

Rule of Law Handbook for ■ **JOURNALISTS** in Myanmar



Konrad
Adenauer
Stiftung



*Empowered lives.
Resilient nations.*

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Foreword

Konrad-Adenauer Stiftung and United Nations Development Programme Myanmar are pleased to partner in presenting this Rule of Law Handbook for Journalists in Myanmar as an important tool for media professionals reporting on governance and justice issues in the country. As Myanmar moves towards a democratic system of governance, aligning policies and practices with the rule of law is fundamental to rebuilding people's trust in government institutions as well as to promoting sustainable development in the country. In this dynamic environment, journalists play a key role in helping the people stay informed about the activities of government and to understand the workings of the legal system. Reporting knowledgeably and reliably about what is happening in Myanmar's courts, Parliament, and Government offices at all levels is also the best way for media professionals to earn the trust of the people who eagerly read, listen and view their coverage.

Accordingly this Handbook provides journalists with an introduction to the concept of rule of law as a system of governance as well as the principles such a system contains. It then provides a snapshot of the system of government in Myanmar and especially the court system. Importantly, the discussions on ethical best practices while reporting on the

justice system as well as the Code of Conduct found in the 2014 Media Law present internationally recognized best practices for journalists. The Handbook also describes some of the current legal challenges that journalists should be aware of as they do their work in Myanmar. The laws mentioned here are current as of the time this Handbook was published. Lastly, there is a short glossary and resource guide that should be helpful in obtaining more information from key governmental and non-governmental sources.

Myanmar itself recognizes the critical role journalists play in a functioning democracy; the media is considered the “fourth estate” or the “fourth pillar” of the nation following the three branches of government. As such, journalists and media professionals function as a check on the government, promoting transparency and fairness in government practices, and helping the public exercise its right to information and to obtain access to justice. We hope this Handbook will be useful as Myanmar's Journalists produce stories that are both accurate and interesting for the public.

Peter Batchelor
Country Director
UNDP Myanmar

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¹ Section 3 of the Myanmar Media Law 2014.

Introduction to Rule of Law

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Summary

This chapter will introduce the concept of rule of law as it is understood internationally, as a system of governance founded on principles of supremacy of law, accountability, protection of human rights, equality, separation of powers, public participation, and transparency and legal certainty. As the impact of rule of law extends beyond laws to all aspects of governance, the role it plays in promoting sustainable development will also be considered.





Yangon Region High Court

What is 'Rule of Law'?

In November 2015, the general elections held in Myanmar resulted in the first democratically elected, civilian-led government for more than half a century. State Counsellor, Daw Aung San Suu Kyi, has spoken at length about the importance of rule of law and its central role in Myanmar's transition to democratic governance. Since 2012, UNDP has been working in partnership with the Government of the Republic of the Union of Myanmar to strengthen rule of law and to support government institutions, including the Office of the Supreme Court of the Union and the Union Attorney General's Office, to implement rule of law into their policies, strategic goals, and daily work.

But what is meant by ‘*rule of law*’? This is a phrase used widely in Myanmar, but one that is often misunderstood as ‘rule by law’. ‘Rule by law’ means laws are used to control people and to rule over them. In this sense, it does not matter how the laws were made or whether they are fair or equally applied to all people. In Myanmar language, the term ‘*ubaday baung dwinnay tai gyin bay kin yan kwar seit chan thar*’ is used to try and capture the essence of rule of law but this is a narrow focus on simply following rules or enforcing the law. In fact, rule of law is a much broader concept. It is a system of governance in which all people are treated equally and without discrimination, where nobody is ‘above the law’, regardless of their political position or social status, and where, crucially, the exercise of arbitrary power is restrained. The transformative value of rule of law depends upon a broad conception of what it means, which includes a reform agenda that extends beyond laws themselves and to all aspects of governance.

There is no single, universally accepted definition of rule of law, but its main components were summarized by the former United Nations Secretary General Kofi Annan as:

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international

*human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.*¹

Why is it important for journalists to understand 'Rule of Law?'

Persons who work as journalists – no matter what medium – have a duty to report responsibly and to inform their readers or listeners with correct information. This is especially important when the subject of their reporting concerns legal issues, government officials, crime, corruption and other matters that touch upon the law. Having a better understanding of what the rule of law means, and how it works in Myanmar, is essential for improving the quality of journalism. And as journalists become more reliable as a source of correct information, especially about rule of law matters, they will enjoy more respect and be able to better defend their reporting from criticism.

¹ United Nations Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)

Foundational Principles of Rule of Law

Supremacy of Law

This means that 'nobody is above the law'; laws are applied in the same way to everybody in society, including the most powerful, the wealthy and those in government.

Accountability

In a system based on rule of law, it is essential that all people and institutions, whether government institutions, private entities and corporations, including the state itself, are accountable and can be held responsible for their actions and decisions under the law. The opposite of accountability is impunity; impunity is when people or entities, usually because they are wealthy, powerful or well-connected, can behave as they wish and are not held accountable or responsible for their actions.

Protection of Human Rights

Rule of law and human rights are

What happens without rule of law?

When rule of law is weak or absent, **rule by law** is often imposed:

- Members of the government are above the law
- No accountability (corruption)
- Discrimination and arbitrary enforcement of laws (eg based on ethnicity, gender, religion)
- No protection of minorities/ disadvantaged groups
- Fear of authority/ the police
- Lack of access to justice for most of the population
- Breaches of international human rights standards

sometimes described as ‘two sides of the same coin’. That is, they are mutually reinforcing and interdependent concepts. Rule of law is not simply about enforcing laws, but about ensuring that laws are consistent with international human rights standards. Laws should protect the rights and freedoms of everybody in society and ensure that there is proper redress available when violations occur. Laws should pay special attention to the needs of marginalized and vulnerable groups, such as women, young people, and ethnic and religious minorities. The effect of laws should not have a disproportionately negative impact on these groups.

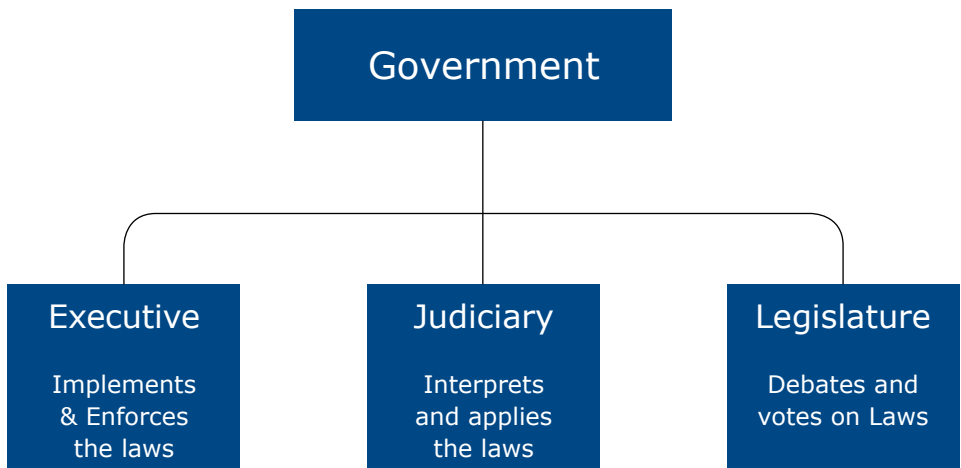
Equality Before the Law

Laws should be applied to all people in the same way and should not be used to discriminate. It is important that the laws themselves do not discriminate, but also that there is no discriminatory impact from the way in which the laws are enforced and applied. Discrimination can be based on sex, gender identity, race, religion, sexual orientation, ethnicity, nationality, social status, age, political opinion, or other reason. An example of a discriminatory law would be a criminal law that imposed higher sentences for persons of a particular religious group. Clearly this would be unfair to members of that group and they would experience unequal and discriminatory

treatment under that law. In comparison, an example of unequal application of the law would be the failure to prosecute certain types of physical assault where the perpetrator is the husband of the victim. Here, even though the law does not differentiate between men and women or between married and unmarried perpetrators and victims, it is common for cases of domestic violence to be regarded as a 'private' matter between husband and wife. Failure to apply the law against husbands in these circumstances would be an example of unequal enforcement.

Separation of Powers

The separation of powers is important for rule of law because it helps to prevent interference and undue influence between the different functional roles of government.



Power is more vulnerable to abuse if concentrated in one person or a small group of people. By separating the functions of government into three distinct branches - the executive, the legislature and the judiciary - it is easier to implement systems of checks and balances and prevent abuse of power.

Public Participation

Public participation is the foundation of democratic governance and is equally important to rule of law. In a democratic society, the needs and aspirations of the people in the country should be at the heart of the policies and plans developed by the government.

In order to foster this type of people-centred governance, governments can consult members of the community and civil society organisations on proposed laws and policies to ensure that their needs and views are taken into account in the policy-making process. For public participation to be meaningful, it is essential that the public are well informed about relevant issues; public legal awareness initiatives often form a significant part of rule of law programming for this reason. Participation should be inclusive, ensuring that it extends to all sections of society, including women and minority groups.

Transparency and Legal Certainty

Transparency is important in helping to build public trust in the government and in the legal system. Transparency means that

decisions are made by following laws and procedures that are available to the public. Legal certainty is created when institutions and officials working within the justice sector consistently and properly follow rules and procedures. If a representative of any government institution or public body makes a decision, the reasons for the decision should be given. Courts should be open and accessible to the public.

Rule of Law and Development

Rule of law is a cross-cutting issue, which can help support human rights, development and peace and security. As Myanmar continues to develop, many aspects of the ongoing transition, including peacebuilding, justice sector reform and socio-economic development, rely on changes that are built on strong foundations. Rule of law can help to ensure that those foundations are solid and that development is both inclusive and sustainable. Further, rule of law is critical in addressing and preventing corruption that can impede development. Both foreign and domestic investment rely on a robust court system in which people can safely refer commercial or contractual disputes. Building and sustaining peace will depend on inclusive processes that fully encompass the views of all ethnic and religious groups within Myanmar and that include the voices of women and girls. The safety and security of communities requires an independent judicial system which the public can trust and law enforcement agencies that use the law to protect

the rights of individuals. Rule of law is not a cure-all to the type of issues faced in transitional contexts such as Myanmar, but it does provide a strong base from which Myanmar can continue to progress and transition to democratic, people-centred governance. Above all, rule of law is a tool that can help to build confidence in government institutions in communities that have suffered through conflict and authoritarianism. Where the trust between those who govern and those who are governed has been broken, rule of law can help to repair it.

