists.

³¹ Key informant interviews with four media leaders carried out on 28 September 2023.



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nine of these problematic laws. Journalists faced an average of 1.3 charges each, with most facing a single criminal charge (81%). A minority of journalists faced two to five charges (19%). One journalist faced seven criminal charges, all under one law, the Penal Code (1861), including offenses of causing hurt, causing hurt to obstruct an official in their duties, hurting on provocation, endangering others, wrongful restraint, and causing mischief by fire or explosion. It was unclear whether journalists faced multiple charges for one incident or for multiple incidents.

Most charges fell under the military's newly "amended" Penal Code (1861) Article 505A (66%).³² This broad, vague provision was "adopted" shortly after the coup started as an easy catch-all that could be used to criminalize almost any form of expression without the need to fulfil the requirements of prosecutions under other laws (see Annex I).³³ Article 505A also has a maximum sentence of three years, longer than the two years included in some other provisions used against journalists before. Article 505A includes three sub-clauses on "causing fear", "false news", and "agitation" but it is unclear which was most used against journalists because court records are inaccessible and media reports are unspecific.

A minority of journalists (10%) faced charges under 15 other Penal Code (1861) provisions including Article 124A, exciting disaffection against the government (2%), and Article 505(b), inciting public alarm (2%).

A large minority of journalists were charged under eight special laws that similarly violated international guarantees for the rights to freedom of expression and association (23%). Some journalists faced charges under the Counter-Terrorism Law (2014), which included extremely punitive minimum and maximum sentences for so-called "persuasion" and "propaganda" (10%). Others faced charges under Myanmar's digital laws (7%), including the Telecommunications Law (2013), which contained provisions disproportionately criminalizing "defamation" (5%).³⁴ A few journalists were charged under the Unlawful Association Act (1908), which unnecessarily prohibited certain types of interaction, including providing funds, with banned or unregistered groups (3%).

SEVERITY OF CHARGES

The gravity of each of the military's violations of the rights to freedom of expression and association is based on the severity of the charges laid down against journalists. The Penal Code (1861) and Counter-Terrorism Law (2014) include provisions with far more disproportionate sanctions than other provisions. For example, Article 124A of

32 Many media and civil society reports incorrectly attributed charges to the colonial-era Penal Code Article 505(a), rather than to the military's newly "amended" Article 505A. Almost all charges were under subclauses of Article 505A.

33 Free Expression Myanmar (2022), "[505A: Act of revenge](#)".

34 The vague and overly broad Article 66(d) includes "defamation" but most cases before the coup were concerned with insult. For more information, see: FEM (2017), "[66\(d\): No real change](#)".

the Penal Code (1861) includes a maximum sentence of “life imprisonment” (a term of 20 years) for exciting disaffection against the government, a vague provision that violates the right to freedom of expression.

It is unclear whether the military made centralized decisions about whether to use more or less severe provisions to charge journalists, or whether decisions were made arbitrarily by prosecutors, police, or military officials. There was also no clear link between the severity of the charge and the individual journalist or where they worked. For example, journalists who faced long sentences under the Counter-Terrorism Law (2014) came from different parts of the country, had different roles of varying seniority, and worked for a diverse range of media outlets, including some who were freelance.

The law most commonly used against journalists changed during the period under review. The military mostly used the colonial-era Penal Code (1861) in 2021. By 2022, the military continued to use the Penal Code (1861) for most charges against journalists (67%) but also started using the Counter-Terrorism Law (2014) (28%). Some civil society observers believed that the military had “amended” the Counter-Terrorism Law (2014) in 2021 to hand down longer prison terms to dissenters, including journalists, and encourage an environment of self-censorship.³⁵ However, this trend did not clearly materialize in 2023 as the proportion of charges laid under the Counter-Terrorism Law (2014) declined (11%). The military had shifted back to using the Penal Code (1861) (78%).

³⁵ Key informant interviews with three civil society leaders carried out on 30 September 2023.

76 journalists convicted and sentenced

The military gave lengthy prison sentences to journalists as a public sign of their willingness and power to ruin lives in order to crush dissent and protect their position of power.

At least 76 journalists were convicted of committing a crime and sentenced during the period under review. The military's sham courts did not abide by either global due process standards or Myanmar's own procedural laws and rules. Trials were closed and overseen by either non-independent judges or military officials (see Annex I). Defense lawyers were either barred from entry or prevented from adequately representing their clients.³⁶ Convictions were likely pre-judged and sentences were punitive. At the end of the period under review, half of the 76 convicted journalists were still serving prison sentences (46%) and the other half had been released. The latest conviction was handed down in September 2023.

CONVICTION POLICY

Many journalists captured earlier in the coup were held in detention without any sign of being processed through the courts. Probably the first journalist to be convicted by the military was sentenced on 12 May 2021, three months into the coup.³⁷ They were sentenced to three years imprisonment under the military's newly "amended" Penal Code (1861) Article 505A. By the end of November 2021, 10 months into the coup, the military had convicted only eight of the 141 journalists that had been detained during the same period (6%).

The number of convictions started growing from December 2021, doubling from eight journalists to 15 within the month. It is unclear whether there was a specific change in military policy or whether the growth was simply the result of a judicial queue. Some civil society observers queried whether the military was initially avoiding convicting journalists in a desperate bid to maintain a pretense of legitimacy, or whether it was just preoccupied elsewhere.³⁸

335 YEARS' IMPRISONMENT

The military's sham courts handed down disproportionate sentences that clearly violated the rights to freedom of expression and association and undoubtedly created a chilling effect for all other journalists and media outlets. The 76 convicted journalists were sentenced to a combined total of 335 years' imprisonment, an average of 4.8 years each. Almost all of the sentences handed down were imprisonment (92%) and most applied the maximum sentence allowable under the law.³⁹

36 For further information about the judicial system under the military, see: FEM (2023), "Myanmar military's 'justice' system".

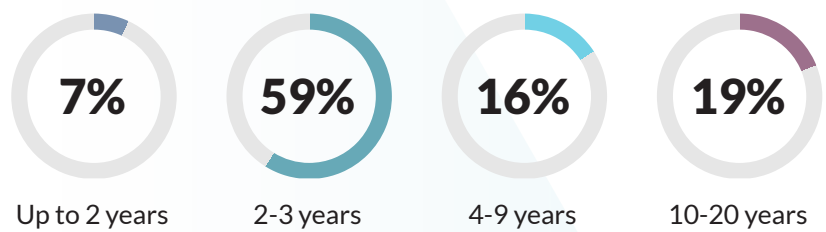
37 It was difficult to ascertain all convictions of journalists due to the secretive nature of the military's sham courts.

