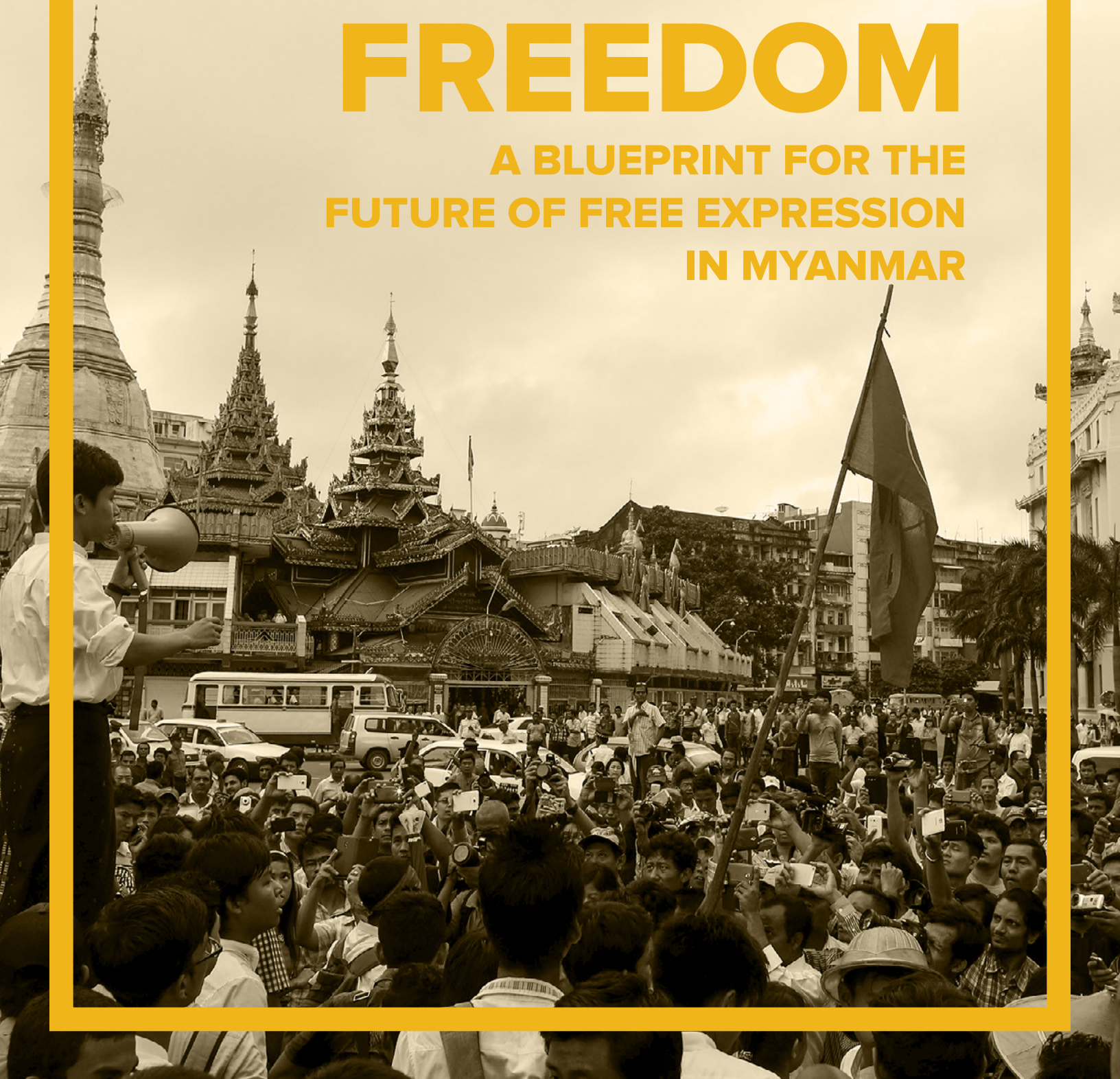


# UNFINISHED FREEDOM

A BLUEPRINT FOR THE  
FUTURE OF FREE EXPRESSION  
IN MYANMAR



**UNFINISHED FREEDOM: A BLUEPRINT FOR THE FUTURE OF  
FREE EXPRESSION IN MYANMAR**

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PEN American Center is the largest branch of PEN International, the world's leading literary and human rights organization. PEN works in more than 100 countries to protect free expression and to defend writers and journalists who are imprisoned, threatened, persecuted, or attacked in the course of their profession. PEN America's 4,200 members stand together with more than 20,000 PEN writers worldwide in international literary fellowship to carry on the achievements of such past members as James Baldwin, Robert Frost, Allen Ginsberg, Langston Hughes, Arthur Miller, Eugene O'Neill, Susan Sontag, and John Steinbeck. For more information, please visit [www.pen.org](http://www.pen.org).

*Cover: Student leader Nan Lin gives a speech during a protest in Yangon, June 2015. Credit: Soe Zeya Tun/Reuters*

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# INTRODUCTION

With the landslide victory of the opposition National League for Democracy (NLD) party, led by Aung San Suu Kyi, in the historic November 2015 parliamentary elections, Myanmar stands at a crossroads in its transition to greater democracy. If that potential is to be fulfilled, however, the new government will need to take urgent steps to strengthen the most essential foundation for a free and democratic society: freedom of speech. The reforms begun in late 2010 have brought significant strides toward a more open environment for speech, communication, and the dissemination of information in Myanmar.<sup>1</sup> Yet progress has stalled and in some areas regressed in 2014 and 2015. Essential steps are necessary to ensure that the promise of a new government and a better future for Myanmar is not undermined by the deep hand of the military as it continues to curtail freedom of expression.

Five years into a top-down transition from military dictatorship to a quasi-civilian government, Myanmar citizens are seizing their new-found freedom of expression: debating in teashops and online, writing in the country's myriad ethnic languages, voting and running for parliament, protesting, networking, launching new apps and media outlets, shooting videos, taking photographs, and creating satire. Their country has leapfrogged from near silence and isolation to a connected, smartphone society: more people now have mobile phones in their hands than electricity in their homes.<sup>2</sup> Never have writers, journalists, poets, cartoonists, comedians, performance artists, filmmakers, and citizens had so many platforms and opportunities for free expression.

After decades of military rule that repressed dissent and kept an iron grip on public discourse, education, and communication, establishing and protecting the free expression rights fundamental to democratic society is a critical step in Myanmar's transition. On the surface and in many arenas, enormous progress has been made. But as evidenced by heavy-handed efforts to manipulate and control the media and a sporadic yet menacing crackdown on activists and free speech in the lead-up to the pivotal November 2015 vote, the control by the generals, police, and their allies continues to reach deep

into a still-scarred society.<sup>3</sup> And despite the historic election results that will deliver a National League for Democracy majority in parliament, the military will retain considerable control over both the parliament and other structures of the bureaucracy.<sup>4</sup> Until Myanmar's military and ruling elites collectively internalize the imperative to protect free expression in ways that firmly limit their own influence and control, free speech in Myanmar will fall short of international standards, and will hobble the country's fledgling democracy. What happens next—whether the new government is prepared to develop and implement a legal and regulatory framework that insulates expression and related rights, whether the military stays its own hand from interference in civic discourse, and whether citizens are able to securely use their voices and restore their trust in government—will determine whether Myanmar's transformation is fulfilled or stillborn.