Current Rule of Law and Justice Initiatives Underway in Myanmar

While the commitment to promoting rule of law is noticeable at nearly all levels of society in Myanmar, some of the most significant rule of law initiatives will be highlighted here. More information about these initiatives can be found using the links in the Resources section of this Handbook.

Both the Office of the Supreme Court of the Union (OSCU) as well as the Union Attorney General's Office (UAGO) have engaged in strategic planning emphasizing the need for reform and adherence to rule of law principles. Taking steps to align their practices with international standards, the OSCU as well as the UAGO have each developed and launched a Code of Ethics for their respective offices. The OSCU has begun producing an Annual Report that is available on their website

in an effort to increase transparency. An independent national bar association, the Independent Lawyers' Association of Myanmar (ILAM), was established with international support.² Myanmar lawyers have formed associations and networks to support pro bono efforts and legal aid, including the Myanmar Legal Aid Network (MLAW), the Public Legal Aid Network (PLAN), and the Myanmar Lawyers Network. Lawyer-driven organizations such as Legal Clinic Myanmar, U Kyaw Myint Law Firm and Justice For All are delivering public legal awareness activities and offering legal aid assistance. Supported by the British Council's MyJustice project, 'Justice Centres' provide legal aid to the public and promote legal awareness around the country. A capacity building programme for law faculties across the country has been implemented to promote clinical legal education.³

To promote much needed coordination in the rule of law sector, a Union level Rule of Law Centres and Justice Sector Coordinating Body was formed with the leadership of the UAGO in February 2017. Regional and state coordination bodies were established in May 2017 in all 14 states/regions. The feedback the local

²Supported by the International Bar Association Human Rights Initiative.

³Led by Bridges Across Borders Southeast Asia Community Legal Education Initiative funded by UNDP.

bodies receive from their communities are expected to serve as a useful resource for identifying problems and solutions to justice sector problems locally that can inform the Union body as it develops a national reform strategy and recommendations for policy-making.

The Rule of Law Centres, in Yangon, Myitkyina, Mandalay and Taunggyi, established at the request of the Union government and through international support from UNDP, provide intensive trainings on rule of law principles, and specialized topics such as sex and gender based violence and legal skills to diverse groups of law officers, government administrators, lawyers, paralegals, and community service organizations. In addition, these centres provide platforms for community forums on topics of crucial concern such as anti-corruption efforts and the land laws.

A Summary of the Government for the Republic of the Union of Myanmar

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Summary

This chapter summarizes the organization of the national government for the Republic of the Union of Myanmar. The purpose of this chapter is to provide broad outlines of the national government—alternatively called the Union government—to clarify the distribution and scope of political and legal powers among the legislative, executive and judicial branches of government as described in the Constitution of 2008. It will briefly describe the state and regional government bodies as well.





Yangon Region Government Office

Sources

The institutions and powers of the various components of Myanmar government are largely set out in the Constitution of 2008.

Legislative / Parliament

The Union (national level) legislature is called the Pyidaungsu Hluttaw (Parliament), which is a bicameral institution comprised of two chambers: the Amyotha Hluttaw and Pyithu Hluttaw. The Amyotha Hluttaw, or House of Nationalities, has 224 elected seats that are evenly distributed across the regions and states. The Pyithu Hluttaw, or House of Representatives, has 440 seats

elected based on townships. Members of Parliament serve five-year terms.

The 2008 Constitution allocates 25% of the seats in each Hluttaw to the military, such that it has 56 seats in the Amyotha Hluttaw and 110 seats in the Pyithu Hluttaw. Military representatives in Parliament are drawn from Defence Services Personnel (military) and are appointed by the Commander-in-Chief of the Defence Services Personnel. Elections for both the Amyotha Hluttaw and Pyithu Hluttaw, along with the appointments of Parliamentary representatives of the military, are done simultaneously.

The Pyidaungsu Hluttaw is responsible for deciding the budget and directing the funds to be spent by government offices and passing laws. The two chambers of Parliament have the power to issue laws for national level subjects specified in Schedule One of the Constitution of 2008:

- defence and security
- foreign affairs
- finance and planning
- economic policy
- agriculture and livestock
- energy, electricity, mining, and forestry
- industrial policy
- transportation, communication, and construction
- social policy
- administrative management
- judicial issues

Law Making Process

In both the Amyotha Hluttaw and Pyithu Hluttaw, the legislative process involves the submission of bills for debate by a Member of Parliament (MP) in each Hluttaw. A bill approved by the Pyithu Hluttaw must be sent to the Amyotha Hluttaw for discussion, resolution, or amendment, and similarly a bill approved by the Amyotha Hluttaw must be sent to the Pyithu Hluttaw for discussion, resolution, or amendment. Bills are passed by a simple majority vote in each chamber. The Amyotha Hluttaw and Pyithu Hluttaw can coordinate their activities by forming Joint Committees composed of members from both chambers. Disagreements between the two chambers with respect to a bill require resolution through the full Pyidaungsu Hluttaw. If both chambers approve a bill, the President has to sign it to enact it into law. The President has fourteen days to sign a bill into law or amend the bill and return it to the Pyidaungsu Hluttaw. Bills that are not signed or amended by the President within fourteen days will automatically become law.

State and Regional Hluttaws

The Constitution of 2008 provides for Hluttaws for each region or state. Each Regional or State Hluttaw is comprised of two representatives elected from each township. The term of office for Regional or State Hluttaws are the same as the Pyidaungsu Hluttaw. In addition, one-third of the members of a Regional or State Hluttaw must be Defence Services personnel chosen

by the Commander-in-Chief.

Regional or State Hluttaws have the power to issue laws for their respective Region or State with respect to topics prescribed by Schedule Two of the Constitution of 2008:

- finance and planning
- economic policy
- agriculture and livestock breeding
- energy, electricity, mining, and forestry
- industrial policy
- transportation, communication, and construction
- social policy
- administrative management

The legislative process for Regional or State Hluttaws involves the submission of a bill for debate. If passed, a bill becomes law if the Chief Minister for the region signs it. If the Chief Minister fails to sign a bill for the region or state within seven days, it will automatically become law. If the Chief Minister fails to sign a bill for a self-administered zone within fourteen days, it will automatically become law.

Parliamentary Elections

Elections for Parliament are held every five years using a system where the winner for an elected office is the candidate receiving the highest number of votes. Voting is voluntary, with citizens having the right to vote via secret ballots. There is universal suffrage for all Myanmar citizens over the age of 18, though

there are some notable exceptions including members of religious orders and prisoners.⁴

Self-Administered Zones

Territories identified as self-administered zones are allowed to form their own leadership bodies, and so do not necessarily follow the model of a Hluttaw in composition or procedure. In contrast to the Union-level Pyidaungsu Hluttaw or Regional/State-level Hluttaws, self-administered zones are limited in their authority to subjects specified in Schedule Three of the Constitution of 2008:

- urban and rural projects
- construction and maintenance of roads and bridges
- public health
- development; fire prevention
- pasture maintenance
- forest conservation
- natural environment preservation
- township and village water and electricity
- township and village markets

Executive / President

The head of the Executive is comprised of the President and two Vice-Presidents, each of whom serve five-year terms with

⁴ Article 392 of the 2008 Constitution

a limit of two terms. The election process involves a Presidential Electoral College composed of members from the Amyotha Hluttaw, Pyithu Hluttaw, and military. Each group selects a Vice-President, and then from the pool of three Vice-Presidents the collective Presidential Electoral College votes for a President. Presidents and Vice-Presidents who are members of the Pyidaungsu Hluttaw must resign their parliamentary posts, and must also refrain from political party activities during their terms of office. In addition, Presidents and Vice-Presidents must not hold any other office or position receiving compensation.

Cabinet

In addition to the President and Vice-Presidents, the executive branch of Myanmar government also contains a Cabinet. The Cabinet is led by the President, and is comprised of the Ministers of the various ministries in the government. The Ministers of each ministry are appointed by the President, with the exception of the Minister of Defence, Minister of Border Affairs, and Minister of Home Affairs, all of whom are appointed by the Commander-in-Chief. As of September 2017, there are 21 ministries for the Republic of the Union of Myanmar.⁵

⁵ A full list of the ministries of the Republic of the Union of Myanmar as well as the heads of each is available on the website of the President's Office: <http://www.president-office.gov.mm/en/?q=cabinet/ministries>

Judiciary and Court System

The Union Judiciary Law was passed in 2010 to align the country's court system with the 2008 Constitution. The judiciary is comprised of a hierarchy that places the Supreme Court as the highest court in the country and descends in successive layers to High Courts for each respective region or state, the Courts of the Self-Administered Zones, and then the Courts for each district and township. Additional Courts with specific jurisdictions can be created by law. There is a separate courts-martial system for matters involving defence service personnel.

Supreme Court

The Supreme Court has appellate jurisdiction as the court of final appeal from lower court rulings, but it also has original jurisdiction prescribed by the Constitution of 2008. Original jurisdiction means that the Supreme Court is the first and only venue where certain cases can be filed, including cases arising from treaties; disputes between the levels of national, region or state, or territorial governments; disputes among governments at the region, state, or territorial level; and other subjects granted by law. Decisions by the Supreme Court are final, with no right of appeal.

The Supreme Court is also able to issue certain types of writs, and technically anyone can petition the Supreme Court for a writ. These include writ of habeas corpus (compelling authorities to deliver a prisoner to the court and show a valid reason for

the imprisonment); writ of mandamus (compelling a government entity, including a government agency or official, to perform an action or to stop performing an action); writ of prohibition (preventing a government entity from doing an action); writ of quo warranto (calling upon a government entity to prove they are authorized to exercise a right); and writ of certiorari (requiring a lower court to deliver records for review by a higher court).

The Supreme Court can have anywhere between seven and eleven judges, or Justices. All of the Justices are nominated by the President and reviewed by the Pyidaungsu Hluttaw. The Pyidaungsu Hluttaw must approve the nominees unless it can prove that the candidates are not qualified. Upon appointment to the Supreme Court, all justices must surrender membership in political parties. Once in office, a Justice can serve until he/she reaches the age of 70, resigns, is impeached, suffers a permanent disability, or dies.