38 Key informant interviews with three civil society leaders carried out on 30 September 2023.

39 One conviction included a fine and no custodial sentence. Sentences could not be established for three convictions.

All sentences were fundamentally unnecessary and disproportionate. The following table shows a small proportion of sentences were up to two years imprisonment (7%), while more than half of sentences handed down to journalists were two to three years imprisonment (59%). A large minority of journalists were sentenced to four to nine years (16%), while others received extremely disproportionate sentences of 10 to 20 years imprisonment (19%). Some longer sentences were made up of multiple concurrent sentences.

Sentences Handed Down to Journalists



There was little difference in the sentences given based on the seniority of the journalist. The average sentence given to junior journalists was 4.8 years. Senior journalists and media leaders received an average of 5 and 4.8 years respectively. There was no clear link between where the journalist worked and the length of the sentence handed down.

A significant but unverified proportion of the sentences were enhanced or aggravated custodial sentences that included “rigorous” imprisonment provided for under Penal Code (1861) Article 53. Rigorous imprisonment or “imprisonment with hard labor” involves a far harsher form of punishment than Myanmar’s general prison labor camps.⁴⁰ Sentencing a journalist to rigorous imprisonment violates labor rights under international law and potentially constitutes a war crime.⁴¹

40 Rigorous imprisonment was commonly used by Myanmar’s previous military administration, which forced prisoners including journalists to do construction, manufacturing, and military work under horrendous conditions. It was rarely if ever handed down to journalists or enforced during the transitional period. Myanmar Now (2023), “Myanmar regime reviving practice of forcing political prisoners to do hard labour”.

41 International Labour Organization (2023), “Towards freedom and dignity in Myanmar”. See also: International Committee of the Red Cross (2005) “Practice relating to Règle 95”.



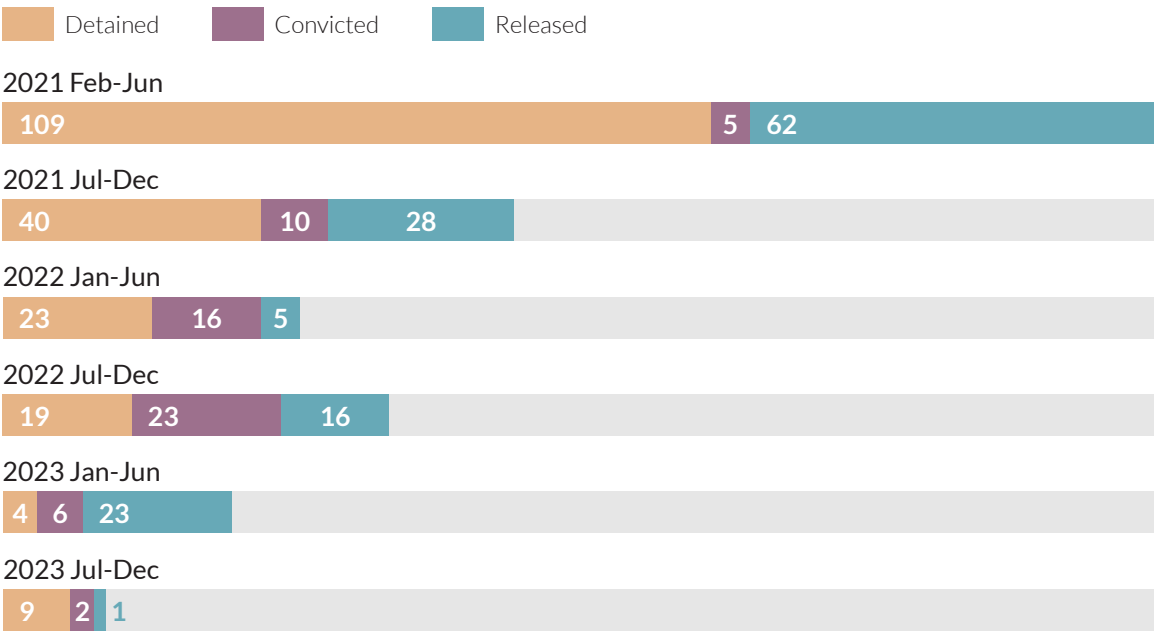
The 76 convicted journalists were sentenced to a combined total of 335 years’ imprisonment, an average of 4.8 years each. Almost all of the sentences handed down were imprisonment (92%) and most applied the maximum sentence allowable under the law.

144 journalists released

The military released some individual journalists, reasoning that imprisonment, violence, and the threat of further detention served the purpose of ensuring that they would either self-censor in the future or stop practicing journalism altogether.

The military had released 144 of the 206 detained journalists by the end of the period under review (71%). Each released journalist had spent an average of 181 days deprived of their liberty. The following table outlines when journalists were detained, convicted, and released.

Detentions, Releases and Convictions by Time Period



RELEASED WITHOUT CONVICTION

Most of the 144 journalists who were released from detention were let out without being convicted (73%). It was unclear why the military released some journalists without first convicting them in sham courts. Some civil society observers queried whether it was the result of poorly-resourced prisons or incapable courts, or if the military wanted to improve its public image domestically and internationally.⁴² However, the average period of detention for journalists who were not convicted was still 69 days.⁴³ The military may have considered this a sufficiently long deprivation of liberty coupled with rampant torture and other forms of mistreatment, to ensure most journalists would self-censor in the future.

⁴² Key informant interviews with three civil society leaders carried out on 30 September 2023.
⁴³ Half were let out within a week of being detained (52%), and almost all were released within a year (97%) with a minority kept for up to two years before being released (3%).