An assessment of the free expression environment in Myanmar conducted by PEN American Center finds that despite considerable openings since 2010, the steady increase in the number of violations during the last two years—particularly in the areas of media freedom, freedom of assembly, and digital rights—point to a clear and imperative route forward for reform. Restrictive laws that remain in place from the time of the junta enable many of the cases against journalists and activists. The expansive control by the military and the quasi-civilian government over news and information, and the military leaders' unwillingness to allow scrutiny or criticism of their role in public affairs, is an overarching theme. Measures to promote a diversity of voices in public discourse and channels of information from the country's seven ethnic states remain particularly weak. The increase in hateful speech and anti-Muslim rhetoric over the past year has placed additional strains on democratic discourse. PEN American Center offers this report, *Unfinished Freedom: A Blueprint for the Future of Free Expression in Myanmar*, in the hope of placing stronger legal and policy protections for expression near the top of the agenda of the new government and administration. PEN also aims to highlight steps that Myanmar's civil society and





Yangon journalists protest the sentencing of four journalists and the head of a local publication.

the international community can take to ensure that this essential dimension of genuine democracy is firmly cemented within the foundations of a new Myanmar.

Over the coming months, with a new president and government set to be in place by March 29, 2016<sup>5</sup>—a process complicated by the need to define Aung San Suu Kyi's role<sup>6</sup>—urgent steps are needed to protect and expand the space for free expression. The legal and regulatory framework must be strengthened, with repressive laws that criminalize speech and association either abolished or reformed to meet international standards. New media and telecommunications laws, and bodies such as the press council, should also match these standards. The boundaries of acceptable official involvement in the media sector must be clearly delineated and significantly narrowed. Punitive measures and threats against journalists and media outlets by the military, police, or the Ministry of Information, as well as attempts to control or guide content, need to cease. Additionally, the detainment of activists for engaging in peaceful protests or speaking out on social media should stop. Given the particular challenges of dealing with dangerous speech in the context of rising Buddhist extremism and ongoing conflicts in Myanmar's ethnic states, the new government also needs to adopt an affirmative agenda to promote tolerance and healthy speech, fostering dialogue across societal lines and enabling a diversity of voices to flourish, especially in the ethnic languages.<sup>7</sup>

*Unfinished Freedom: A Blueprint for the Future of Free Expression in Myanmar* is based on interviews with free expression advocates, journalists, editors, civil-society actors and researchers, media law experts, representatives of Myanmar's ethnic diversity, and others, as well as a review of a wide range of media reports and secondary sources. We attempted to contact the Myanmar government for comment, via the Ministry of Information and the Myanmar Embassy in Washington, D.C., but did not receive a substantive response to our queries. PEN American Center applied its global perspective on free expression standards and best practices to these findings. This research, primarily carried out during late 2015, builds on a submission to the United Nations' Universal Periodic Review process prepared in early 2015 by PEN International, PEN Myanmar, PEN Norway, PEN American Center, and Myanmar IT for Development Organization (MIDO).<sup>8</sup>

The report begins with an overview of the positive developments that have broadened and liberalized Myanmar's environment for expression. It then analyzes a series of obstacles to free expression in the areas of media freedom, assembly, digital rights, and ethnic voices—including many that require the military and government to desist from actions and several that oblige them to take affirmative action. It then concludes with a series of recommendations for the new government, the international community, and local civil society.

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# A CHANGED LANDSCAPE: POSITIVE OPENINGS FOR FREE EXPRESSION

For five decades, Myanmar's citizens endured one of the most repressive military regimes in the world. Their country was cut off from the rest of the globe by international sanctions and the insularity of its leadership. The population was denied basic freedoms, including freedom of expression, association, and assembly.<sup>9</sup> Substantive change came beginning in late 2010 with planned national elections.<sup>10</sup> Although the polling was widely viewed as a sham and was boycotted by opposition leader Aung San Suu Kyi and her party, the National League for Democracy (NLD),<sup>11</sup> after the vote the country's leader of 19 years, General Than Shwe, stunned the world by voluntarily turning power over to a handpicked successor, Thein Sein, to lead a military-backed quasi-civilian government.<sup>12</sup> This so-called 7-step roadmap for reform propounded by the junta was spurred by a desire to improve economic relations with the West after years of sanctions that had crippled the economy and heightened Myanmar's dependence on China. Some pressure may also have arisen from discussions about a possible United Nations inquiry into the junta's repressive tactics.<sup>13</sup>

Although the constitution ensured continued domination by the military, important reforms ensued after Thein Sein took power. Aung San Suu Kyi was freed on November 13, 2010 after spending most of the prior two decades under house arrest.<sup>14</sup> She was permitted to travel around the country to campaign and speak freely to the media, her face seen and voice heard widely in public for the first time in years.<sup>15</sup> Thein Sein led a political rapprochement with Aung San Suu Kyi, and initiated a range of other political reforms.<sup>16</sup> In 2012, she was elected to parliament in a by-election that her party contested and swept. Since then, the NLD has participated actively in the political process.<sup>17</sup> The changes implemented under Thein Sein's rule have included a significant restoration of free expression rights for many Myanmar citizens—particularly in the urban areas—who are now better informed, more civically engaged, and less fearful than during the decades of military dictatorship. While segments of society, ethnic and religious minorities in particular, continue to struggle with disenfranchisement, conflict, and daily survival, this changed landscape must still be celebrated, and any consideration of the work yet to be done should reflect the progress made, including in the key areas described below.

## Freedom of Expression and the Media

Beginning in 2009 Myanmar's quasi-civilian administration released thousands of political prisoners, including many writers, comedians, and journalists who had been imprisoned for decades-long terms.<sup>18</sup> The list includes the comedian Zarganar;<sup>19</sup> the blogger, PEN Myanmar founder, and incoming regional parliamentarian Nay Phone Latt;<sup>20</sup> the 88 Generation student leader Min Ko Naing;<sup>21</sup> and one of the main leaders of the Saffron Revolution protests, the monk U Gambira.<sup>22</sup> However, more than 100 political prisoners currently remain incarcerated, while dozens of others await trial in prisons after arrests for participating in education reform rallies in March 2015.<sup>23</sup>

The Myanmar quasi-civilian government passed a new law allowing for peaceful demonstrations,<sup>24</sup> lifted a ban on gatherings of more than five people,<sup>25</sup> and eased or lifted a range of restrictions on the media, including a longstanding practice of pre-publication censorship.<sup>26</sup> Legislative reforms have included new laws for the press, broadcasting, and publishing, and the creation of a press council.<sup>27</sup> For the first time in almost 50 years, privately owned newspapers appeared on newsstands, including dailies.<sup>28</sup> Exiled media outlets such as Mizzima,<sup>29</sup> *The Irrawaddy*,<sup>30</sup> the broadcaster Democratic Voice of Burma (later renamed DVB Multimedia Group<sup>31</sup>), and a variety of outlets reporting on ethnic minorities opened offices inside the country.<sup>32</sup> However, Myanmar's new Television and Radio Broadcast Law is not yet operational. As a result, all current Myanmar-based broadcasters are owned by the government, the military, or individuals closely affiliated with the former regime.<sup>33</sup> Unable to get a license, DVB continues to broadcast its programs via satellite from Thailand.<sup>34</sup> Audiences in Myanmar can now access a wide range of international broadcasters, including the BBC, VOA, and Al Jazeera.<sup>35</sup>