High Courts

The High Courts for each region or state have appellate jurisdiction from lower courts, along with jurisdiction prescribed by law. The High Courts for each region or state can have between three to seven Justices. The Chief Justice and Justice of a region or state High Court are nominated by the President in coordination with the Chief Justice of the Supreme Court and the Chief Minister of the respective state or region. Nominees

must be approved by the respective Region or State Hluttaw, unless it can prove that the candidates are not qualified. Similar to the Supreme Court, members of a High Court must be free of party politics. A member of a High Court may serve until he/she reaches the age of 65, resigns, is impeached, suffers a permanent disability, or dies.

District & Township Courts

Below the region or state High Courts are the district and township courts and courts in self-administered zones. District and township courts, along with the courts in self-administered zones, have original jurisdiction over criminal and civil cases within their geographic areas as well as jurisdiction prescribed by law. Judges for courts at the level of district, township, and self-administered zones are appointed by the Supreme Court.

Constitutional Tribunal

Outside of the hierarchy of courts, there is a Constitutional Tribunal. Under the Constitution of 2008, the Constitutional Tribunal has the power to interpret the Constitution, review the compliance of legislation to the Constitution, and resolve disputes between the Pyidaungsu Hluttaw and the regions or states regarding the Constitution. The Constitutional Tribunal is comprised of nine members and nominees must be approved by the Pyidaungsu Hluttaw unless it can prove they are not qualified, with the nine candidates then selecting a Chairperson from amongst themselves. The term of office for a member of

the Constitutional Tribunal is five years. According to the 2012 Constitutional Tribunal Amendment Law, members of the Constitutional Tribunal must report to the President, the speaker of the Pyithu Hluttaw, and the speaker of the Amyotha Hluttaw. In addition, under the 2012 Constitutional Tribunal Amendment Law, the decisions of the Constitutional Tribunal are no longer final.

Courts-Martial

Pursuant to Section 293 (b) and 319 of the 2008 Constitution, matters involving defence personnel are to be handled by courts-martial. Decisions of these tribunals may not be appealed to the Supreme Court of the Union. Courts-Martial proceedings are generally not open to members of the public or press.

Special Courts

Juvenile courts, along with Municipal courts and Traffic courts, were constituted by the Supreme Court under certain special laws in order to provide speedy justice.

Juvenile Courts

Under the 1993 Child Law, the power to try juvenile offenders was conferred to the Township courts. While most townships have juvenile courts in separate venues within the township courthouse, separate juvenile courts have been set up in Yangon and Mandalay. The 1993 Child Law law intends for the juvenile offender to be rehabilitated and returned to society. Juvenile

offenders cannot receive certain kinds of punishment including whipping or the death penalty.

Municipal Courts

In Yangon, Mandalay, and Nay Pyi Taw courts specializing in adjudicating municipal offenses have been set up. The offenses considered by these courts are limited. For example, the Yangon Municipal Court hears cases that allege violations of the provisions of the City of Yangon Municipal Act, Rules, By-Law, Orders and Directions still in force and those under the Yangon City Development Law enacted by the State Law and Order Restoration Council.

Traffic Courts

In consultation with the Traffic Rules Enforcement Supervision Committee, separate courts in Yangon, Mandalay and Nay Pyi Taw have been constituted to try violations of vehicle rules and traffic laws.

Political Parties

The Constitution of 2008 calls for the practice of a multi-party democratic system in Myanmar wherein political parties have the right to organize and compete in elections. The Constitution of 2008 also requires that political parties include among their objectives the preservation of national unity and sovereignty, loyalty to the state, and respect for the Constitution and the

law. Political parties must be registered, and can be denied their rights to exist if they are deemed unlawful; found to be contacting or abetting an armed rebellion; considered to be receiving assistance from a foreign government, foreign person, or foreign religious organization; or determined to be using religion to further political purposes. According to the Union Election Commission, there were 94 registered political parties in the country in September 2017.⁶

Military

As indicated above, the military maintains a presence in the legislatures at both the national and region/state levels, with the Commander-in-Chief able to appoint military representatives to a dedicated proportion of seats in the Pyidaungsu Hluttaw and Regional and State Hluttaws. The military also has a presence in the ministries, with the Commander-in-Chief directing the selection of ministers for the Union-level Ministries of Defence, Border Affairs, and Home Affairs.

⁶ <http://uecmyanmar.org/index.php/voters>, last accessed September 7, 2017

Ethics and Integrity for Journalists

Bridget Di Certo

Lawyer and Journalist



Summary

As well as obeying Myanmar's domestic laws, journalists and media professionals are expected by readers and viewers to meet industry standards for ethics and integrity in reporting. In this chapter, we discuss some key ethics and integrity principles for journalists and media professionals in Myanmar to strive toward.



A courthouse in downtown Yangon

1. FOURTH ESTATE (FOURTH PILLAR)

Section 3 of Myanmar's Media Law 2014, discussed in the Chapter on Relevant Laws as well, sets out the objectives for the law, one of which is *'to ensure that News Media can stand up firmly as the fourth estate [or fourth pillar]'* of the nation.

The history of the term 'fourth estate' comes from Europe and was used at least as far back as 1787 in Great Britain. The concept is that there are three 'estates' of society: the clergy, the nobility, and the commoners – or three 'estates' of government: the executive, the parliament and the judiciary.

In addition to these three critical 'estates' is a 'fourth estate'

– the press. The imputation is that the press is considered so important to the functioning of democracy and a nation that it is like a 'fourth' estate of the nation.

In its role as the fourth estate the press is looked to by readers and viewers to keep the other three estates of government in check, to report fairly, honestly, and accurately on the machinations of government and society and to give the public information to be able to make informed votes and expose the public to opinions that may not be their own and raise on the social agenda important issues, trends and injustice.

2. CODE OF CONDUCT

The Media Law 2014 aims to '*establish and develop responsibilities, ethics, rules and regulations and practices to be adopted within relevant industries and organisations*'.

The Chapter on Ethics and Integrity for Journalists in the Media Law sets out the Code of Conduct to be complied with by all journalists and media professionals. Failure to comply with this Code of Conduct can be punished with a fine of up to MMK 1,000,000.

CODE OF CONDUCT

MEDIA LAW 2014

(a) Evaluation shall be performed to ensure accuracy and reliability of every bit of information and their completeness.

(b) When incorrect news has been published and amendment/ revision is necessary, and this takes place in the Print Media, this revision shall have to be printed in the eye-catching position of the page or, if in other media, this should be published immediately.

(c) While news regarding some cases for which litigation is being run is published, the person prosecuted shall be considered innocent until the court has passed its judgment and any news related criticism which means disregard to the court shall be avoided.

(d) While news photos, voices and pictures are published, improper ways of modifying them with the help of certain technologies shall have to be avoided.

(e) Apart from criticisms, opinions and features, no other views and opinions of journalist or reporter shall be comprised of.

(f) Intellectual properties which belong to others shall not be plagiarized or published without asking for their permission.

(g) Writing news which relate to the interest of the public, writing style which deliberately affects the reputation of a specific person or an organization or generates negative impact to the human right shall be avoided.

(h) Ways of writing which may inflame conflicts regarding nationality, religion and race shall be avoided.

Let us examine each of these points in turn.

(a) Accuracy

A fundamental quality of the Fourth Estate is that it can be trusted. Journalists and media professionals can build this trust by ensuring accuracy, reliability and completeness in reporting.

Accuracy can be attained through examination of primary, supporting and expert sources (see discussion on 'Sources' below). Reliability can be fostered through maintaining a high and consistent standard of accuracy. Completeness in reporting means to give the whole picture of a story. For example, if a story is about how shopkeepers are being evicted from a local market by a new landlord, it would be important to include in the story if the reason for the eviction is that the shopkeepers are not paying their rent.

(b) Retractions and Corrections

Unfortunately, mistakes do happen in a newsroom. When there has been an error and incorrect information has been published it is important that a correction is issued to inform readers of the error. If a story contains so many inaccuracies that the story itself is no longer accurate it should be retracted in whole.

A correction should include the headline and author of the story, the date it was published, and clearly state the incorrect

information and what the correct information is.

(c) Presumption of Innocence

It is a hallmark of the Rule of Law that all defendants are presumed innocent until a court has issued a verdict on the guilt or innocence of the defendant. During the trial proceedings stage of a court case it is important for reporters to respect this presumption of innocence.

One way to do this is when describing the acts that have led to the charges to include the word 'allegedly' and refer to the defendant as 'the accused'. This is because until a court has passed a verdict, the charges are merely allegations.

For example, 'The court is hearing the charges against Htet Myo, who stole Mar Mar Myint's wallet outside Bogyoke market last Saturday', does not contain a presumption of innocence for Htet Htet Myo. The reporting would be better as: 'The court is hearing the charges against Htet Htet Myo, for allegedly stealing Mar Mar Myint's wallet outside Bogyoke market last Saturday'.

(d) Accurate Representation

This element of the Code of Conduct is particularly relevant to quotations. It should be the case that all words that appear in quotation marks are a direct, unmodified quotation of the exact words an interviewee used. If the wording of the interviewee

is difficult to understand, awkward or uses inappropriate language, the quotation should be removed and the words of the interviewee paraphrased.

As with words, there is an expectation that journalists and other media professionals working with images, sound or video tell the complete story through their work. This means not photoshopping, editing or cropping out elements of photos, video or sound bites in a way that would leave a viewer or a listener with a different impression than if the viewer or listener had seen the complete photo, footage or heard the complete soundbite.

There is an exception to this where the photograph could be used to identify a minor or victim of a sex crime or other crime that would cause personal anguish to the person identified. In these situations, the victim or minor's face should be blurred. This should be confirmed with the relevant photo and news editor of your news organisation.

(e) Unbiased Reporting

While accuracy and completeness in reporting are some of the hallmarks of a journalist's or media professional's ethics and integrity, so is a lack of bias. All reporting that is not an opinion piece or a review, should be unbiased – meaning the journalist has not taken anyone's side in the story and the journalist does

not have any agenda to make any particular point other than to reveal the facts and circumstances of the news story to readers and viewers.

Lack of bias is a key journalist's ethic. Readers rely on journalists to be impartial and a journalist can respect this by keeping their own views and opinions – both negative and positive opinions – out of reporting. One way to do this is the writing technique of 'show, don't tell'.

For example, if the reporter has been given reason to believe that Mr. X is corrupt and has been falsely awarded a government contract, the reporter should show this in the article, instead of telling readers that Mr. X is corrupt (which would be an opinion). The reporter could show this in the article by gathering statements from sources, and documentation to prove that Mr. X has been falsely awarded a government contract. Readers may draw the conclusion, based on evidence, that Mr. X is corrupt, but it would be biased for a reporter to simply tell his readers that Mr. X is corrupt without corroboration and evidence.