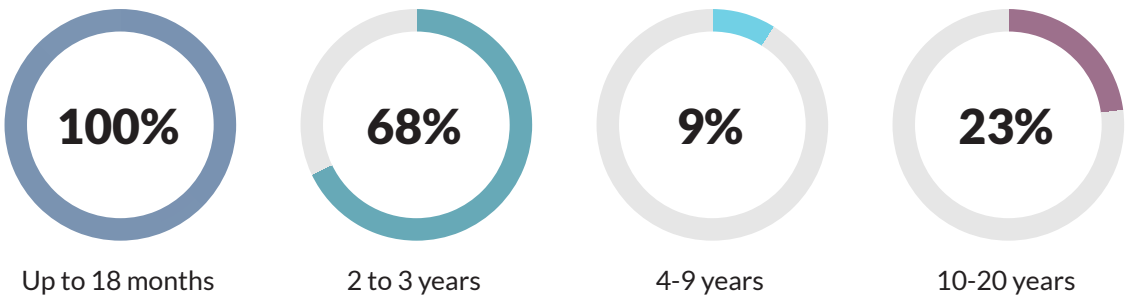
The potential threat of future imprisonment may also have served the purpose of encouraging self-censorship. Journalists were often uncertain about whether charges were withdrawn when they were released, or whether they were released under investigation and could be re-detained in future. The military reportedly warned some journalists that their charges would be revived if they criticized the military or supported the opposition. Some journalists were made to sign agreements promising not to continue working as a journalist as a condition of their release. The military did re-detain some previously released journalists (5%) and in December 2023 was still seeking to re-detain others who had evaded re-capture.

EARLY RELEASE

Half of the 76 journalists convicted after the coup began had already been released by the end of the period under review (54%). All were let out early, serving only part of their sentences. For example, on average, journalists serving two-year sentences were released after 14 months, while journalists serving three-year sentences were released after 15 months.⁴⁴ However, each journalist released early had still served an average of 443 days in prison. The military may have considered this a sufficiently long deprivation of liberty to ensure future self-censorship.

It is unclear whether decisions to release were centralized. There was no clear link between early releases and journalists' backgrounds or where they worked. The following table shows that most of the convicted journalists who were released early were serving comparatively short prison sentences. For example, most of the journalists serving two-year sentences were released (89%), while half of the journalists serving three-year sentences were released (52%). Most journalists serving long sentences were still in prison, perhaps as symbols of the military's willingness to crush dissent with extreme prejudice.⁴⁵

Release Rates by Sentence (Percentage Released as of Dec. 2023)



⁴⁴ The release dates of journalists still serving their sentences could not increase this average to a full sentence.

⁴⁵ A minority of journalists serving longer prison sentences had been released (17%), including one journalist who had previously been sentenced to 11 years. The journalist who was released from an 11-year sentence had served six months.

Differences for women journalists

The military's seemingly indiscriminate persecution of any journalist captured actually concealed gender-based discrimination.

At least 31 women journalists were deprived of their liberty after the coup started, representing 15% of all detained journalists.⁴⁶ Nine of the 62 journalists still detained at the end of the period under review were women (15%). Women made up a quarter of journalists before the coup and were therefore underrepresented among those detained.⁴⁷ Civil society observers have highlighted professional factors for underrepresentation, such as fewer women continuing to work after the coup compared to men, and fewer women covering more risky current affairs beats.⁴⁸ Observers also pointed to cultural factors, such as greater pressure on women journalists from families and colleagues seeking to “protect” them from risky reporting, and military prejudices that women journalists were less influential or threatening than men.

HIGHER CONVICTION RATES

Although women were underrepresented in the total number of detained journalists, they often experienced worse outcomes than men. The following table shows that women journalists once detained were less likely than men to be released without charge (19% vs. 32%). They were more likely to be charged with a crime (71% vs. 60%), and less likely to be released from detention after being charged (16% vs. 22%). They were also more likely than men to be convicted of a crime (52% vs. 35%).

These differences indicated the presence of gender-based discrimination. Some civil society observers raised concerns that women journalists were less likely to have supportive networks than men.⁴⁹ This may have included less access to or experience with the law, lawyers, and civil society organizations. Some observers theorized that a large proportion of men were captured indiscriminately while reporting on protests during the initial period of the coup and then released quickly. But women journalists were more likely to have been ignored during the protests due to discriminatory attitudes among police who regarded women as less of an immediate threat.

Journalists detained later on, including women, were more likely to have been specifically targeted for detention.

46 ICNL categorized the gender of 96% of journalists and did not establish any identifying or being identified by their peers as a gender other than “man” or “woman”. It is likely that some affected journalists conformed to an alternative gender or no gender, but this was not shared. For more information on the general situation in Myanmar, see: Outright International (2021), “2021 Myanmar Crisis: Implications for LGBTQ People”.

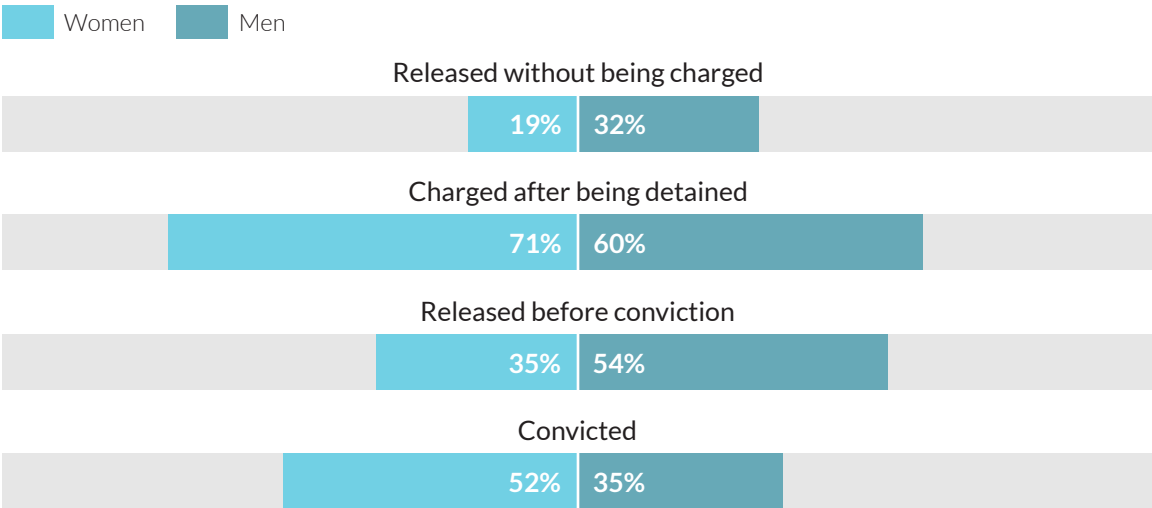
47 Surveys have tried over the years to identify the overall number of journalists in Myanmar and their gender breakdown. Surveys before the coup put the proportion of women at about 23%: Irrawaddy (2018), “Women Journalists Say Access to Information More Challenging Under NLD”.