For the first time in decades, journalists, writers, and poets who are not part of the dominant Burman (Bamar) majority have begun openly publishing in their own languages, a hugely significant step in a country where repression of minorities has sparked decades of conflict and intervention by the military regime. The Burmese and Mon language journal *Than Lwin Times*<sup>36</sup> in Mawlamyaing, Mon State, and the Lai Hakha language *Chinland Post*<sup>37</sup> in Hakha, Chin State, were among the first ethnic media to

*The political opening in Myanmar has let loose a vibrant and diverse digital culture. Blanket censorship of the digital space was lifted, including restrictions on Internet cafes and blocking of web sites and applications such as Skype.*

obtain licenses in 2013.<sup>38</sup> Ethnic language literature also began emerging. Joel Ling wrote his novel, *The Lonely Land*,<sup>39</sup> in the Lai Hakha language in 2012, while Daw Mie Lay Mon<sup>40</sup> is writing the first collection of contemporary Mon-language short stories.<sup>41</sup>

Civic participation has increased, and nongovernmental organizations such as PEN Myanmar have been able to constitute themselves, organize, and recruit members, alongside dozens of other civil society groups<sup>42</sup>—albeit without the protections of official registration due to the lack of an operational Association Registration Law.<sup>43</sup> In June 2015, for example, the third annual Human Rights, Human Dignity Film Festival<sup>44</sup> was held at Yangon’s Naypyitaw and Waziya cinemas. Dedicated this year to Aung San Suu Kyi, the festival seeks to create a public space for a discussion about human rights by travelling around the country, including, in December, to Rakhine State, home to the persecuted Rohingya minority.<sup>45</sup>

### Digital Access

The political opening in Myanmar has let loose a vibrant and diverse digital culture. Blanket censorship of the digital space was lifted, including restrictions on Internet cafes and blocking of web sites and applications such as Skype.<sup>46</sup> Telecommunications companies, including foreign private firms, began aggressive rollouts of digital and broadband services.<sup>47</sup> Myanmar is now considered the fastest growing Internet market in Asia, with at least 15 million online—about 29 percent of the total population of 51.5 million<sup>48</sup>—most often via their mobile phones.<sup>49</sup> Smartphones that accommodate the font for written Burmese are affordable at 15,000 Kyat (about US\$12), making the Internet widely accessible.<sup>50</sup> More than half of the population is now believed to have access to a mobile phone.<sup>51</sup> SIM cards are also cheap, with operators reporting more than 34 million in active use.<sup>52</sup> Facebook is the most widely used platform for information dissemination by journalists, civic watchdogs, and individuals, with six-seven million active monthly users. Messaging apps—including Viber,

which was used by an estimated 12 million people as of mid-2015<sup>53</sup>—and voice-over-Internet programs have helped users surmount the hurdles posed by low bandwidth in many areas. A key challenge for independent journalism will be to move beyond Viber and Facebook to entrepreneurial digital platforms that can help financially sustain media operations.<sup>54</sup>

### Ethnic Minority Participation

Minority groups comprise an estimated 30 to 40 percent of Myanmar’s population, living predominantly in or along the borders of the country’s seven ethnic states of Kachin, Kayah, Kayin, Chin, Mon, Rakhine, and Shan as well as in the lowlands.<sup>55</sup> Decades of conflict between the national army, which is dominated by ethnic Burman (Bamar),<sup>56</sup> and ethnic armed groups and of repression of free expression rights have given way to fragile peace negotiations and ceasefire agreements with some groups. This tentative progress has been fortified by efforts to strengthen civil society, the growth of the ethnic media sector, and the participation of some ethnic parties in the 2015 parliamentary elections. With greater political opening, community-based organizations are forging channels of communication and influence flowing from the ethnic states to the country’s political and economic centers. Several bi-lateral ceasefire agreements signed by the government and ethnically based armed groups contain important provisions regarding freedom of expression and media, although the Nationwide Ceasefire Agreement (which a limited number of ethnic armed groups have signed) does not.<sup>57</sup>

Reflecting the increasing voice of ethnic constituencies, nearly two-thirds of the 91 parties registered to participate in the November 2015 parliamentary elections represented ethnic or religious minorities (these included parties from seven major ethnic groups that have their own states as well as smaller sub-minorities).<sup>58</sup> Most major ethnic groups were represented by two parties or more.<sup>59</sup> Notably, though, the stateless Rohingya Muslim minority was barred both from running for election and from voting.<sup>60</sup>



*The campaign that produced these dramatic results saw an expanded free expression environment with more robust, if imperfect, media coverage of the various candidates, parties, and positions.*

Myanmar's transition has also enabled the growth and diversification of the independent media sector in the ethnic states. The Burma News International (BNI) network, a consortium that aims to support the development of the ethnic media sector and to disseminate news from the ethnic areas in Myanmar across the country and the region, now has 13 member media organizations from the 7 ethnic states, most of which were previously exiled.<sup>61</sup> BNI's members produce a daily television program in seven ethnic languages called Ethnic TV News.<sup>62</sup> New media outlets in ethnic areas also are emerging, including the *Myitkyina Journal*<sup>63</sup> in the capital of Kachin State in northern Myanmar and the *Tanintharyi Times* and the Dawei Watch<sup>64</sup> media group in the southern Tanintharyi region.<sup>65</sup> After decades in which ethnic languages were criminally banned, and teaching and publishing in those languages was forbidden,<sup>66</sup> some media outlets are now serving communities in their own languages, including the Mon-language *Guiding Star*<sup>67</sup> in Mawlamyaing, Mon State; the bilingual Karen and Burmese *Knyaw Takaswe*<sup>68</sup> in Hpa'An, Kayin State; the *Shan Independence* journal<sup>69</sup> produced by the Shan Herald Agency for News; the Jingpaw *Kachin Times*<sup>70</sup> magazine in Myitkyina, Kachin State; and the Lai Hakha *Hakha Post*<sup>71</sup> in Chin State.

### Media and the Elections

On November 8, 2015, Myanmar's citizens voted in more than a thousand new lawmakers to Myanmar's national, state, and regional parliaments. In accordance with the constitution, a quarter of the seats at all three levels are reserved for unelected military officers,<sup>72</sup> meaning a party or coalition needs more than two-thirds of the open seats to win control of the government—a mark met by Aung San Suu Kyi's National League for Democracy (NLD). With this “super-majority,” the NLD will have a strong mandate to govern, the power to select the president, and the ability to control the passage of bills in both houses, although the military will retain areas of control including the police and veto power over changes to the Constitution.<sup>73</sup>