(f) Original Work

All reporting and published materials should be original and properly attributed to the author/creator of the works and published with the author/creator's express permission for the publication to occur. This is especially true for graphics and images.

This also covers the use of other news organisations' reporting in your own stories. If the Associated Press or Reuters have reported a story and you are reporting on that story, it should be clear to a reader which reporting was done by Associated Press or Reuters, and which was done by your own news organisation.

(g) News Value

Readers and viewers rely on a journalist's or media professional's integrity to report on news which is in the interest of the public. This means avoiding reporting that has no public interest or news value and only aims to lower or damage the reputation of people or companies.

In certain situations, the reputation of people or companies does have news value. For example, if a company is awarded a government contract for an important project but the company's financial data and public accounts show the company is in financial ruin, this still has news value because it is in the public interest to know the company does not have the finances to deliver on the project.

Myanmar courts have taken a very conservative approach to charges of defamation. This Section (g) of the Code of Conduct goes toward creating an obligation for journalists and media

professionals – which would include newspaper political cartoonists – to not defame others.

(h) No Hate Speech

The Myanmar Media Law includes this requirement as the final instruction to journalists in the Code of Conduct. The section is drafted very broadly and there are no guidelines on how journalists must implement this requirement.

We suggest that this requirement is akin to a prohibition against hate speech, which is speech that advocates violence or hatred toward a particular person or group. There are limited rulings from the Myanmar Media Council and no guidelines to interpret how this requirement will be interpreted by Myanmar authorities.

However, the effect of this requirement is similar to (g) 'News Value', encouraging journalists and media professionals to ensure that reporting is in the public interest and has probative news value.

3. SOURCES

Sources are the stitching in the fabric of all news stories. Sources can be live (people) or documentation. All news reporting should be supported by sources. Without sources, what is written is open to criticism and claims of bias or even fabrication. A journalist's sources are her evidence that what is being reported

is true, complete, accurate and unbiased.

An informal guide is to aim for at least three sources for each report:

- Primary source;
- Supporting source; and
- Right of reply / expert source.

Ideally all your sources should be 'on the record' – that is, your sources will be identified within your story. The preference should always be for 'on the record' sources, however there will be certain times where sources may request to be off the record or are required to be off the record.

A well reported story would include at least one direct quote from each of these types of sources. A direct quote is a verbatim excerpt of a source's words given during an on-the-record interview.

These are discussed further below.

Primary source

Your primary source is the most important source of any news report. This can be a person or a document. For example, in reporting on the Union's Budget Law the budget document itself will be the primary source for the article.

More commonly, your primary source will be a person. Your

primary source should be able to speak directly about the matter at hand from personal knowledge or personal involvement. If your source can only repeat what someone else has told them, or a rumour they have heard, this is generally not sufficiently direct enough involvement for the person to be considered your primary source.

A primary source should be reliable and credible. This reliability and credibility can be confirmed through supporting sources.

Supporting Sources

It happens in journalism that sometimes a primary source has a background agenda, is lying, or is mistaken as to the true facts at hand. This is why journalists turn to supporting sources to back-up the primary source's statements/information.

Supporting sources should be able to verify or add further detail to the claims being made by the primary source and the news angle being pursued by the journalist.

A supporting source may or may not be connected to the primary source, but should not be so closely connected to the primary source so as to raise questions about independence or bias. For example, if a woman tells you she has seen a large tycoon company destroy her crop of sandalwood trees, her husband or children are not optimal supporting sources as they are too closely connected to the primary source to provide an unbiased

account. A better supporting source in this example would be a neighbour or village chief that can confirm the sandalwood trees were indeed destroyed.

As a general principle, the longer, more complicated or more contentious/controversial the story is, the more supporting sources will be required.

If you are unable to find credible and independent supporting sources for the allegations or claims being made by the primary source, the story likely does not have enough weight to be published.

Publishing weak, poorly or under-sourced reports should always be avoided.

Right of Reply / Expert sources

Right of reply is discussed in further detail below. If your article is making an allegation or claim against someone or something (like a company or government department), it is a principle of unbiased and balanced reporting to contact the person or institution to comment on the allegations that are being made.

An expert source is also helpful to bring balance to your article. An expert should be impartial and unconnected to the other sources. Independent expert sources lend weight and credibility to reporting. It is useful to include a brief description of your

expert's credentials when introducing the expert source in your story.

4. IDENTIFYING YOURSELF

It is a foundational principle that all journalists and media professionals should identify themselves as a media worker when interviewing people or seeking information.

The reporter should identify themselves by name, and the name of their news organisation and a brief introduction to the story that is being reported. The reporter should then explain what it is they want – to interview the person, to take the person's picture etc.

The reason for this is to better distinguish between 'on-the-record' and 'off-the-record' comments and to ensure that information the media worker comes into possession of is information that is being given to the media worker in their capacity as a media worker, and not in a personal or mistaken capacity.

However, Section 8 of the Myanmar Media Law provides some exceptions:

A news media worker –

a) Has to acquire news by describing his name in

accordance with their ethics. However, when issues like public healthcare, concerns which generate negative impact to the public security and environmental conservation, corruptions and misconducts are found to occur in the activities of legislature, the executive and the judiciary, social and economic centre are very important to be investigated and revealed, he/she can perform investigation with his/her name hidden according to regulations after getting permission from the relevant editor and disclose how such activities were conducted.

b) In a case for which proper actions are taken pursuant to any regulation of this law, equipment and accessories of News Media shall be exempt from being confiscated, sealed or destroyed unless the order of the court of law instructs to do so.

According to this Section 8, there are some certain situations where the Media Law permits reporters to seek information without identifying themselves as a reporter.

In our view, this should only be done in very limited circumstances where there are compelling reasons for the reporter not to identify themselves. The information gathered by the reporter 'undercover' should only be reported alongside 'on-the-record' supporting information.

It would be preferable for a reporter to interpret Section 8 as meaning a reporter may 'observe' without identifying themselves. For example, if there is a police crackdown on a protest, the reporter may observe the crackdown without identifying themselves for the purpose of viewing how police treat protestors.

As another example, if the reporter was reporting on unreasonable waiting times in a hospital, the reporter may visit the waiting room to observe the average waiting time, without identifying themselves to everyone in the waiting room.

A critic or reviewer may keep their identity as a media professional hidden to receive a true and reflective experience for the purposes of their review.

Another reason to clearly identify yourself as a journalist is that press is supposed to be offered special protections to carry out their work under Myanmar law (as discussed in the Relevant Laws chapter of this Handbook). As such it is recommended that press travelling to conflict zones wear protective clothing that identifies them as press.

5. NEWS VALUE

The five 'W's

A good story will address the five 'W's, which actually include one 'H'. These are:

- Who?;
- What?;
- Where?;
- When?;
- Why?; and
- How?

It is sometimes useful to consider a seventh element:

- So what?

A well-researched, solid news story will be able to address all of these questions within the article. If some of this information is missing it is a clue that further reporting is needed or that the story perhaps has low news value.

6. INVESTIGATIONS

Investigations are the backbone of news publications. This is the meaty work that the public looks to the fourth estate to undertake. As such, it's a good move to develop productive, ethical habits for investigations (as a bonus this will help with day to day reporting as well).

All investigations will be made up in large part of interviews.

After identifying yourself to your interview subject, you would ask permission to record your interview. A good practice is to start your recorder while identifying yourself and asking permission to record so that when your interview subject says 'yes' you have their consent recorded as well. If the person says no, you should immediately turn off your recorder.

It is unethical to record an interviewee without their express permission.

If the interview subject declines to have the interview recorded, you can still proceed with the interview 'off-the-record' – the interviewee may point out information that is useful to your investigation.

The interviewee may agree to be quoted by you anonymously. Journalists and media professionals should only agree to quoting an interviewee anonymously in extenuating circumstances. The preference should be to avoid using anonymous/unnamed sources in reporting at all costs. There should be a compelling reason for quoting someone anonymously and this reason should be stated in the published article. Such reasons could be – the person has no authority to speak to the press, or a fear of reprisals. If the interview subject simply doesn't want their name to be reported, a savvy reporter would question the person's motives in speaking to the press at all.

If a person does not want their true name to appear in the press it is bad practice to use a fake name instead. No news article should ever contain false information, not even to protect someone's identity. It is more transparent and credible to instead describe the source as unnamed or anonymous, the reason for the anonymity and as much information about the person as is possible without given away their identity.

Investigations can become long and complex. A good practice to have is keeping good notes of dates of interview subjects and the content of those interviews. A journalist should get in the habit of taking down the full names, phone number and other contact information (like Email or Viber) for all interview subjects in case there is a need to cross-check information with the interviewee later in the investigation process.

7. VIDEOS AND PHOTOGRAPHS

As discussed in the Code of Conduct, photographs and videos should not be manipulated in any way that distorts the truth of the images.

There is an exception to this where the photographs or videos are incriminating or damaging to the subject. For example, sex workers and sex crime victims should not be identifiable in videos and photographs unless they have expressly consented to being identified. In general, the same principle should be applied to other vulnerable groups of people such as minors

and drug addicts.

A videographer or photographer would note the name, age and contact information of any subjects who appear in their images.

8. RIGHT OF REPLY

A hallmark of fair and balanced reporting is to offer people and institutions a 'right of reply'. This means that in a report where a person or institution has been accused of something or there have been negative insinuations, that the subject of the report should be offered an opportunity to respond or reply.

A legitimate effort should be made to offer the person or institution a right of reply. This means, where possible, giving the person/institution reasonable time to offer a reply. This is often difficult in a daily news cycle, but for example, calling the businesses offices of Mrs. C after hours on a Tuesday night for a story going to print that same night is not akin to given Mrs. C a reasonable time to offer a reply.

It is good practice for the journalist or media professional to contact the person/institution in a way that they could reasonably be expected to be reached (for example, sending an email is likely to be more effective than sending a letter in the mail). The journalist or media professional should identify themselves and their news organisation to the person/institution and explain what the crux of the story is and ask if the person/

institution has any comment.

If the person/institution was contacted but did not issue a reply, the journalist would include this in their story to confirm that there was at least an attempt at offering a right of reply, even if this was ultimately unsuccessful.

Offering a right of reply to persons/institutions can also help avoid situations where aggrieved persons file complaints of defamation against media workers.