48 Key informant interviews with three civil society leaders carried out on 30 September 2023.

49 Key informant interviews with three civil society leaders carried out on 30 September 2023.

Several observers stated that gender-based differences in decisions made by the military, police, prosecutors, and judges were not only due to subconsciously entrenched discriminatory social attitudes and behaviors, but also to overt and explicit misogyny intended to punish and censor women.

Gender Differences in Being Charged, Released and Convicted



LOWER SENTENCES

Some gender-based differences in detentions favored women journalists to their benefit. In most convictions, the judge handed down a sentence that was the maximum allowable under the law and was therefore awarded regardless of gender. Most women journalists, like most men, were convicted under Article 505A of the Penal Code (1861) and sentenced to three years imprisonment. However, a small minority of men were convicted under more punitive laws and given extremely disproportionate sentences of 10 to 20 years imprisonment. As a result, men received longer average sentences of 5 years each compared to a lesser – but still significant – 3.9 years for women.

Women journalists likely faced other gender-based violations of their rights to freedom of expression and association that were not revealed in the case database, have not been adequately investigated elsewhere, and warrant further investigation. For example, although there is no hard data to date, it is reasonable to surmise that women journalists may have endured higher rates of systematic sexual violence and the threat of sexual violence while under interrogation. They likely experienced gender-based discrimination from their employers, families, and communities. Women journalists may also have experienced different gender-based repercussions of seemingly gender-neutral violations. For example, detained women were more likely to face social stigma or “victim-blaming” for working in a role outside of traditional perceptions and stereotypes on the role and status of women in society.⁵⁰

⁵⁰ Free Expression Myanmar (2019), “Daring to defy Myanmar’s patriarchy”.

OTHER VIOLATIONS EXPERIENCED BY MYANMAR JOURNALISTS

Journalists in Myanmar experienced a range of human rights violations intended to censor them that were outside of this report's focus on deprivation of liberty. The military killed at least one journalist who was not detained at the time, and others were subjected to life-changing violence with no hope of independent investigations under conditions of widespread impunity.⁵¹ The military increased surveillance and communications interception to track down and detain dissenters, including journalists.⁵² Online intimidation of journalists, such as doxing, was widespread.⁵³ Many journalists went into hiding or traveled abroad to escape.⁵⁴ The military then intimidated and detained escaped journalists' families and unlawfully confiscated their assets.⁵⁵ Operating underground or in exile abroad was insecure with serious consequences for journalists' economic rights, association rights, and their physical, emotional, psychological, and social wellbeing.⁵⁶



The military killed at least one journalist who was not detained at the time, and others were subjected to life-changing violence with no hope of independent investigations under conditions of widespread impunity.

51 Sai Win Aung was killed by military artillery fire. Committee to Protect Journalists (2023), "10 Journalists and Media Workers Killed in Myanmar". Journalists received bullet wounds while reporting: Amnesty (2021), "Myanmar: Cease persecution of journalists".

52 Freedom House (2023), "Freedom on the net: Myanmar".

53 Military supporters "doxed" journalists on Telegram by publicly sharing their home addresses and family information alongside calls for them to be punished.

54 International Federation of Journalists (2021), "Myanmar: Exiled but not silenced".

55 The Irrawaddy (2022), "Myanmar Junta Seizes Anti-Regime Celebrity and Journalist Homes".

56 Al Jazeera (2022), "Trauma haunts journalists, human rights workers in Myanmar".

Impact on media outlets

The military both directly censored individual media outlets and indirectly attacked them by detaining their journalists in an effort to shut down the public's largest and most trusted source of information about the coup.⁵⁷

The failure of successive administrations to properly protect the rights to freedom of expression and association in the law helped enable the military's general crackdown on the media (see Annex). For example, the military used the compulsory licensing requirements in the Printing and Publishing Law (2014) to revoke the licenses of at least 15 print media outlets during the period under review, effectively banning them.⁵⁸ The military did not need to revoke television or radio licenses because the previous NLD government had refused to implement the Broadcasting Law (2015) and therefore had not awarded any.⁵⁹

Fortunately, the military's general crackdown, news office raids, and revocation of licenses did not result in most media outlets closing down.⁶⁰ Many outlets and journalists had already experienced operating under threat. However, revocation of licenses increased the risks faced by all involved, including journalists. For example, the military's 2021 "amendment" of the Broadcasting Law (2015) criminalized individuals caught working for an unlicensed outlet punishable by up to five years imprisonment.⁶¹

DETAINED EMPLOYEES

Most if not all of the 104 media outlets identified as serving Myanmar communities have been affected by a variety of serious violations of the rights to freedom of expression and association since the coup started (96%).⁶² At least 90 of the 104 outlets had journalists detained during the period under review (87%), and almost half had journalists convicted and sentenced to imprisonment (38%).⁶³ The following table shows that many outlets had not just one but several journalists deprived of their liberty (44%). One media outlet had 11 of its journalists detained.

57 A minority of affected journalists were freelancers (17%), although many of them were still associated with a particular media outlet.

58 The military's 2023 "amendment" of the Printing and Publishing Law (2014) removed the only weak procedural safeguards, leaving licenses under the unfettered control of the military.

59 Mizzima and DVB were temporarily allowed to operate on channels licensed to the state media. They did not have their own broadcast licenses issued under the Broadcast Law (2015) which was never implemented.

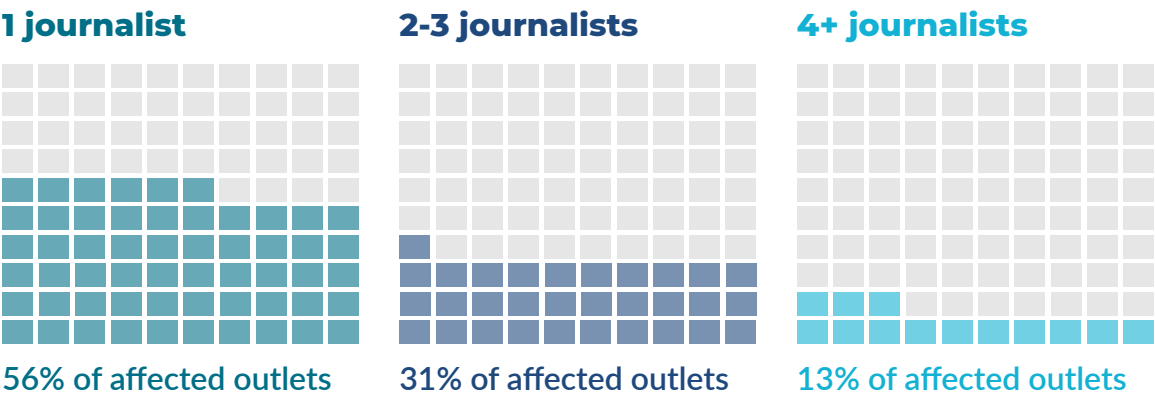
60 The Guardian (2021), "[Myanmar security forces raid media HQ as opposition crackdown spreads](#)".