The campaign that produced these dramatic results saw an expanded free expression environment with more robust, if imperfect, media coverage of the various candidates,

parties, and positions. The non-partisan Myanmar Institute for Democracy (MID) monitored 5 TV channels, 5 radio stations, 10 newspapers, and 5 online media for two months before the election to gauge whether they supplied the objective and balanced coverage that would allow citizens to make informed choices at the polls.<sup>74</sup> MID concluded there was a general lack of in-depth and analytical coverage and outlets were clearly divided along political lines, supporting the ruling party or the opposition. State-funded media were dominated by an official agenda focused on the activities of the president and state authorities, while private outlets mostly openly supported the NLD opposition. However, DVB Multimedia Group provided voters with more diverse information about contestants and political subjects and the TV station organized the country's first-ever televised national elections debate,<sup>75</sup> while the BBC Burmese service and BBC Media Action organized a radio election debate and a youth radio debate.<sup>76</sup> The BNI network organized candidate debates in all ethnic states that were broadcast on their daily ethnic-languages DVB program, Ethnic TV News.<sup>77</sup> A number of broadcasters carried voter education programs. Candidates used free airtime allocations on state-funded and some private television and radio broadcasters and used free space in state-controlled newspapers. However, their ability to freely express their views was restricted due to regulations on speech for candidates ahead of the elections.<sup>78</sup> Youth-driven technology also played a role in expanding free expression around the election. In September, the teenage coders at Team Popstack launched Myanmar's first election information app, Voter2015, aimed at first-time voters.<sup>79</sup> In October, the Myanmar Election Monitoring Technology Alliances, a joint initiative of MIDO and the Center for Civic Tech, launched the Kyeet App to allow citizens to monitor elections on voting day and to report irregularities.<sup>80</sup>

The above snapshot of current conditions in Myanmar describes notable advances for free expression in multiple areas during the last five years. The expansion of opportunities for debate and dissent has been justifiably commended. However, as the rest of this report will demonstrate, there remains much to be done to firmly ground respect for this right and to enable its full realization in Myanmar.



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# A STILL TIGHT GRIP: MILITARY AND GOVERNMENT CONSTRAINTS ON FREE EXPRESSION

The reforms to the free expression environment in Myanmar are neither complete nor certain. In fact as change has gained momentum, the reluctance of the generals and their allies to relinquish power has become increasingly evident.<sup>81</sup> After several years of heady change, reform stalled and even reversed direction in several arenas in 2014 and 2015. Documented by a range of human rights and media freedom groups, the erosion in freedoms has been characterized by more threats, lawsuits, and jailings of journalists and activists by government and military actors. PEN America’s review, outlined below, documents a range of areas—including the legal and constitutional framework, press freedom, freedom of assembly, and digital rights—in which the military has continued to intrude into the realm of civilian expression and kept protections deliberately weak. The new government will need to rectify this pattern of unwarranted control over free expression lest the credibility of the transition be undermined.

## Constitutional Framework

Myanmar’s 2008 constitution contains several provisions recognizing freedom of expression, including freedom of assembly and association, but these provisions also stipulate a number of crucial limitations on these rights. Article 354 states that:

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 tranquility or public order and morality: (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; (c) to form associations and organizations; (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.<sup>82</sup>

Regarding “national races” in particular, Article 365 states that:

Every citizen shall, in accord with the law, have the right to freely develop literature, culture, arts, customs and traditions they cherish. In the process, they shall avoid any act detrimental to national solidarity. Moreover, any particular action which might adversely affect the interests of one or several other national races shall be taken only after coordinating with and obtaining the settlement of those affected.<sup>83</sup>

The constitution does not explicitly protect press freedom or the right to access to information.<sup>84</sup> It is more broadly flawed with respect to provisions that enshrine the role of the military in politics and bar (based on a technicality related to having a foreign spouse or children) opposition leader Aung San Suu Kyi from becoming President.<sup>85</sup>

Constitutional reform will be essential to ensure adequate provisions for core rights, to allow an equal and free political playing field, and to enable meaningful democratic reforms and the creation of a strong foundation for the rule of law. The landslide victory of the National League for Democracy (NLD) in the parliamentary election may finally open the door to long-delayed reforms, helping to overcome structural constraints that have made it virtually impossible to amend the constitution.<sup>86</sup> The incoming government should prioritize the process of constitutional reform, abolishing supermajority requirements, redefining the role of the military so that it remains outside of politics, and adopting express protections for press freedom and the right to access to information. If the military and their allies hope for a constructive partnership with the incoming government, they should not stand in the way of these reforms, widely cited by both Myanmar and international experts as essential to the emergence of a stable democracy.

## International Protocols

The right to freedom of expression is so widely recognized, including in the Universal Declaration of Human Rights (UDHR), the foundational text of modern human rights law, that it is considered a part of customary international law.<sup>87</sup> Myanmar is not yet a party to the

# *Constitutional reform will be essential to ensure adequate provisions for core rights, to allow an equal and free political playing field, and to enable meaningful democratic reforms and the creation of a strong foundation for the rule of law.*

International Covenant on Civil and Political Rights (ICCPR), although it agreed to consider ratification during its first UN Universal Periodic Review in 2011 (when UN protocols required that the government respond to recommendations from other UN Member States that strongly pressed accession to the Covenant).<sup>88</sup> In a positive step, the government signed the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on July 16, 2015,<sup>89</sup> though this is still subject to parliamentary ratification.<sup>90</sup> On a regional level, Myanmar has been a member of the Association of Southeast Asian Nations (ASEAN) since 1997, and as such, is bound by Article 23 of ASEAN's Human Rights Declaration, which protects the right to freedom of expression in member states.<sup>91</sup>

Myanmar is thus bound under international law to protect and promote the right to freedom of expression. Developing strong constitutional protections for free expression, media freedom, and related rights should therefore be a priority, as should signing international protocols such as the International Covenant on Civil and Political Rights (ICCPR). Both steps would help to ensure a strong legal foundation for these rights, and would establish standards against which the ongoing process of legislative and policy reform can be measured. In particular, constitutional and legal reforms should be enacted to bring Myanmar's laws into line with the obligations set out in the ICCPR, including:

- Journalists have a right to seek, receive, and impart information as they see fit, without interference from the government, and subject only to legitimate restrictions.<sup>92</sup>
- The authorities may not harass, intimidate, or otherwise obstruct journalists in their work, impose censorship, or offer rewards to influence reporting.<sup>93</sup>
- With regards to election campaigns, journalists must be allowed to cover all political parties and to publish material critical of the government without

fear of reprisal.<sup>94</sup>

- Political parties have a right to convey their messages to the public through any media of their choosing.<sup>95</sup>
- The public has a right to receive information, including complete and unbiased information about the contending parties, and to participate in public affairs.<sup>96</sup>
- The media, for its part, has a professional obligation to inform the public fully and truthfully about all matters relevant to the elections, without political bias.<sup>97</sup>

## **Legal Environment for Free Expression**

During decades of authoritarian rule Myanmar had one of the most restrictive legal frameworks for free speech in the world, with a wide range of laws used to imprison journalists, bloggers, writers, and activists, and to censor the press. Since 2011 reforms of existing laws, the passage of new laws, and the enactment of regulations have amounted to important first steps to reshape the legal environment for expression. But key shortcomings remain, particularly in the areas of media regulation, criminal penalties for defamation and blasphemy, and digital rights. Meanwhile, military-era laws that remain in place are currently being used to charge and prosecute journalists, editors, writers, and activists for their speech and expression.