9. CONFLICT OF INTEREST

Another ethical responsibility of journalists and media professionals is to avoid both real and perceived conflicts of interest. Conflicts of interest will be defined slightly differently in different newsroom cultures and are very circumstantial. A media worker would do well to be diligent in bringing any possibility of a real or perceived conflict of interest to their editor for discussion.

There are some obvious conflicts of interest, for example where a reporter is bribed to report or not report on a story. But some other conflicts are more complicated.

For example, accepting food or drink provided by a source could be seen as bribery, as could accepting offers of transportation or accommodation by persons directly involved in the story that

is being reported.

The National League for Democracy issued new government guidelines on bribery and accepting gifts for public servants in 2016. Under these guidelines, public servants in Myanmar are prohibited from accepting any 'gift' – food, drink, transport, accommodation, or other benefit or enrichment – that is worth more than MMK 25,000.

While this guideline does not apply to journalists, it is a good benchmark. There are some situations where gifts greater than MMK 25,000 could be accepted, for example in accepting transport to an area of the country that the reporter would otherwise not be able to access.

Another difficult conflict of interest is where the reporter has some form of relationships with the subject of a story or sources or people connected to the story. The preference is to avoid all types of relationship conflicts. Where these are unavoidable, the conflicts should be disclosed within the story.

Reporting of Court Related News

Shama Farooq, JD

UNDP Myanmar Rule of Law and Access to Justice Officer



Summary

This chapter will outline the principal features of the court system in Myanmar to assist reporters in getting a basic understanding of the justice system. It will also provide journalists with information on fair trial rights which they should expect to observe when inside a courtroom. Further, it will provide insight on developing accurate and informative stories about court cases. We hope that in helping society understand the country's legal system, journalists can assist in furthering the rule of law in Myanmar.



Journalists at a courthouse

Why Court Reporting is Important

By reporting on the legal system and the courts, journalists play a major role in achieving and maintaining a justice system that complies with the rule of law principles discussed earlier in this Handbook. In writing about the workings of courts, journalists help promote transparency in the legal system. In addition, when journalists report on the grievances that are raised in courts and how the people working in courts respond to them they help spread information about the rights of citizens and the system of justice in the country. As a result, the media can be seen as the eyes and ears of the people. In helping the public understand the system of justice in Myanmar, the media can also instill respect for the rule of law in the public and assist

with identifying areas that need improvement.

As criminal cases raise especially heightened concerns for the rule of law, much of this chapter will focus on criminal trials.

Fair Trial Rights

As journalists covering courts in Myanmar, it is important to be aware of the rights of the parties, and in particular the rights of the criminally accused. Fair trial rights are the minimum standards that must apply to people who are put on trial for a criminal offence. They reflect the foundational principles of rule of law as discussed in the opening chapter. A violation of fair trial rights is a threat to the entire rule of law system. This section will briefly cover some of those rights journalists should expect to see in a trial setting that is characterized by the rule of law.

1. Equality Before the Law

The 2008 Constitution of Myanmar repeatedly emphasizes that all citizens shall enjoy the right of equality and the Union shall not discriminate based on race, birth, religion, official position, culture, sex or wealth. (See 2008 Constitution Articles 21 (a), 347 and 348). Therefore under the law, race, religion, culture, sex, and national origin should not be considered when deciding whether a party is speaking truthfully or whether they deserve

to be protected by the law. The trial process itself must ensure that all accused, regardless of what they are charged with or where they come from, receive equal treatment.

2. Presumption of Innocence

In criminal cases the accused is considered innocent until the prosecution has presented all the evidence.⁷ This is referred to as the presumption of innocence, and this is a very powerful principle that affects how the accused is treated before the verdict. This requires that every coercive measure taken against the accused, such as pre-trial detention, in the pre-trial stage should be necessary and proportionate. It even prohibits the use of shackles or handcuffs on the accused inside the courtrooms as that gives the accused a guilty appearance. This presumption of innocence has a bearing on how journalists report on court cases as well. As mentioned in the chapter on Ethics and Integrity for Journalists, the Code of Conduct in Myanmar's Media Law 2014 specifically requires that 'while news regarding some cases for which litigation is being run is published, the person prosecuted shall be considered innocent

⁷ This is in accordance with the Common Law, international customary law and courts in Myanmar have repeatedly affirmed that this is the law of the land. See for example: 'All accused shall initially be considered by the court of law as innocent.' *Maung Mya Aung v. The Union of Burma*, 1969, *Burma Rulings* (spe) 9.

until the court has passed its judgment.’

Furthermore, any doubt in the evidence is to the benefit of the defendant in a criminal case.⁸ The defendant can even stay completely silent throughout the trial, the burden to present proof showing that the defendant is guilty would still be with the prosecutor.

3. Public Trials & the Right to be Present

Everyone has a right to a trial in public under both international principles as well as national law. (UN Declaration of Human Rights Article 10; Criminal Procedure Code Section 352 (hereinafter ‘CrPC’)) Myanmar courts recognize this right as well; in *The Union of Myanmar v. Maung Shwe (a) Maung Shae*, a 1966 case, the court stated, ‘Justice must not only be *done*, but also be seen to be done’.⁹ The right to a public trial may be curtailed in certain circumstances such as cases in Juvenile Courts as noted below, but the presiding judge must make that decision. (See CrPC Section 352 and Burma Courts Manual

⁸ ‘Whether the action is right or wrong in reality, a finding of guilt and sentencing are based upon the statements made by the witnesses in the court of law. If evidence is in doubt, the accused shall be entitled to enjoy the benefit of the doubt.’ *Maung Tin Mya v. The Union of Burma*, 1966 B.R. 644.

⁹ *The Union of Myanmar v. Maung Shwe (a) Maung Shae*, 1966 M.L.R. (H.C.) p. 616.

Paragraph 21, also Child Law 1993 Section 43) The accused has to be present in court during his/her trial. (CrPC Section 353)

Note that the principle of public trials includes the right of the press to be present in court and report on hearings.

4. Right to an Independent and Impartial Judge

International fair trial standards require that independent, impartial and competent judges preside over trials. (International Covenant on Civil and Political Rights Article 14 (1) as well as Universal Declaration of Human Rights Article 10). Myanmar law is aligned with this principle and the 2008 Constitution lists 'to administer justice independently according to law' as a judicial principle. (Article 19 (a) of the 2008 Constitution) Judges must be free to render judgements based solely on the evidence presented and the law, and not influenced by the other branches of government or the public.

5. Burden of Proof

Under the rules of evidence in Myanmar law, the burden of proving a claim falls upon the party who is making it. (Evidence Act Sections 101-104). In criminal cases this means the burden of proving the charge, or the criminal accusation, against the defendant is on the prosecution. In criminal cases in the higher

courts of Myanmar a law officer, who is a civil servant, represents the government as the accusing party (CrPC Section 270). It is the law officer who has the burden of proving the charge against the accused. The accused should not be forced, apart from the case of special defences, to present any evidence to prove his innocence.

6. Right to Remain Silent

As a companion to the principles regarding the presumption of innocence and the burden of proof, the accused has a right to remain silent and not be forced to provide evidence against himself. This right is vulnerable to abuse not only during questioning by the police, but also during the trial. Once an individual indicates he wishes to remain silent, an interrogator, be it the judge or a police officer, cannot pressure him to speak, either through verbal pressure or through physical force.

The Criminal Procedure Code in Myanmar reiterates this right in different ways. Under international principles of fair trial, the defendant cannot be compelled to testify against himself and cannot be forced to confess guilt (ICCPR 14 (3) (g)). Under Myanmar law as well, the accused cannot be compelled to give evidence and cannot be punished (including when deciding on the sentence) for refusing to answer questions. (CrPC Sections 256 and 342).

7. Right to a Defence & the Right to Counsel

Both the Constitution of Myanmar as well as the Criminal Procedure Code reiterate the international principle that an accused has the right to present a defence and the right to be represented by an attorney. (2008 Constitution Article 19 and CrPC Section 340 (1)). Furthermore, if in a case the possible punishment is death, the government must provide the accused with a lawyer. (Burma Courts Manual Paragraph 457 (1)). The right to present a defence also means having adequate time and resources to prepare and present the defence. Furthermore, the right to a lawyer includes being able to communicate in confidence with the attorney without intervention by other actors. Critically, this right includes the right to effective representation, that is the right to be represented by a competent attorney.

General Features of the Justice System in Myanmar

The current legal system in Myanmar is based on the British Common Law in which judges make decisions on disputes brought to them by the parties. Under the Common Law, judges have to base their decisions on the evidence presented to them, and according to the written laws as well as previous court opinions. The party bringing a claim is called the plaintiff, and in criminal cases the prosecutor, while the opposing party is

called the defendant.

Most courts in Myanmar are courts of limited jurisdiction or power, both in terms of what kinds of cases can be brought before them as well as their geographical reach. The general hierarchy is magistrate/township courts, District courts, High courts and the Supreme Court. As described in the chapter on the Government of Myanmar, there are also Juvenile courts, Municipal and Traffic Courts, the Constitutional Tribunal and the Courts-Martial. Township judges/magistrate can preside over civil cases where the amount in dispute does not exceed 10,000,000 kyats. In terms of criminal cases, township courts are restricted to presiding over trials where the charge carries a maximum sentence of up to seven years imprisonment.

How a Criminal Case moves into and through a Court in Myanmar

Cases generally start in the lowest court, usually the township or the district court. A Magistrate may initiate proceedings in a criminal matter based on a written report from a police officer or on a complaint or information received from anyone else including himself. (CrPC Section 190). If the Magistrate finds there are sufficient grounds for proceeding, depending on the specific charge involved, he can issue a summons for the accused to appear or a warrant for the accused to be arrested. (CrPC Section 204) Summons cases carry sentences of less

than six months, while in warrant cases the sentence can range from six months to death. (CrPC Section 4) If the charge is the kind that can only go to trial before a higher court, such as the District Court or a High Court, the Township Magistrate acts as a gatekeeper to determine if there is enough evidence for sending the case to a higher court. (CrPC Section 206-213)

Police officers can arrest a suspect without a warrant if the suspected offense is listed in the schedule of 'cognizable' offenses, but they need a warrant in the case of an offense that is considered 'noncognizable'. (CrPC Section 4) Once in custody, whether the suspect can be bailed pending trial depends on whether the alleged offense in question is listed as a bailable or a non-bailable offense in the same schedule. (CrPC Section 4)

In all trials, the accused is first asked how he pleads. (For magistrates CrPC Section 242) If the accused pleads not guilty, the court hears the complainant's evidence followed by any evidence from the accused. The accused has the right to testify on his behalf but consistent with the fair trial principle discussed above he can remain silent as well. (CrPC Section 340) The Court can ask him questions to explain certain circumstances after the prosecution has finished presenting its evidence, but he is not put under oath during this time and his answers still do not shift the prosecution's burden in the case. (CrPC Section 343)

The accused has the right to cross-examine the prosecution's witnesses and also present witnesses of his own.