61 Revocation also increased the potential legal risk faced by others, such as sources or service-providers, interacting with the unlicensed outlet. FEM (2021), "[Criminal media laws return, internet threatened](#)".

62 Serious violations included detentions, license revocation, asset seizures, and targeted acts of violence.

63 This includes journalists working on staff contracts and journalists regularly employed under other contractual agreements, such as stringers and freelancers or "citizen journalists".

Number of Journalists Detained by Outlet



Media observers noted that having a team member detained had serious consequences for an outlet.⁶⁴ The outlet lost some of its often already stretched capacity, impacting its ability to operate. Dealing with a detained journalist required additional resources for taking on responsibilities such as legal costs and providing support to families. Outlets also needed to invest in risk mitigation to reduce the likelihood of further detentions, including supporting other journalists to hide or go into exile. Every detention also undermined team morale, increasing fear, anxiety, and isolation.

DIVERSE IMPACT

The military’s detention of journalists affected a diverse range of media outlets. Most detained journalists worked for private independent media outlets (88%). However, the military’s arbitrary approach to violating the rights to freedom of expression and association also led to a sizable minority of journalists detained who worked for military-aligned “crony” outlets or state media run by the military-controlled Ministry of Information (8% combined).⁶⁵

The 90 affected media outlets served a variety of audiences. Half of the journalists detained worked for 42 outlets with a national focus (51%), and the other half worked at 39 outlets with a local regional or ethnic focus (44%). A small proportion worked for eight foreign outlets (6%), such as the BBC. The military’s past discriminatory practice of oppressing outlets serving Myanmar’s ethnic minorities continued by detaining journalists working at ethnic media (17%). For the first time, the military also detained many journalists working for outlets serving the majority Bamar ethnic group (27%), from which most soldiers originated.

At least half of the journalists detained worked for media outlets that had moved their core operations into exile abroad due to increased risks since the coup started (51%). The

⁶⁴ Key informant interviews with four media leaders carried out on 28 September 2023.

⁶⁵ ICNL used a broad definition of “journalist” in accordance with international standards. As a result, ICNL’s inclusive scope included individuals associated with “pro-military” media, including state media, that some monitors did not regard as journalists.

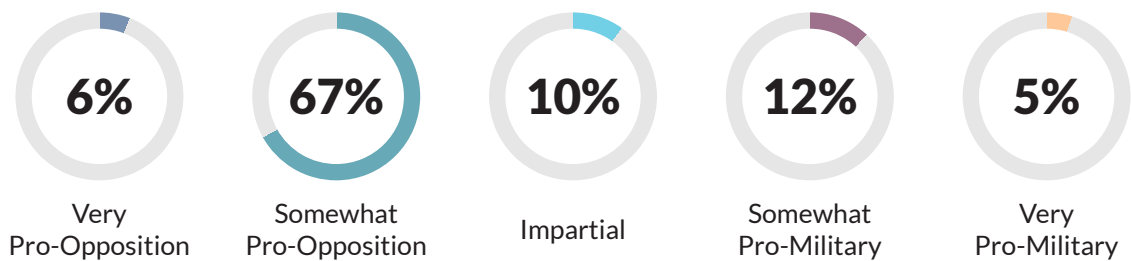
other half worked for outlets that had either closed down or still maintained some core operations inside Myanmar’s borders, many in hiding or within areas administered by ethnic armed organizations (49%).⁶⁶

DIVERSE EDITORIAL POSITIONS

The military detained journalists working for outlets that held a range of different editorial positions on the coup. Unsurprisingly, a large proportion of detained journalists worked for outlets that had adopted somewhat pro-opposition editorial positions (67%). A few detained journalists worked for outlets that were editorially very pro-opposition (6%).⁶⁷

However, the military’s arbitrary crackdown also resulted in the detention of a significant minority of journalists who were working at outlets with somewhat pro-military editorial positions (12%). In what further demonstrates its arbitrary and sweeping approach to repressing journalism, the military even detained some journalists working at outlets with highly pro-military positions (5%).

Detentions by Editorial Position



66 The military was unable to consolidate nationwide control after the start of the *coup d'état* on 1 February 2021, leaving large areas of territory controlled by either an oppositional group, or by no clear institution. Previous administrations did not control all territory too, but did control more, and control more substantively. See: OHCHR (2023), “Illegal and Illegitimate: Examining the Myanmar Military’s Claim as the Government of Myanmar and the International Response”.

67 Editorial positions on the coup were established through a content review.

Conclusion

The military's attempt to recapture Myanmar's information ecosystem relied on intimidation tactics through a draconian new legal framework criminalizing freedoms of expression and association, and a whac-a-mole approach to detaining journalists; first grabbing, torturing, and releasing anyone they could capture in a bid to promote mass self-censorship, and later handing down disproportionate prison sentences to anyone left standing.⁶⁸

In the two years and eleven months since the coup started, the military detained over 200 journalists, convicting 76 journalists so far to a total of 335 years imprisonment, most under vague censorship provisions such as incitement, spreading “false news”, and disseminating “terrorist” propaganda. At least 62 journalists were languishing in prison in mid-December 2023 with disproportionate sentences up to 20 years. The military also tried to intimidate media outlets with bans, license revocations, and internet blocks, in addition to the challenges to resources, capacity, and morale caused by their journalists being detained.

The military has failed to recapture the information ecosystem. Intimidation has not stopped dynamic and resolute journalists and media outlets from publishing videos, photos, and articles that a justifiably angry public has devoured. The military's future response will likely be yet more intimidation with new “laws” that further strip away human rights protections, and more disproportionate prison sentences for any journalists that it manages to capture.