A number of laws from the period of military dictatorship remain in force. The 1950 Emergency Provisions Act provides for prison sentences of up to seven years for spreading "false news," or undermining state security, morality, or the public's trust in the economy, among other offenses.<sup>98</sup> In addition, provisions of the 1957 penal code criminalize sedition, "promoting feelings of enmity or hatred," defamation, and religious insult (blasphemy), allowing prison terms of up to two years for these offenses.<sup>99</sup> Article 18 of the Law on Peaceful Assembly and Peaceful Procession was historically used by the junta to imprison demonstrators.<sup>100</sup> Amendments passed in late

2014 eased prior permission requirements for public assemblies (although authorities retain wide latitude to deny permission for such gatherings) and reduced the maximum sentence for violations.<sup>101</sup>

Citizens' rights to access information are weak. National security-related laws, including the colonial-era 1923 Official Secrets Act, provide for criminal penalties (including jail terms of up to 14 years) for the possession of classified information and for proximity to prohibited venues (including most military installations).<sup>102</sup> These prohibitions have been used to threaten and imprison journalists who report on sensitive military matters.<sup>103</sup> The government is reportedly interested in developing a right to information law with a view to Myanmar, in 2016, joining the Open Government Partnership, a multilateral organization of governments that commit to transparency and accountability protocols.<sup>104</sup> But this statute has not yet been enacted despite both official and civil society discussions on a possible law.<sup>105</sup> Journalists, civil society organizations, and citizens routinely complain of obstacles in their efforts to access information and a lack of government transparency.<sup>106</sup>

Broad repeal or reform of existing laws is needed to ensure that expression is not subject to criminal penalties, and current legal reform efforts must be better aligned with best practice international standards and provide more robust protection for free expression. Specifically, the following steps are needed:

- Decriminalization of offenses such as defamation, sedition, and blasphemy.
- Adoption of a robust access to information law and establishment of a credible mechanism for its implementation.
- Decriminalization of the right to peaceful assembly and liberalization of permission requirements.

### Media Regulation

Over the past 18 months, several new laws have been enacted to regulate the media and publishing sectors. While some provisions have allowed for expansion and modernization of the media, the laws fail to fully protect the sector from interference by the government and military. In particular, there is concern about the structure and powers of the new press council, the role of the Ministry of Information (MOI) in regulating the media sector, and ongoing state ownership of media outlets.

The Printing and Publishing Enterprises (PPE) Law and the Media Law (also called the News Media Law) were both approved by Parliament in March 2014.<sup>107</sup> The PPE Law regulates licensing and registration for media outlets, while the News Media Law enabled the establishment of a permanent press council charged with regulating media workers. Under the PPE law, the Ministry of Information retains control over licensing of news outlets

(vaguely defined) and can revoke licenses or impose fines on outlets that breach its rules.<sup>108</sup> The Ministry's powers include enforcement of prohibitions on publication of news deemed insulting to religion, disturbing to the rule of law, or harmful to ethnic unity.<sup>109</sup>

Under international law, government licensing schemes for print media that grant discretionary power over licensing to an official body based on content are considered to violate states' freedom of expression obligations.<sup>110</sup> International law does permit purely technical media registration schemes that meet certain basic and non-content-related criteria.<sup>111</sup> An international media law expert who has provided advice to the Ministry of Information, Toby Mendel, describes the registration requirements as essentially an administrative and technical scheme synced with international law. However, the law also includes vague and overbroad restrictions on the content of what may be published, which are problematic.<sup>112</sup> As long as the Ministry is empowered to censure and de-license outlets based on the nature of their news coverage, Myanmar's media sector cannot be considered free. To date the law has not been used to punish print outlets with a revocation or suspension of their registration, but the Law does not conform fully to international standards and it should be modified by the new government.

Myanmar's News Media Law, which became fully operational in June 2015, governs the creation and election of a press council, dispute mediation for complaints brought against journalists, coverage of protests and armed conflict, journalists' right to information, and provisions for journalists to file complaints if public bodies unreasonably refuse to provide information.<sup>113</sup> Importantly, the law does enumerate some specific rights for journalists and does contain limited protections for press freedom, although the scope of these provisions is vague and therefore could result in arbitrary interpretation. For example, with regard to covering conflicts and protests, Chapter 3 of the News Media Law states that reporters can seek advance permission from authorities and receive protection when reporting from conflict zones or the site of protests as long as they obey existing laws, yet the nature and scope of the available protection is not clear.<sup>114</sup>

The regulations also lay out a set of ethical obligations and "responsibilities" for media workers, and formalize procedures for civil actions against news organizations by government authorities or private interests. The regulations give both officials and ordinary citizens the right to file complaints against journalists and media owners for breaching the News Media Law. If mediation attempts fail, cases can be taken to a criminal court, which would have the power to impose fines ranging from 100,000 kyats to 1,000,000 kyats (US\$82 to US\$812).<sup>115</sup> While international standards call for self-regulation as the ideal form of regulation for print media, under this law



journalists and media outlets continue to be subject to criminal penalties and under the control of a legislatively-mandated press council, the funding and membership of which are influenced by the government.<sup>116</sup> The Ministry of Information used provisions of the law in November 2014 to file suit against 11 staff members of the *Myanmar Thandawsint* for publishing critical commentary about President Thein Sein, which the complaint said violated the law's code of conduct.<sup>117</sup>

The Myanmar Press Council (MPC) was created in October 2015, replacing an interim body formed in 2012 that was widely criticized for being overly aligned with the government. The precursor council's members were appointed by the Ministry of Information (MOI), and it accepted a 50 million kyat (about US\$50,000) donation from the president during the same period as it was negotiating draft media legislation with the MOI.<sup>118</sup> The interim council's successes include helping to develop the News Media Law, creating a Code of Conduct for journalists, and establishing a self-regulatory complaints committee to review complaints about the media.<sup>119</sup> In several cases, however, the interim council was unable to adjudicate successfully between the MOI and media outlets, leaving the latter open to prosecution by the MOI.<sup>120</sup>

The new permanent MPC is mandated to review complaints from the public about ethically questionable or discriminatory media coverage. It is also responsible for ensuring that professional ethical standards are upheld. The council depends upon the MOI for its funding, raising the concern that criticism of the government could jeopardize its budget.<sup>121</sup> To better safeguard its independence, new members say they would like to establish an independent fund to finance the MPC's work.<sup>122</sup> The membership structure also ensures some official influence, with three members being directly appointed by the President and both houses of Parliament. Overall, of a total of 29 members, 12 are appointed (by journalists' groups and the precursor interim press council as well as the government) and 17 elected from relevant interest groups including publishers, media outlets, and literary groups.<sup>123</sup> In October, 24 members were confirmed, with some elected seats going empty due to a lack of nominations, including those reserved for cartoonists and poets.<sup>124</sup> PEN Myanmar maintains it is a conflict of interest to have journalists' associations on the MPC as their positions on a quasi-official body weakens their independence.<sup>125</sup> Zayar Hlaing, the General-Secretary of the Myanmar Journalists Network and MPC member, says it was important to have representatives of the media sector on the council to amplify the voices fighting for freedom of expression and journalists' rights. If the council's decisions are acceptable for journalists, then the network will support them. If not, they will fight for change.<sup>126</sup>

Additional laws to regulate the media sector were

adopted in 2015, most notably the Television and Radio Broadcast Law passed in August. This law recognizes a three-tier system of broadcasting (state, commercial, and community), and provides some protections for freedom of expression, independent regulation and public participation.<sup>127</sup> The law also mandates the establishment of two regulatory bodies. The National Broadcasting Development Authority will be tasked with managing spectrum and broadcast licenses, and engaging various governmental agencies and non-governmental representatives to inform policies and plans.<sup>128</sup> The National Broadcasting Council will be tasked with advising the Authority on spectrum management issues and license applications, and adopting and monitoring a broadcasting code of conduct.<sup>129</sup> The National Broadcasting Council has a clear mandate and enforcement powers, and an annual budget protected from government interference.