Judgments

Judgments are of special importance to journalists reporting on court cases because they are a valuable and credible source of information about the outcome of a case.

Evidence taken during the trial must be written down during the trial in the language of the Court (CrPC Section 355 and 356) and this is often referred to as the record of the case. The court is supposed to use this record and the relevant law in the case to reach the decision. Judgements, or the decisions of a court, have to be pronounced in open court and the accused has a right to be present at this time. (CrPC Section 366 and 367) The presiding officer of the Court has to write the judgement down with the reasons for the decision. (CrPC Section 366 and 367). Taken together, the written record and the judgement assist the court in adhering to rule of law principles in explaining how its decision were based on evidence presented in court as well as the governing law. Furthermore, the written judgements are useful for journalists to have an accurate record of the activity in court.

Public Access to a Courtroom

In Myanmar the public has a right to view a trial in court. Under the 2008 Constitution, trials are to be held 'in open court unless otherwise prohibited by law.' (Section 19 (b) as well as Union Judiciary Law Section 3 (b)). This provision allows members of the press, as members of the public, to enter courtrooms. As this provision also notes, access to the courtroom can be limited in certain circumstances in the law. In these exceptional circumstances, it is the presiding judge or Magistrate who is authorized to limit access, not other officials in the courthouse.

In particular in Juvenile Court cases, the court can order anyone to leave the courtroom if it is considered necessary in the interests of the child, and this includes the child accused as well. (Child Law 1993 Section 43)

The Supreme Court of the Union has developed a Handbook for Media Access to the Courts, which includes sections on obtaining information from courts.¹⁰

¹⁰ The English version of the Handbook is available on the Supreme Court's website at http://www.unionsupremecourt.gov.mm/sites/default/files/supreme/media_hand_book.pdf

The Scene Inside a Courtroom

The best way to cover a court case is to be inside the courtroom. Once inside, the judge should be seated behind a higher bench and there will likely be a court clerk, and possibly a separate stenographer. On one side of the room there should be a prosecutor if the court is hearing cases involving law officers, and usually on the opposite side of the room, a defence attorney.

Seating has reportedly been limited inside courtrooms in spite of the fact that the law requires courtrooms to be open and accessible to the public.

Best Practices for Covering Court cases

Educate Yourself

Educate yourself on the law and court procedure as well as best standards of practice. You can use the laws quoted in this Handbook to start to understand the legal landscape, but do not be afraid to ask for help.

Lawyers can explain things to you. For that reason, make friends with lawyers, and be aware of the distinctions in practice between Advocates and High Pleaders.

In addition, some clerks may be willing to talk to you. Clerks

will likely be able to explain what has happened so far in the case and what procedures are coming up.

Judges can also explain what has happened in a case so far. Ask whether you can visit a judge in his/her chambers. For transparency's sake, always identify yourself.

Be present in court

Come to court to watch the actual court proceeding. Do your best to get inside the courtroom even though it is likely to be a small space with limited seating. The cause list, or the daily list of cases, should be posted publically.

Considering the limited seating and how court schedules change, arrive in court as early as possible to observe the proceedings.

Even if your news organization has more than one reporter available to cover a case, try to use the same reporter or team of reporters to cover the entire trial.

Remember it is highly unlikely you will be allowed to use a recording device in court. Find a location where you can hear the proceedings properly and be ready to take notes using pen and paper.

Writing an accurate story

When quoting parties it is best to quote what they said in open

court, as that will likely become part of the record. Even if parties are willing to give you nice long quotes in media interviews outside the courtroom, remember it is what is said inside the courtroom that matters the most.

Further, make sure you have sources from all the parties involved in a matter.

Sometimes the most important quote can be the one that gives the explanation for why something happened. For example, why did the judge deny bond?

For reliable information on the reasons why a judge ruled a particular way, seek out the judgment. The public has a right to view the judgment in a case, and you can ask the clerk's office for this. Some judgments from the High Courts and the Supreme Court, as well as cause lists, are posted on the website of the Supreme Court of the Union.

In addition, the Supreme Court of the Union has designated teams of Court Information Officers at the Supreme Court, High Courts of the Regions and High Courts of the States. At the District court level, the District Judges act as the Court Information Officers and at the Township courts, the Township Judges perform that function. Contact information of these officers is available in the Supreme Court's Handbook for Media Access to the Courts mentioned above.

When you do get access to a judgment and use it in your writing, remember that in explaining legal language, journalists should be true to the spirit of the document.

Be mindful of your obligation to preserve the presumption of innocence and refer to the Ethics and Integrity for Journalists Chapter for more details on achieving this. Use the term 'the accused' instead of 'the defendant' and 'allegedly' instead of implying before the conviction that the accused in fact committed the crime he is charged with.

Review the fourth and fifth exceptions to the Defamation charge (Section 499 of the Penal Code) that are mentioned in the Relevant Laws Chapter of this Handbook to help you craft stories that focus on the court case and steer away from problems with the law. Similarly, revisit the section on the Contempt of Courts law that describes writing objective facts about a court case and reserving opinions about the merits until after judgment has been rendered.

Confidential Information

Do not publish classified information, for example minors' identifying information. Some news organizations have developed guidelines on covering sexual assault cases, which include not revealing any identifying information of the victim unless requested by the victim.

In addition be mindful of the balancing of freedom of speech and the press against the right to privacy and the defendant's right to have a fair trial. Some restrictions in this regard are described in the chapter on Relevant Laws.

Relevant Laws

Bridget Di Certo

Lawyer and Journalist

Summary

This chapter will look at some of the key laws that have an impact on how journalists and media professionals operate in Myanmar. Some of the laws under which journalists and media professionals in Myanmar can face criminal and civil charges are discussed at length.





A Juvenile Court

International Standards on Media Freedom

Freedom of the press is considered a fundamental human right internationally, and is closely linked to freedom of expression. The Universal Declaration of Human Rights states, 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'.¹¹ Any restrictions on the media must comply with a three part test according to the

¹¹ Article 19 of the Universal Declaration of Human Rights.

International Covenant on Civil and Political Rights¹²: 1) they must be provided by law, 2) they must be for the protection of national security, public order, public health or morals and 3) they must be necessary.¹³ When a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Internationally acceptable limits on the exercise of freedom of expression include prohibitions against propaganda for war and any 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.¹⁴ If a government agency sets requirements before allowing access to facilities such as meetings of parliamentary bodies or courtrooms, these restrictions must still meet the three-pronged test. Further, journalists have a right to protect the confidentiality of their sources.¹⁵ Attacks against media workers undermine their independence and the free flow of information to the public, and states have an obligation to prevent and investigate such attacks.

¹² While Myanmar is not yet a party to the International Covenant on Civil and Political Rights (ICCPR), its provisions are now considered customary international law.

¹³ ICCPR Article 19 (3).

¹⁴ ICCPR Article 20.

¹⁵ This right is recognized by numerous leading international legal bodies including the European Court of Human Rights, the Organization for Security and Co-operation in Europe, the Inter-American Declaration on Principles of Freedom of Expression, and the African Commission on Human and People's Rights.

Laws to be Considered

The Myanmar laws considered in this chapter are:

1. Constitution 2008
2. Penal Code 1861
3. Telecommunications Law 2013
4. Electronic Transactions Law 2004
5. Media Law 2014
6. Printing and Publishing Law 2014
7. Unlawful Associations Law 1908
8. Contempt of Court 2013
9. Myanmar Government Official Secrets Act 1923
10. Child Law 1993

This is not an exhaustive examination of all the laws that could be used to govern or restrict media activities, but these are some of the key legal instruments for journalists to be aware of.

Myanmar's Legal System

Myanmar's legal system is made up of a combination of:

- (a) colonial-era British laws,
- (b) mid-century orders,
- (c) rules and directives issued by a socialist government,
- (d) military-government drafted protectionist laws and rules, and
- (e) modern legislation drafted by majority civilian-led

governments.

This mix of legal sources is underpinned by a common law court system which is designed to have at its heart court rulings that explain how the law applies in specific cases. However, it is not possible in Myanmar to easily access court judgments. This makes it difficult to analyse how the courts view, interpret and apply each of the relevant laws for journalists and media professionals.

Some of the laws listed below are relatively ambiguous, many are quite old and the use of illustrative examples does not always make clear what the law is intended to allow or restrict.

Relevant Laws for Journalists and Media Professionals

With the right to freedom on speech and expression come important responsibilities. In Myanmar, there are many laws that outline these responsibilities and place restrictions on speech and expression.

Below are summaries of some of the key laws for journalists and media professionals to be aware of in the undertaking of professional journalism. The below summaries and sections are in force as of the time of printing this Guidebook but are subject to amendment in the future. Of course, journalists and media

professionals are not exempt from the usual laws of the land in the pursuit of their reporting. For example, a journalist is not allowed to violate criminal laws such as trespass or burglary when reporting on a story.

1. 2008 Constitution

The constitution is the primary legal document for a country. It establishes the basic legal norms for the country and could be considered a 'parent' or 'founding' law. The principles set out in the Constitution are then set out in more detail in the laws of the country. For Myanmar, the 2008 Constitution is the primary legal document.

This 2008 Constitution contains protections of freedom of speech and expression and freedom from discrimination.

Freedom of speech is protected before the Union Pyidaungsu and Pyithu Hluttaw under articles 92 and 133 of the 2008 Constitution, while Article 185 provides the same freedom of speech guarantee before the State and Regional parliaments.

Article 354 of the Constitution sets out the most relevant fundamental rights and duties of citizens:

Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality:

(a) To express and publish freely their convictions and opinions...

This article provides a very basic and minimum provision of freedom of speech. It does not provide comprehensive freedom of speech protections as there are many elements of the constitutional protection that are not clearly defined, such as 'community peace and tranquillity or public order and morality'.

In general, it is not a criminal act to do something that is contrary to the constitution. Acts are criminalised in other domestic legislation of Myanmar. But it is important for journalists and media professionals to be aware that Myanmar's 2008 Constitution does provide some protections for freedom of speech as one of the basic principles of Myanmar society.

Article 364 of the Constitution also prohibits '*any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects*'. Such acts that are contrary to Article 364 could include hate speech.