Future reforms should prioritize rolling back the military's attacks on the rights to freedom of expression and association, and establishing, with journalists, a robust framework to ensure long-lasting protection for media freedom. Reforms should address rampant impunity for crimes against free expression during the coup, and provide proper remedies to victims and survivors. All reforms should be done in accordance with international human rights standards.

⁶⁸ Japanese game in which a player has to quickly hit plastic moles that randomly pop out of holes.



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RECOMMENDATIONS

To Myanmar's future legitimate government:

- Consult on, create, and, when in power, implement media freedom legislation, policies, and plans to protect the rights to freedom of expression, assembly, and association. This should include specific, measurable, reform targets covering special media laws, general criminal laws frequently used against journalists and the media, and the judicial process itself, and include an unqualified commitment to international human rights standards and best practices.
- Nullify - not repeal - the military's unlawful "amendments" and nullify - not pardon - all military convictions of journalists. Nullification in law means that the military's "amendments" or convictions should be treated as though they were unlawful and never existed.⁶⁹
- Independently investigate and adequately remedy journalists' claims of human rights violations, including torture. This should include adequate compensation and ongoing support for those affected. The military and its representatives, including police, prosecutors, judges, and prison authorities should be held accountable.

To the United Nations and its mechanisms:

- Prioritize Myanmar, applying the same political prioritization and resources as applied to other countries. This should include increased strategic, technical, and financial support for a comprehensive and multi-pronged program on media freedom and the safety of journalists, better utilizing the UN Plan of Action as a framework, and based on stakeholder consultations.
- Ensure that the United Nations Country Team respects the wishes of the Myanmar people as voiced through their legitimately elected representatives, by better promoting human rights, including media freedom, and ensuring proper due diligence on projects, including independent evaluations of the success of all engagement with the military. This should include proper integration of the Human Rights Up Front initiative, and building upon previous recommendations to the UN in Myanmar, such as those in the Rosenthal Report.
- Continue the strong leadership of the UN Special Rapporteur for Myanmar while considering broadening the diversity of interventions to include thematic expertise from other Special Procedures.

⁶⁹ To nullify means that the legal provision (or conviction) never existed and therefore neither did any defined rights, responsibilities, or offenses included within. Nullification therefore means that what the military did was illegitimate and unlawful at the time. "Repealing" and "pardoning" are the opposite in that they legitimize the lawfulness of the original provision or conviction, but say that it no longer exists or is no longer enforceable.

- Ensure representation of journalists in future interventions by international investigative mechanisms to demonstrate international support for ensuring accountability for crimes against freedom of expression.

To foreign governments and donor agencies:

- Draw military attention to serious human rights concerns in Myanmar and publicly condemn all prison sentences given to journalists.
- Increase long-term support to the media, ensuring that support is sustained, consistent, resilient, and reaches the intended beneficiaries. This should include flexible, responsive, and unrestricted support for diverse content creation, as well as support promoting the safety, digital security, healthcare, and wellbeing of journalists – particularly female journalists and those belonging to other marginalized groups.
- Increase flexible, realistically costed, and responsive support for initiatives led by local civil society to defend journalists and media freedom in courts, including via monitoring and assessments of the judicial system, and via support to and training of lawyers and other relevant stakeholders. This should include self-defense approaches and mechanisms wherever possible.

To businesses, including Meta:

- Abide by the UN Guiding Principles on Business and Human Rights, including via public commitments, conducting human rights due diligence assessments, implementing findings, and establishing processes to remediate adverse human rights impacts.
- Support the Myanmar media by increasing businesses' internal capacity to provide targeted and more proactive security support to journalists and media outlets.

To journalists and media outlets:

- Work together, such as through unions or an independent press council, to consult on and develop policy reform proposals for any new government, setting out specific, shared, and prioritized demands, with metrics to measure success.

Annex: Myanmar's media regulatory and criminal law framework

Myanmar's media has historically been overburdened with restrictive, burdensome, and contradictory regulations, featuring unnecessary and disproportionate criminal penalties that create significant risk for media outlets and journalists alike. The following table outlines Myanmar's recent political periods and the related regulatory context.

Comparing Recent Historical Periods in Myanmar

CATEGORY	1992 - 2011	2011 - 2016	2016-2021	2021 - ONGOING
		>>> TRANSITIONAL PERIOD >>>		
Administration	Military	Quasi-civilian	Elected civilian	Military ⁷⁰
Ruling party	State Peace and Development Council (SPDC)	Union Solidarity and Development Party (USDP)	National League for Democracy (NLD)	State Administration Council (SAC)
Leader	Military leader, Than Shwe	Former military leader, Thein Sein	Party leader, Aung San Suu Kyi	Military leader, Min Aung Hlaing
Licensing and censorship	Licensing and prior-censorship of all publications	Print licensing retained with new safeguards	Broadcast licensing reformed but unimplemented	Print licensing returns with criminal sanctions
Media landscape	Independent media operate in exile	Exiled independent media move into Myanmar	Media consolidation	Independent media move into exile

The media experienced widespread, gross, and systematic violations of the rights to freedom of expression and freedom of association under the military administration that ruled Myanmar until 2011. There were three types of media outlets operating at that time. The first was state-owned or “crony”-owned propaganda outlets, including all broadcasters and major print media.⁷¹ The second was independent outlets that focused

70 The military was unable to consolidate nationwide control after the start of the coup d'état on 1 February 2021, leaving large areas of territory controlled by either an oppositional group, or by no clear institution. Previous administrations did not control all territory too, but did control more, and control more substantively. See: OHCHR (2023), “Illegal and Illegitimate: Examining the Myanmar Military's Claim as the Government of Myanmar and the International Response”.