Yet the law does not adequately protect the independence of either regulatory body or their members.<sup>130</sup> Although the roles and responsibilities of the government vis-à-vis the regulation of broadcasting should be clearly defined so they cannot silence dissenting voices, the law only states that the Ministries of Information and Communication and Information Technologies should issue their own rules. As well, the Authority is not independent from the government and so should not be the body empowered to issue, renew, or revoke broadcast licenses. As they must be nominated by politicians and can be fired by the president, the independence and impartiality of Council members are also not sufficiently protected.<sup>131</sup> The Deputy Executive Director of DVB Multimedia Group, Khin Maung Win, concurs that further reform is needed to ensure the independence of regulators and the issuing of licenses, and the development of a more just broadcast sector.<sup>132</sup> Myanmar's six FM radio stations and two of its TV stations are owned by allies of the military junta. No new licenses have been granted since 2010.<sup>133</sup> As radio and television can reach areas of the country that are geographically remote and poorly served, reform of the broadcast law would play a vital role in enabling and protecting freedom of expression, including within Myanmar's ethnic states.<sup>134</sup>

The government—and therefore the military—also wields power over the media sector via the heavy-handed role of the Ministry of Information (MOI) and the prevalence of state media. There are nine private daily newspapers on the market, alongside three state-run competitors and dozens of independent and state-owned weeklies and monthlies. While private papers are struggling financially and in some cases shutting down, state-run daily newspapers reportedly brought in revenues of more than US\$3.86 million for the 2014–15 fiscal year.<sup>135</sup> Meanwhile, all of the broadcast outlets licensed and operating from within the country are either owned by the government, the military, or by individuals close to them who were given licenses



**Journalist protests at International Press Institute conference in Yangon, March 2015.**

by the previous junta.<sup>136</sup> State-owned media continue to be heavily subsidized from public funds that underwrite production and distribution, and to have privileged access to public advertising, which hinders the ability of private papers to compete. Moreover journalists from state-owned media outlets also receive preferential access to official events.<sup>137</sup> Alongside official state-run media there are several highly visible media outlets owned by individuals who enjoy close ties to the military.<sup>138</sup> Continuing and pervasive state media ownership poses a major obstacle to press freedom.

Amid strong criticism from the private media sector, in early 2015 the MOI withdrew its proposed public service media law 18 months after it was submitted to parliament.<sup>139</sup> The draft law was meant to transform the state-controlled media sector into public-service non-profit outlets that would incorporate content reflecting ethnic diversity and programs in minority languages.<sup>140</sup> Although the draft law mandated editorial independence for these outlets, critics voiced concern that in an environment where the MOI plays such a dominant role in the sector, a publicly funded media conglomerate would create unfair competition for private media outlets and act as a pro-government voice.<sup>141</sup> The MOI

is now reportedly considering new measures, including joint government/private ventures and/or privatization of state media outlets into for-profit entities.<sup>142</sup> Information Minister Ye Htut has also indicated the MOI is interested in forming partnerships with ethnic media and potentially providing financial and other support.<sup>143</sup> While the infusion of resources to ethnic media outlets would be welcome, absent a strict barrier preventing influence over content and political direction, there is risk of compromising the integrity of independent media outlets serving ethnic communities, placing them under the effective control of the state and using state funding as a lever of control. Rather than these piecemeal measures, the new government should commit to full and prompt privatization of all state-controlled print media outlets, ensuring they are placed in the hands of a diverse range of owners. Privatization of the broadcast media should follow, coupled with the development of a public-service broadcaster with strong provisions built in to ensure its independence from the government or other official actors, particularly the military.

In terms of media regulation, the new laws do not go far enough in lessening state control over the media sector. The following specific steps should be priorities for future

reform in order to strengthen the regulatory framework and to align it with international standards:

- Amend the News Media Law to establish self-regulation.
- Abolish direct political appointments to the Myanmar Press Council; all members should be elected or appointed by the press and by groups of independent stakeholders.
- Replace direct financing of the Myanmar Press Council by the Ministry of Information with a more independent and guaranteed funding structure.
- Terminate the power of the Ministry of Information over licensing for print media.
- Terminate the role of the Ministry of Information in licensing broadcast media and vest such authority with a truly technical, apolitical body.
- Embark on a direct path to privatize state-owned print media outlets, ensuring diverse private ownership.
- Liberalize the broadcast sector, granting licenses to diverse privately- and community-owned outlets.
- Develop a truly independent public-service broadcaster that does not compete unfairly with private media.

### Press Freedom

The military, police, and quasi-civilian administration's continued intolerance of critical journalism and public discourse on controversial topics is evident in the increased pace of harassment, intimidation, prosecutions, and jailings of journalists, as well as editorial pressure and censorship, observed in 2014 and 2015.<sup>144</sup> In recent years, journalists have been imprisoned for reporting on themes from the educational levels of military members of parliament to the production of chemical weapons.<sup>145</sup> Leading media advocates see a clear link between opening space for expression and the impulse of the military and its allies to crack down.<sup>146</sup> In March, while Information Minister and Presidential Spokesman Ye Htut was speaking at an International Press Institute conference in Yangon, a masked journalist named Soe Yarzar Tun held up a sign with the message: "Stop beating, arresting and imprisoning journalists!"<sup>147</sup> A few months later at the 2015 National Press Awards, when Minister Ye Htut claimed that most of the disputes in the sector were caused by journalists' partiality and lack of professionalism, Chief Editor of the *The Voice* and Interim Press Council Secretary Kyaw Min Swe countered that it was the army that was usually responsible due to its dictatorial approach and tendency to quickly take legal action.<sup>148</sup> Myint Kyaw, the Myanmar Journalists Network's outgoing General Secretary and a newly elected member of the permanent press council, agrees, saying: "Over the past year the military's pressure and threats have been one of our biggest setbacks. After the reforms, their claws came out."<sup>149</sup>

### Legal pressure

The courts are increasingly being used to silence and intimidate media. The range of restrictive laws still on the books, such as criminal defamation and sedition discussed above, as well as a pliant judiciary that often adjudicates cases according to the government's decrees, allows for these prosecutions to continue. They serve as a clear warning for the media not to investigate or report on topics that challenge or otherwise displease the authorities.<sup>150</sup> Troubling recent incidents include:

- Five journalists and editors from the *Unity Weekly* newspaper remain in prison after reporting on a secretive military facility allegedly involved in chemical weapons production. Sentenced in July 2014 to 10 years in prison with hard labor, their term was reduced to 7 years on appeal in October.<sup>151</sup>
- Four journalists and an editor from the now-defunct *Bi Mon Te Nay* journal were jailed after their publication was suspended in July 2014 for publishing a political activist group's claim that Aung San Suu Kyi and allies had formed an interim government to replace the ruling quasi-civilian administration. In October 2014 the five media workers were charged with sedition and sentenced to two years in jail.<sup>152</sup> Notably, they were released as part of a presidential pre-election amnesty of nearly seven thousand prisoners in the summer of 2015.<sup>153</sup>
- Five senior staff at the independent media company Eleven Media Group were sued for defamation in late 2014 by the Ministry of Information for reporting on alleged corruption within the Ministry linked to the misuse of public funds during the procurement of a printing press.<sup>154</sup>
- In March 2015 two editors from *Myanmar Post Weekly* were jailed for two months on charges of defamation after writing that a member of parliament appointed by the military had criticized the low levels of education of his fellow military parliamentary appointees.<sup>155</sup>
- In July 2015, in a case brought by the Ministry of Information, heavy fines of 1 million kyats each (about \$800) were levied against two journalists from the *Myanmar Herald*, who had published an interview in November 2014 in which an opposition politician referred to a statement by the president as "gibberish, irrational, cheap, and inconsistent... completely nonsensical, absurd and insane." Upon announcing the fine, the judge referred to President Thein Sein as "like our parent" and said that the statements "should not have been published."<sup>156</sup>
- When the Eleven Media Group's *Eleven Daily* newspaper attempted to report on its staff members' defamation trial in June 2015, the Ministry of Information brought contempt of court charges



*Although writers and journalists no longer have to contend with the pre-publication censorship that was in place during military rule, content controls remain on the books and instances of unofficial “guidance” over content continue.*

against 17 of its journalists, claiming that coverage of the trial put undue pressure on the court.<sup>157</sup>

Mere threats of legal action are also being used to stifle the press. In January 2015 a statement in the army-owned Myawaddy journal warned journalists from other outlets that they would face legal action if they claimed soldiers were linked to the murders of two Kachin teachers.<sup>158</sup>

**Physical harassment and attacks**

There have been several incidents in which journalists have been physically attacked—and in one case, killed—in apparent retaliation for their reporting. The level of impunity surrounding such cases reflects shortcomings in the quasi-civilian government’s commitment to media freedom. When journalists know that opponents within the military and government can target them without fearing prosecution, the personal calculus associated with the risks of hard-hitting investigative coverage or commentary can lead to a powerful chilling of speech.<sup>159</sup>

The most egregious incidence of violence, which remains unresolved, involves freelance journalist and former democracy activist Aung Kyaw Naing (known as Par Gyi), who often reported on ethnic issues along the Myanmar-Thai border for Yangon-based media. He died in October 2014 after being detained by the military while reporting in Mon State on fighting between the state army, the Democratic Karen Buddhist Army (DKBA), and small units of ethnic Karen rebels.<sup>160</sup> An army statement addressed to the local press council on October 23 said he was killed while trying to escape custody several days after he was detained, and that his body was buried by the military without notifying his family.<sup>161</sup> Following an investigation by the Myanmar Human Rights Commission, his body was exhumed from a shallow grave weeks after his death, revealing signs of torture. However, in May 2015, a secret military court acquitted two soldiers accused of the murder.<sup>162</sup> The civil suit filed to protest his death stalled in June 2015 after two members of the army battalion that detained him failed to appear. His widow has indicated plans to appeal to reopen the inquiry.<sup>163</sup>

Another unresolved case involves a June 2015 attack on Eleven Media Group CEO Than Htut Aung, who in his writings frequently criticizes the military’s political role and official harassment of the media.<sup>164</sup> While driving in Yangon, he was subjected to a slingshot assault that damaged his car.<sup>165</sup> The assailant reportedly escaped in a taxi, and although police apprehended two suspects, they denied involvement in the attack and the case remains unresolved.<sup>166</sup>

Security forces also have harassed and threatened journalists and activists, reflecting a deep distrust of the press, or, at best, a lack of training or direction regarding civilian rights to free expression and assembly. In March 2015 students, protesters and journalists were attacked and arrested during education reform rallies in Letpadan.<sup>167</sup> Police officers beat at least two journalists who were at the scene to report about the protest.<sup>168</sup> The journalists were arrested and held for three days without charge.<sup>169</sup> In an interview with Amnesty International, *The Irrawaddy* journalist Zarni Mann reported that police warned media they would get in “big trouble” if they continued to follow the student protest.<sup>170</sup> Also in March, two journalists from DVB Multimedia and *7Day Daily* were arrested after reporting on a strike at a garment factory; they were detained for several hours and then released.<sup>171</sup> According to *7Day Daily*, state media outlets wrongfully accused the journalists of having violated journalistic ethics, and police did not return the journalists’ equipment after their release.<sup>172</sup> The paper’s executive director Ahr Mahn said these were common tactics used by authorities to discourage coverage of sensitive issues such as public demonstrations.<sup>173</sup>

**Censorship, editorial guidance, and restrictions on access**

Although writers and journalists no longer have to contend with the pre-publication censorship that was in place during military rule, content controls remain on the books and instances of unofficial “guidance” over content continue. The new Printing and Publishing Enterprises Law discussed above also contains strictures pertaining to the publication of sensitive information, military-era

repressive laws are still in place, and there is a lack of strong legislation protecting freedom of expression and freedom to publish.<sup>174</sup> When print media pre-publication censorship was abolished in 2012, 16 guidelines were retained regarding publication of articles critical of the government and/or related to corruption, illicit drugs, forced labor, and child soldiers.<sup>175</sup> Media outlets are in theory obliged to submit copies of their publications after they are printed (four copies of each manuscript must be submitted to the Copyright and Registration Department after publication and publishers must also submit an electronic PDF file to the Ministry of Information).<sup>176</sup> Existence of the restrictions, as well as fear of censure or legal reprisal for overstepping these boundaries, means that self-censorship amongst publishers is still a concern.<sup>177</sup>

Instances of both overt and more subtle “editorial guidance” also continue. A glaring example is the Armed Forces Accurate Information Team, which is ostensibly charged with responding to press requests. This entity was reportedly created in response to the interim press council’s push for a military-run agency to respond to requests for information, but has in practice functioned more like a state-run press monitor.<sup>178</sup> According to Thiba Saw, formerly the *Myanmar Times*’ editorial director and currently director of the Myanmar Journalism Institute and member of the Press Council, the Armed Forces Accurate Information Team first surfaced in March 2015, criticizing the *Myanmar Times* weekly for running a cartoon about a military operation in Kokang province on Myanmar’s northeast border with China.<sup>179</sup> In a second case, *Eleven Daily* was criticized by the Armed Forces Accurate Information Team for a story about the same operation.<sup>180</sup> The *Myanmar Times* apologized for the cartoon and took down the content.<sup>181</sup> Earlier in the year, *The Irrawaddy* was also warned about a cartoon it published about the president.<sup>182</sup> More recently, *Eleven Daily* apologized for publishing an image of government forces captured by rebels without blurring the soldiers’ faces, but it rejected accusations that its report about heavy government casualties violated journalistic ethics.<sup>183</sup>

In an overt attempt to control content, the Ministry of Information invoked the Union Election Commission’s election guidelines to temporarily force Cherry FM, one of 10 government-aligned radio stations in Myanmar, off the air on August 13. The license revocation came amid a surprise political reshuffle that ousted Shwe Mann, a chairman of the ruling Union Solidarity and Development Party.<sup>184</sup> Cherry FM, which is run by the deposed leader’s daughter-in-law, was told by the MOI it would have to meet certain conditions to reopen, including “balanced” coverage of political parties and election candidates. It was able to resume broadcasting five days later.<sup>185</sup>