Again, it is not a criminal act to do something that is contrary to Article 364, but in a media landscape it is important to be aware that such acts as listed in Article 364 are against the foundational principles of Myanmar society.

KEY TAKE-AWAYS:

- (1) Myanmar's 2008 Constitution is the foundational legal document of the country and lays down the legal principles for Myanmar society.
- (2) The 2008 Constitution provides a basic guarantee of freedom of speech.
- (3) The 2008 Constitution provides a basic prohibition against forms of hate speech.

2. Penal Code 1861

The Penal Code contains acts and actions that are considered to be 'crimes' under Myanmar law. By this, we mean these are the actions that can be punished with a prison term. Criminal acts are also found in the other laws mentioned below.

Defamation

The Penal Code is important for journalists and media professionals because it contains the provisions that define the crime of defamation in Section 499:

Words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person.

The penalty for defamation is a prison term of up to two years, or a fine, or both. Helpfully, the Penal Code provides some

explanations, examples and exceptions to help us understand what acts may be considered 'defamation' and what a defence to a suit for defamation may be.

Explanations

Who can be defamed?

The Penal Code explains that the subject that is defamed can be a person, either living or dead, or company, or an organisation or association of persons. All of these categories of persons/entities are capable of being defamed.

What is an 'imputation'?

An imputation includes the use of humour, satire or irony to say something about a person or entity, but means something different. The Penal Code gives the following example:

A says – '*Z is an honest man; he never stole B's watch*'. This could still amount to defamation as the intention is to make the reader/listener believe that Z really did steal B's watch.

An imputation also includes a signal, tone, or indication (not necessarily always something written). The Penal Code again gives a helpful example: *A is asked who stole B's watch. A points to Z, intending it to cause it to be believed that Z stole B's watch.*

In this example, an action can be defamatory.

Exceptions

The Penal Code provides ten exceptions to a suit or claim of defamation. There are helpful illustrative examples for some

of these exceptions in the Penal Code and all of the examples noted here can be found in the Penal Code.

First exception – Truth for the public good

It is not defamation to impute anything which is true concerning any person if it be in the public good that the imputation should be made or published. According to the Penal Code, whether it is for the public good or not is determined as a matter of fact, meaning the judge would look at the facts surrounding the case and look for tangible public benefit from the information being published.

It is important to note how narrow this first exception is. In many other countries, it is not defamation if the information being reported is true. However, in Myanmar, it must be true and for the public good. Whether something is for the public good will likely be a subjective test to be determined by the court. This makes the application of this first exception uncertain and unpredictable.

Second exception – Opinion of public servants

It is not defamation to express in good faith an opinion about the conduct or character of a public servant only in respect of the execution of the public servant's public functions.

Third exception – Opinion of public figures

It is not defamation to express in good faith any opinion

whatever respecting the conduct or character of any person touching on any public question. Similar to the second exception, this applies only to public figures where the opinion is given regarding their public character or conduct.

It is important to note the difference between opinion and factual reporting. An opinion is an unsourced view of a person.

Fourth exception – Court proceedings

It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

This exception covers the factual reporting on preliminary court motions that take place in open court. A court is 'open' if the public are allowed to attend. A court is 'closed' if no public are allowed to attend.

Fifth exception – Opinion about court proceedings

It is not defamation to

express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as party witness or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct and no further.

Similar to the other exceptions, the opinion can only be expressed about the character or conduct of the person in so far as it relates to the trial. The examples in the Penal Code are especially helpful for reporting on court cases.

For example, A says – ‘I think Z’s evidence on that trial is so contradictory that he must be stupid or dishonest.’ A is within this exception if he says this in good faith, inasmuch as the opinion which A expresses respects Z’s character as the opinion is only about Z’s conduct as a witness, and nothing else.

However, if A were to say – ‘I do not believe Z’s evidence at trial because I know that man is a liar.’ A is not within this exception because the opinion expressed is about Z’s character outside the court proceedings.

Sixth exception – Opinions on published or performed works

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as her character appears in such performance and no further.

The Penal Code further elaborates that a performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public. If an author publishes a book, a person

makes a speech, or an actor/singer performs for the public, opinions can be expressed about the merits of these published or performed works and the character of the publisher or performer only in relation to the publication or performance.

Here also, the Penal Code provides a number of examples for this exception. For example, A says of a book published by Z – ‘Z’s book is foolish; Z must be a weak man. Z’s book is indecent; Z must be a man of impure mind.’ A is within this sixth exception if he says this in good faith as the opinion expressed concerns Z only in relation to Z’s book and no further.

By contrast, the Penal Code provides this example: But if A says – ‘I am not surprised that Z’s book is foolish and indecent for he is a weak man and a libertine.’ A is not within this exception because the opinion of Z’s character is not in relation to the book.

Seventh exception – Censure

It is not defamation for a person of authority to censure another.

The Penal Code provides the following illustrations:

- A judge censuring in good faith the conduct of a witness, or of an officer of the Court;
- A head of department censuring in good faith those who are under his orders;
- A parent censuring in good faith a child in the presence

of other children;

- A schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils;
- A master censuring a servant in good faith for remises in service, a banker censuring in good faith the cashier of his bank for the conduct of such cashier as cashier.

Eighth exception – Complaint to authority

The Penal Code gives an exception for a person who makes a complaint in good faith to a person who has lawful authority over a subject matter of person.

For example, a person could complain about Z, a child, to Z's father because Z's father has lawful authority over Z the person. An employer could make a complaint about their employee to a Magistrate because the Magistrate has lawful authority over hearing employment-related complaints.

Ninth exception – Warnings

It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

The Penal Code gives the example of A, a shopkeeper, saying to B, also a businessman, 'Sell nothing to Z unless he pays up front, for I have no opinion of Z's honesty'. The warning is given

by A in good faith to B for B's own protection and is not defamation.

Tenth exception – Warnings

This tenth exception and final exception to a charge of defamation is similar to the ninth exception. The Penal Code says it is not defamation to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Other Penal Code provisions relevant for journalists and media professionals

The Penal Code contains other provisions relevant for journalists and media professionals. These include crimes of offending religion and crimes of inciting the public or persons to commit a crime. The Penal Code also includes crimes of disturbing public peace and tranquillity.

KEY TAKE-AWAYS:

- (1) The Penal Code contains the main crimes of defamation, which is broadly defined with narrow exceptions and defences.
- (2) There are ten exceptions to defamation, however truth alone is not an exception.
- (3) The Penal Code contains other crimes including those of offending religion and incitement to commit a crime.

3. Telecommunications Law 2013

Sections 66 and 68 of the Telecommunications Law contain the most relevant provisions for journalists and media professionals.

Following the most recent revisions of 2017 under Law 26 of the Pyidaungsu Hluttaw, Section 66 (d) now gives a maximum two-year jail term, or fine, or both, for an act of 'extorting, defaming, disturbing, or threatening any person by using any Telecommunications Network'. This section describes the criminal conduct very broadly and unlike Section 499 of the Penal Code described above (defamation) it contains no examples, illustrations or annotations with which journalists may decipher what behaviour contravenes the section and what does not. The change from the earlier maximum three-year jail term to the current two-year now allows for pre-trial bail. Another recent revision now requires the subject of the defamation to make a complaint; the earlier, more punitive law, allowed anyone to file a complaint on behalf of the person or organization at issue.

Section 68 (a) makes it an offence, punishable by up to one year in prison, or fine, or both, for the act of 'communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation'.

KEY TAKE-AWAYS:

- (1) The offence provisions under Sections 66 and 68 of the Telecommunications Law are broadly and ambiguously drafted.
- (2) The Telecommunications Law contains no exceptions of defences to the crimes listed within.

4. Electronic Transactions Law 2004

Offences and penalties under the Electronic Transactions Law include the Section 33 offence of using 'electronic transactions technology' to:

- (a) *do any act detrimental to the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture; or*
- (b) *receive or send and distribute any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture.*

Offences under this section are punishable by a minimum of five years and a maximum of seven years imprisonment under a 2014 amendment.

Section 34 (d) makes it an offence to 'create, modify or alter information or distribute information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organisation or any person'.

We can see that the offences under the Electronic Transactions Law are again broadly drafted, however in practice are seldom used to prosecute journalists and media professionals.

KEY TAKE-AWAYS:

- (1) Electronic Transactions Law makes it an offence to do anything detrimental to the country, law and order, peace and tranquillity, or national solidarity, economy or culture.
- (2) Electronic Transactions Law makes it an offence to modify electronic information in a defamatory or detrimental way. This could include images as well as text.

5. Media Law 2014

The Media Law was introduced in 2014.

Section 4 of the law sets out the rights of media workers as follows:

- (a) *To freely criticise, point out or recommend operating procedures of the legislative, the executive and judiciary in conformity with the constitution.*
- (b) *To investigate, publish, broadcast information and related opinions to which every citizen is entitled in accordance with rules and regulations.*
- (c) *To reveal issues relating to rights and privileges lost by the citizen.*
- (d) *To collect information, to be provided with accommodation and to enter into certain offices, departments and*

organisations in accordance with regulations of relevant departments of organisations.

The Media Law guarantees freedom from censorship for Myanmar media and other guarantees for media workers. For example, in Section 7 the law guarantees that media workers 'trying to get news in compliance with regulations specified by relevant and responsible organisations, in the areas where wars break out, and where conflicts or riots and demonstrations take place:

- a) *Shall be exempt from being detained by a certain security related authority, or his/her equipment being confiscated or destroyed;*
- b) *He/she shall be entitled to ask for their safety and protective measures from the security related organisations.*

However, the protections set out in the Media Law to date have not been uniformly applied to media workers and appear to not protect media workers from charges brought under other laws, such as the Unlawful Associations Act.

The Media Law also sets out a Code of Conduct for all journalists and media professionals (discussed in the 'Ethics and Integrity for Journalists' Chapter of this Guidebook). Failure to abide by this Code of Conduct can be punished with a fine of up to MMK 1,000,000.

Freedom of Information requests

A mechanism for freedom of information requests is contained in the Rules to the Media Law. The Media Rules 2015 include a template form for journalists and media professionals to use when requesting information from government bodies. This freedom of information mechanism is only in respect of public information from public institutions and cannot be applied to private enterprise.