71 In Myanmar, a “crony” is an individual who has benefited economically from their close links to the military. The military granted some cronies with media licenses. The cronies' media outlets, which covered broadcast, print, internet, literature, and cinema, often featured a mixture of light entertainment and pro-military messaging.

largely on non-political topics, had all of their content pre-approved by the Censorship Board, and operated under constant threat of losing their obligatory publishing license or being arrested. The third type was “exile” media outlets that operated abroad, beyond the reach of Myanmar’s regulatory framework, and spent much of their time trying to get information in and out of the country, while the military searched for their journalists and sources.⁷²

REGULATORY TRANSITION

A new military-backed quasi-civilian USDP administration began implementing political, economic, legal, and administrative reforms from 2011 to 2015 in what was announced as a transition to democracy under the military-drafted Constitution (2008). The reforms established some basic protections for the rights to freedom of expression and association and led to a general reduction in human rights violations.⁷³ Several exile media outlets were unblocked online in 2011, and a year later the Censorship Board was shut down. Three laws were adopted bringing the regulatory framework governing the media closer to international standards, but never quite free. The News Media Law (2014) granted some limited media rights but did not repeal, expressly override, or require compatibility from other laws that still unduly restricted media freedom.⁷⁴ The Printing and Publishing Law (2014) retained compulsory licensing for print media – incompatible with international human rights standards – and only removed some of the obstacles that were previously used to block dissenting publications from registering.⁷⁵ The Broadcasting Law (2015) would have allowed for independent television and radio channels but was not implemented.

REGULATORY TRANSITION HALTED

Although the media regulatory framework was still restrictive at the time of Myanmar’s first free and fair elections in 2015, new media outlets were launching, exile media outlets and their journalists had returned, and a diverse media sector was beginning to emerge. Aung San Suu Kyi’s NLD administration, which won a landslide electoral victory and took up power from 2016 to 2021, decided after gaining power not to continue the regulatory reforms or better protect the rights to freedom of expression and association, reneging on decades of prior commitments. In particular, the NLD

72 The outlets that based their operations outside of Myanmar were commonly labeled as “exile” media. Most did not originally operate inside Myanmar but rather were set up abroad by “exiled” individuals who had escaped persecution in Myanmar. After the 2021 coup many outlets operating inside Myanmar moved into exile abroad.

73 For more information regarding 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>. However, gross and systematic human rights violations continued against many ethnic minority groups. Violations against the Rohingya in particular later increased, leading to atrocity crimes that were being investigated by multiple international mechanisms, including the International Criminal Court and International Court of Justice. For more information, see the UN’s Independent Investigative Mechanism for Myanmar: <https://iimm.un.org>.

74 Lawmakers often claimed or implied that the *lex specialis doctrine*, according to which special laws override general laws, applied to media law, but this was not demonstrated in Myanmar in practice.

75 FEM (2017), “News Media Law”; FEM (2017), “Printing and Publishing Law”; FEM (2017), “Broadcasting Law”.

administration did not legislate to protect media freedom, end the domineering state media, close down the Orwellian Ministry of Information, or implement the Broadcasting Law and award independent channels with licenses.

Myanmar's media developed during the transitional decade despite the lack of significant regulatory reforms or human rights protections because of its ability to operate in an online space outside the offline scope of the government's regulatory framework. For example, new national, regional, and local media outlets, many of them covering current affairs and risky issues such as corruption and discrimination, were emerging online and were not required by law to seek a license under either print or broadcast laws. The NLD administration was beginning to recognize the limitations of its jurisdiction online before the coup and was already contemplating new laws to govern the online space that would have restricted the right to freedom of expression.⁷⁶

CRIMINALIZED JOURNALISM

In addition to the oppressive regulatory framework, individual journalists faced significant risks from Myanmar's harsh criminal laws, many of which flagrantly violated the rights to freedom of expression and association. These included the colonial-era Penal Code (1861) as well as specialized laws such as the Electronic Transactions Law (2004), Official Secrets Act (1923), Telecommunications Law (2013), and Unlawful Associations Act (1908). Myanmar's criminal laws all include vague and overly broad restrictions with unnecessary and disproportionate penalties and have regularly been used to criminalize journalists conducting standard journalistic practices protected under international human rights law. Scores of journalists were sentenced to prison under both the USDP and NLD administrations.⁷⁷ Many journalists perceived that legitimate journalism was increasingly criminalized under the NLD administration from 2016 to 2021.⁷⁸

76 ICNL (2021), "Myanmar: Draft Cyber Security Law and Other Threats to Fundamental Freedoms".

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

78 Multiple authors (2020), "Myanmar's media not free or fair". A globally notorious case was the arrest and conviction of two Myanmar journalists under the Official Secrets Act (1923). The two journalists were reporting for Reuters on the military's atrocity crimes against the Rohingya.



Myanmar's criminal laws all include vague and overly broad restrictions with unnecessary and disproportionate penalties and have regularly been used to criminalize journalists conducting standard journalistic practices protected under international human rights law.

Civil society campaigns to amend or repeal criminal laws to bring the framework into accordance with international human rights standards were largely ignored by successive administrations. Indeed, the USDP and NLD administrations increased the number of criminal laws that violated the right to freedom of expression. For example, the number of laws criminalizing defamation, which was often used to oppress journalists, was increased to six in total during that period.⁷⁹

The USDP administration's consistent public narrative was that Myanmar was not yet "ready" for freedom, that journalists were "inexperienced" and needed to first improve their "ethics" before criminal laws could be progressively reformed. After being elected, the NLD administration, which had previously enjoyed very positive media coverage, adopted a similar public narrative in response to increasing criticism of its performance. The NLD leadership also started, perhaps purposefully, confusing the media with social media in public statements, and blaming the media for all content online.⁸⁰ The USDP and NLD's patronizing and politicized narrative was also repeated by other influential sources, such as the Myanmar Press Council and journalists in some cases.

MILITARY "LAWS"

The military issued a slew of legal "Amendments" and executive "Orders" after the coup began, which effectively had the force of law. These "Orders" and "Amendments" were de jure unlawful because 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.⁸¹ Therefore, without a valid State of Emergency, the military had no right to make legislative changes without a legitimate government and parliament. There was no prior consultation on the "Orders" and "Amendments", which were announced without warning in the state media. In most cases, the texts were poorly drafted and extremely vague, perhaps purposefully so.⁸²

The military first "amended" Myanmar's criminal laws to add vague new crimes and increase applicable penalties. Most of the military's initial changes concerned laws governing the rights to freedom of expression, assembly, and association, seriously restricting media freedom. Within the first two weeks of the coup, the military "amended" the Penal Code (1861) to broaden the definition of treason to include protests (Article 124), and added "encouraging disaffection towards the military" to the sedition provisions (Article 124A).⁸³ The military "adopted" a new provision, Article 505A, with

79 RFA (2020), "Myanmar NGOs Urge Reform of Defamation Laws Used to Silence Critics".

80 Irrawaddy (2018), "The NLD and the Media: A Once Cozy Relationship Turns Icy".

81 Unlawful but legalistic changes have been placed in quotation marks throughout the report to emphasize that the military's changes may be cloaked in legalistic language but remain unlawful. For further information on the legality of the coup, see for example, ICNL (2021), "Unlawful Edicts: Rule by Decree under the Myanmar Tatmadaw"; also, Multiple authors (2021), "Statement by Myanmar civil society organisations on the unconstitutionality of new 'laws'".