KEY TAKE-AWAYS:

- (1) Media Law guarantees freedom of speech – but only to the extent freedom of speech is not limited by other laws (such as those set out in this chapter).
- (2) Media Law contains a compulsory Code of Conduct that journalists and media professionals in Myanmar must abide by.
- (3) Media Rules contain a Freedom of Information (FOI) request mechanism for media professionals to seek information from public institutions.

6. Printing and Publishing Law 2014

The Printing and Publishing Law contains certain restrictions on what material can and cannot be published.

Section 8 of the law contains a prohibition against publication of the following agendas:

- a) *'expressing subject matters which may cause harm to an ethnic group or among the ethnic groups, or those*

- which may insult other religions or cultures;*
- b) *expressing subject matters which may cause harm to national security, the rule of law and tranquility, and rights of equality, freedom and justice;*
 - c) *expressing nudity;*
 - d) *encouraging and stimulating crimes, cruel behavior, violence, gambling and the act of committing crimes using opium and abusive drugs.'*

KEY TAKE-AWAYS:

(1) The Printing and Publishing Law contains broad restrictions against types of content that can be printed, however there are no clear guidelines on how these restrictions are interpreted or applied by the Myanmar Government.

7. Unlawful Associations Act 1908

This colonial-era law contains the following provision at Section 17(1):

Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association, shall be punished with imprisonment for a term [which shall be not less than two years and not more than three years and shall also be liable to pay a fine].

It is difficult to draw the conclusion from the clear language of this law that a journalist or media professional reporting on an 'unlawful association' is equivalent to taking part in meetings, or in any way assisting the operations of any such association. However, the government and courts have taken the view that reporting can be considered to contravene Section 17(1).

KEY TAKE-AWAYS:

(1) The government and Myanmar courts may take the view that reporting on unlawful associations contravenes Section 17(1) of the Unlawful Associations Act.

8. Contempt of Court Law 2013

This law sets out the crime of contempt of court. The contempt law is challenging for journalists and media professionals because it does not contain specific instructions about what is lawful to say about court actions.

The crime is described as follows:

Criminal Contempt of Court means orally or by words or by sign or by significant pattern or other means or announcing internationally, by describing in writing as information, publishing or distribution of any matter for any conduct as follows:

- (1) *Scandalising the court at which power is conferred legally;*
- (2) *Affecting the fair judicial case, interfering or disturbing;*
- (3) *Impairing the public trust upon fair and free judiciary*

by any means;

- (4) *Pre-commenting, describing in writing, publishing, distribution, before the judicial decisions are passed.*

Criminal contempt of court carries a jail term of up to six months and a fine or both.

The law contains some exceptions or 'immunity' provisions in Chapter 3. These exceptions can be summarized as:

- Objectively true facts about the court; and
- Comment or 'fair' review of a court act once final judgment has been passed.

The Contempt of Court Law also creates a prohibition against reporting on 'closed' hearings and court sessions except where the reporting is in respect of:

- Criticism of the relevant legislation to the case;
- If the court has undertaken a clearly illegal act, or clearly illegal miscarriage of justice;
- Investigations into other illegal activity of the court relevant to the case, for example corruption.

KEY TAKE-AWAYS:

- (1) The Contempt of Court Law contains broad restrictions on publishing any material that could be considered to insult the court system or impact public trust in the court system.
- (2) It is possible to report objectively true facts about a

court.

(3) Opinions on the merits of a case should only be published after a case has reached final judgment.

(4) Reporting on 'closed' or secret court sessions is generally prohibited.

9. Myanmar Government Official Secrets Act 1923

This is another colonial-era law that contains far-reaching provisions against publishing any words, images, sketches that expose 'state secrets' or are 'prejudicial' to the 'safety or interests of the State'. The law does not define 'state secrets' or provide any guidelines for what could be considered prejudicial to the safety or interests of the State, which leaves a large degree of ambiguity for journalists reporting on State institutions, such as military and state-owned economic enterprises.

The Official Secrets Act defines a 'prohibited place' as:

- Any military site, or military related site, for example a munitions factory;
- Any place notified by the President in the Gazette as being a prohibited place;
- Public transportation routes such as railways, roads and channels.

Section 3 of the law states that it is prohibited for any purpose prejudicial to the 'safety and interested of the State' to:

- (a) *approach, inspect, pass over or be in the vicinity of, or enter, any prohibited place; or*
- (b) *make any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or*
- (c) *obtain, collect, record or publish or communicate to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy.*

It is also an offence under the Official Secrets Act to retain or communication, i.e. publish, any 'state secret' documents, including maps, plans and correspondence.

Contravention of Section 3 can be punished with up to fourteen years imprisonment. The evidentiary burden is a light burden, whereby the prosecution is not required to bring forward active, objective evidence that a person was contravening Section 3 with a 'prejudicial purpose'. This is important for journalists and media professionals to be aware of.

KEY TAKE-AWAYS:

- (1) The Myanmar Government Official Secret Act broadly prohibits being in any prohibited area – including military sites and sites related to the operations of the military, such as

factories. In addition to the legal consequences, approaching such prohibited areas without permission could also jeopardize immediate personal safety.

(2) It is an offence under the law to do so with 'prejudicial purpose', however, 'prejudicial purpose' is interpreted broadly.

(3) It is an offence to publish any state secrets or be in possession of any state secrets in the form of maps, plans, correspondence or other images and documentation.

10. Child Law

The main issue for journalists to be aware of regarding the Child Law is that there is essentially a prohibition against publishing the identity of a child involved in a juvenile court case as a perpetrator or as a witness. Only a judge can give permission for the identity of a child in a court case to be published. As such, journalists and media professionals should avoid publishing the identities of child perpetrators or witnesses unless such permission or direction has been given by the relevant court.

KEY TAKE-AWAYS:

(1) Avoid publication of a child's identity where the child is involved in a court case, unless the relevant judge has given permission for the identity to be published.

Glossary

Adversarial system: A judicial system where both the defendant and the plaintiff are given equal powers, rights and resources to argue their case before a neutral judge or jury.

Advocate/high-grade pleader: in Myanmar, refers to attorneys who can practice before different levels of tribunals. Advocates may practice in any court, while high-grade pleaders may practice in the subordinate courts only.

Appeal: to apply to a higher court for a reversal of the decision of a lower court.

Bail: means that an arrested person can be allowed out of custody and guarantee his/her return to court based on transferring property or things of value.

Bailable offense/nonbailable offense: 'bailable offense' refers to those offenses listed in the Schedule II of the Myanmar Criminal Procedure Code as bailable, meaning where the accused may be released on bail out of custody prior to trial or which is made bailable by any other law, while 'non-bailable offence' means any other offence.

Charge: an accusation of crime.

Cognizable/noncognizable offense: a 'cognizable offence'

means an offence for which a police-officer may, in accordance with Schedule II of the Myanmar Criminal Procedure Code or under any other applicable law arrest without needing a warrant. A 'non-cognizable offence' means an offence for which a police officer may not arrest without a warrant.

Common Law: that body of law which originated and developed in England and which derived from customary practice and the decisions of courts instead of laws passed by legislatures.

Complainant: sometimes called the 'plaintiff', the party who files the complaint with a police officer or a court and initiates a court case.

Defendant: the person against whom a court case is brought.

Evidence: something allowed by the law to be submitted to a court, usually oral testimony or physical objects, that are used to prove a fact to determine the truth of a matter.

Complainant's lawyer: in criminal cases, the complainant may be represented by his/her own private attorney called the complainant's lawyer.

First Information Report: a written document report created by a police officer comprised of information that forms the basis of the charges against the defendant in cases of cognizable

offenses.

Judgment: a formal decision given by a court

Law officer: public prosecutors from the Union Attorney General's Office (UAGO)

Oath: A declaration that you are telling the truth and that you can be charged with a crime if you thereafter not tell the truth

Remand hearing: a hearing that requires the police to bring every detained defendant to appear before a judge within 24 hours of arrest so that the judge may determine whether or not the defendant should be remanded back into custody or released.

Summons case: those cases where the charge carries a maximum imprisonment of six months or less, or a fine.

Testify: to make a statement under oath

Warrant case: means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.

Resources

Bodies of Law, International Conventions, Guidelines

Burma Library (Online resource which has access to most laws of Myanmar in Myanmar language and English)

<http://www.burmalibrary.org>

Universal Declaration of Human Rights

<http://www.un.org/en/universal-declaration-human-rights/>

International Covenant on Civil and Political Rights

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Resources on human rights education and training of media professionals and journalists

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Union Supreme Court Handbook for Media Access to the Courts

http://www.unionsupremecourt.gov.mm/sites/default/files/supreme/media_hand_book.pdf

Websites of Government Bodies, Justice Reform Initiatives and International Rule of Law Organizations Working in Myanmar:

Amyotha Hluttaw

<http://www.amyotha.hluttaw.mm/?lang=my>

Rule of Law Handbook for Journalists in Myanmar

Bridges Across Borders Southeast Asia Community Legal Education Initiative

<https://www.babseacle.org>

Committee to Protect Journalists

<https://cpj.org/>

Independent Lawyers Association of Myanmar, Mandalay Region

<https://www.facebook.com/IlamMdyReg/?fref=mentions>

International Bar Association's Human Rights Initiative

<https://www.ibanet.org/IBAHRI.aspx>

International Bridges for Justice Myanmar Justice Centres

<https://www.facebook.com/IBJMyanmar/>

Legal Clinic Myanmar

<http://legalclinicmyanmar.org>

Myanmar Legal Aid Network

<https://www.facebook.com/Myanmar-Legal-Aid-Network-MLAW-429532753913890/>

MyJustice

<http://www.myjusticemyanmar.org>

President's Office of the Republic of Union of Myanmar

<http://www.president-office.gov.mm/en/>

President's Office of the Republic of Union of Myanmar

<http://www.president-office.gov.mm/en/>

Pyidaungsu Hluttaw

<http://pyidaungsu.hluttaw.mm>

Pyithu Hluttaw

<http://www.pyithuhluttaw.gov.mm/?q=eng>

Rule of Law Centres

<https://rolcmyanmar.org/en>

U Kyaw Myint Law Firm

<https://www.facebook.com/U-Kyaw-Myint-Law-Firm-489907667880346/>

Union Attorney General's Office

<http://www.oag.gov.mm>

Union level Rule of Law and Justice Sector Coordinating Body

<https://www.facebook.com/CoordinationBody/>

United Nations Educational, Scientific and Cultural Organization (UNESCO) Press Freedom on All Platforms

<http://en.unesco.org/themes/press-freedom-all-platforms>

Union Supreme Court

<http://www.unionsupremecourt.gov.mm>

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