82 English translations have been criticized for being vague and contradictory but they reflected the original Myanmar language versions which were similarly unclear.

83 ICNL (2021), "Unlawful Edicts: Rule by Decree under the Myanmar Tatmadaw".

three sub-clauses vaguely criminalizing “causing fear”, “spreading false news”, and “committing or agitating for an offense against a government employee”. In the same few days, the military “amended” the Code of Criminal Procedure (1898) to remove due process protections, and “suspended” for an unspecified period the privacy rights granted under the Law Protecting the Privacy and Security of Citizens (2017).

The military later changed the media regulatory framework and began to wield it more oppressively. The Broadcasting Law (2015) was “amended” in 2021 to restore media crimes and expand the scope of application to cover all media content online. The new provisions did not define media content, and therefore could feasibly apply to anybody publishing anything online. The Printing and Publishing Law (2014) was “amended” in 2023 to strip away the law’s few procedural safeguards and make arbitrary revocation of media licenses easier.⁸⁴

The military continued to change the criminal law framework. For example, the Counter-Terrorism Law (2014) was first “amended” in 2021 after the coup started to significantly increase penalties for several of the vague crimes included within that restricted freedom of expression, such as provisions banning “persuasion” and “propaganda”.⁸⁵ The military later “amended” the law again in 2023 to expand its surveillance powers. The military also added legitimate opposition groups, such as the National Unity Government (NUG), to the Counter-Terrorism Law’s (2014) list of sanctioned terrorist organizations, effectively ensuring that positive or even impartial media coverage of the NUG was tantamount to terrorist incitement and could attract significant penalties for journalists.

MILITARY “COURTS”

Several of the military’s “Orders” established a new system of military tribunals with jurisdiction over particular laws in townships that the military had placed under martial law. The list of laws that were placed under the tribunals’ remit included media regulatory laws, such as the News Media Law (2014), and criminal laws restricting freedom of expression, such as the incitement provisions in the Penal Code (1861). The tribunals were extra-legal both because they were created by unlawful military “Orders” and because there was no constitutional legal basis for them.⁸⁶ There was little to no information publicly available on the tribunals’ procedural rules, besides them being closed courts in which defendants had no rights to legal representation or to appeal.

Criminal cases that did not fall within the jurisdiction of military tribunals were processed by “special” courts set up within prisons.⁸⁷ Special courts were also closed

84 Center for Law and Democracy (2023), “[Note on amendments](#)”.

85 For more information on how the military has used and “amended” the law, see: ICNL (2023), “[Impact of counter-terrorism measures in Myanmar](#)”.

86 The military tribunals were not “courts martial” as established in the constitution and other laws to regulate military affairs.

87 The civil society organization, FEM, has attempted to understand and explain how the military’s new court system works based on key informant interviews with lawyers and defendants. For more information, see: FEM (2023), “[Myanmar military’s ‘justice’ system](#)”.

courts but had ostensibly civilian judges and limited legal representation. Special courts applied civilian laws but judges openly ignored the due process and evidential standards established in Myanmar law and sought to rapidly convict. More recently, criminal courts began to re-open, but only to hear “non-political” crimes. All military tribunals, special courts, criminal courts, and judgments are entirely directed by the military and are therefore effectively sham courts.

MILITARY “DIRECTIVES”

In addition to legal “Amendments” and executive “Orders”, the military-controlled ministries also issued secretive “Directives” including to state-owned, military-owned, and private telecommunications companies ordering them at different times to restrict and in some cases completely shut down access to the internet. The “Directives” were clearly issued to control the organization of protests, to silence media reporting at sensitive times, and to prevent the general public from accessing independent information.⁸⁸ Many “Directives” also included lists of individuals to target for surveillance interception.

FOREIGN JURISDICTIONS

Media outlets and journalists that moved into exile abroad faced additional legal risks under the jurisdiction of their new host countries. Most went at least initially to Thailand, a country with a poor record of protecting media freedom or conforming to international human rights standards.⁸⁹ A small minority of media outlets and journalists operated from within India’s increasingly threatening media environment.⁹⁰ Others operated from more distant jurisdictions with stronger protections for the rights to freedom of expression and association, such as Australia.

Media outlets faced significant regulatory barriers in their host jurisdictions. For example, Thai law requires that all businesses register, but the Foreign Business Act (1999, List One) prohibits foreigners from owning a media business in Thailand, or from



Media outlets and journalists that moved into exile abroad faced additional legal risks under the jurisdiction of their new host countries.

⁸⁸ For more information about the military’s crackdown on access to the internet, see: Freedom House (2023), “Myanmar”.

⁸⁹ Freedom House (2023), “Thailand”.

⁹⁰ Reporters Sans Frontiers (2023), “World Press Freedom Index 2023”.

being a majority of board directors. Any media outlets that registered were therefore forced to use complicated, expensive, and risky legal routes to register under the ownership of a figurehead Thai citizen. Thailand's regulatory framework also required media outlets to acquire a special media license under one or more laws, including the Broadcasting and Television Business Act (2008), Publishing Act (2007), and Film and Video Act (2008). As a result, many media outlets operated clandestinely and faced significant legal risks as a result of operating unofficially.

Individual journalists faced personal risks particularly from immigration laws.⁹¹ Thailand, for example, had not ratified the Convention Relating to the Status of Refugees (1951) and therefore did not fully recognize or protect the legal rights of Myanmar refugees who risked refoulement back to Myanmar or the constant need to bribe local officials. Several journalists were threatened with refoulement during the period under review, and some may have been refouled.⁹² At the same time, the Thai government has reportedly not allowed many journalists to leave Thailand for safe third countries, perhaps fearing that more refugees would come if they saw an "easy" escape route.

91 VOA (2022), "Future Remains Cloudy for Exiled Myanmar Journalists in Thailand".

92 Reuters (2021), "Myanmar reporters, activists arrested in Thailand".

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