Restrictions have also been placed on journalists’ access to sites of newsgathering interest, including conflict zones, which in turn restricts coverage of certain sensitive or

embarrassing issues. In one case, the government imposed physical restrictions on coverage of the armed conflict with the Kokang group on the China border. (Some media, including *The Irrawaddy*, ignored the restrictions without consequence.)<sup>186</sup> In late May, Myanmar’s navy refused to let journalists approach Thamee Hla Island, at the mouth of the Irrawaddy River, where more than seven hundred people (reportedly members of the Rohingya Muslim minority) were said to be held after being found drifting in a boat off the coast.<sup>187</sup> Journalists who tried to reach the island were either turned back, or briefly detained and questioned; some were forced to hand over their camera memory cards, or ordered to sign documents promising not to return.<sup>188</sup> As a result, virtually no independent reporting on the situation was possible.

In June 2015 the Myanmar Parliament announced it would no longer allow journalists in the media section directly overlooking the chamber of the assembly; instead they would have to watch proceedings on a television screen in the hallway outside of the chamber. This was largely seen as punishment for filming and photographing members of parliament sleeping during sessions and for showing a military-appointed MP impermissibly voting on behalf of his absent military-appointed colleague.<sup>189</sup> Critics say this change in policy demonstrates the military’s influence over the house speaker.<sup>190</sup> Parliament officials also said they would cease publishing their schedule in advance, thus further stymieing reporters’ ability to follow relevant legislative debates.<sup>191</sup> The decision means journalists can no longer take photographs or film inside the parliament.

Additional constraints were placed on media content during the preelection period. On October 19, the Union Election Commission (UEC) issued a direct warning to media to avoid “biased” news reporting, while on October 18, in a separate incident, it used state media to denounce a BBC program in which people interviewed on the street claimed the ruling party had bribed voters.<sup>192</sup> According to Press Council member Myint Kyaw, the commission should not have issued a public statement through a state-owned news outlet since this demonstrated institutional bias toward the ruling party.<sup>193</sup>

The instances of legal prosecutions, physical attacks, and editorial “guidance” during 2014 and 2015 indicate that both ministries and the military were using a range of tactics to exert pressure on the media. True press freedom will not be attained unless these types of retaliatory actions end, as they cast a chilling effect over the sector and the ability of media outlets to cover the news. Specifically, the following steps are recommended:

- Abolish any forms of censorship remaining on the books.
- Reform or abolish laws enabling the criminal prosecutions of journalists, particularly for charges of

defamation and sedition, so that journalism and free expression are not criminalized.

- Ensure prompt and thorough investigations of attacks on journalists, providing for transparency regarding the investigation progress and outcomes so that the perpetrators are brought to justice.
- Abolish the Armed Forces Accurate Information Team, with its legitimate functions—if any—subsumed by other entities.

### Digital Freedom

The expansion of affordable digital communications and information access offers dramatically expanded opportunities for communication and expression in Myanmar. With new rights have come new risks, however. A spate of arrests in October 2015 have relied on a draconian—and virtually unchanged—legal framework that dates back to the junta, while uncertain protections regarding user data have left individual users vulnerable to authorities' requests for their electronic records or other forms of surveillance.

### Digital and telecommunications regulation

Myanmar's military junta adopted a trio of laws specifically to restrict the digital sphere, including the 1996 Computer Science Development Law, the 2000 Web Regulations,<sup>194</sup> and the 2004 Electronic Transactions Law (ETL).<sup>195</sup> All three remain in force and could constrict free speech online.

The Computer Science Development Law, called “Orwellian” by the U.S. Department of State shortly after it was passed, punishes a variety of vaguely defined and overly broad offenses.<sup>196</sup> Specifically, it criminalizes any individual who uses a computer to carry out an act that undermines the “state security, the prevalence of law and order and community peace,” and makes it a crime to import, possess, or use a computer without a license from the Ministry of Communication.<sup>197</sup> The 2000 Web Regulations prohibit content that is “directly or indirectly detrimental to the interests of the Union of Myanmar.”<sup>198</sup> Information about prosecutions using these laws is not widely reported, and analysts have noted that the actual enforcement of these laws is uneven, with the vast majority of offenders never prosecuted.<sup>199</sup>

The Electronic Transactions Law is more clearly troubling. The Law had been used in the past to target digital activists, such as bloggers Nay Phone Latt and Thin July Kyaw in 2007 and activist and comedian Zarganar in 2008. Although it was not invoked after the political openings began in 2010, its promised repeal never occurred, and the statute was again cited in a series of arrests of activists in October 2015 for Facebook posts.<sup>200</sup> Under Section 33 of the law, which was amended in 2013 to lower the prison penalties for offenders, Internet users face up to five years in prison for any act “detrimental to security of the State

or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture,” and/or for receiving or sending state secrets. Section 34 (d) allows a five-year prison term for anyone found guilty of “creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.”<sup>201</sup>

Regrettably, the quasi-civilian government has perpetuated the junta's pattern of enacting intrusive legislation that impedes online expression. The 2013 Telecommunications Law's Section 66-D contains a broad prohibition on vague and ill-defined categories of communication: “Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both... Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network.”<sup>202</sup> Analysts note that while the Telecommunications Law governs the development of the telecommunications sector, including licensing services, network facilities and equipment providers, and obligates them to operate consistent with “national peace and tranquility and for public security,” it does not protect online freedom of expression or the right to privacy.<sup>203</sup>

### Threats and repercussions

In October 2015 two activists were arrested in separate incidents over the space of a week for posting satirical content on Facebook that was deemed critical of the army.<sup>204</sup> Chaw Sandi Tun (also known as Chit Thami), a former National League for Democracy officer who participated in the 2015 student rallies calling for educational reform, was initially charged under the Electronic Transactions Law,<sup>205</sup> although this was later replaced by a defamation charge.<sup>206</sup> Kachin peace activist Patrick Kum Jaa Lee was arrested for allegedly posting a portrait of Defense Services Commander-in-Chief Senior General Min Aung Hlaing being trampled underfoot. The activist's mobile phone and laptop were also confiscated and he was jailed on charges brought under Section 66-D of the Telecommunications Law; he is believed to be the first person ever charged under this law for online expression.<sup>207</sup> Later in October, the poet and activist Maung Saungkha was accused of defaming the president under Section 66-D because he referenced having a tattoo of the president on his body in a poem that was posted to Facebook in late October. Saungkha went into hiding to protect himself, but was arrested on November 5, 2015.<sup>208</sup> The Ministry of Information's Permanent Secretary Tint Swe defended the arrests, saying they were designed to ensure stability ahead of the elections.<sup>209</sup> Local journalists and bloggers contend they were a form of intimidation





Students protest in Yangon against the proposed Education Law, November 14, 2014.

by the military, intended to silence key activists.<sup>210</sup> Lee, for example, is married to the prominent women's rights and peace activist May Sabe Phyu, who has spoken out against religious extremism.

Other crackdowns on online expression in 2015 included the arrest in late February of freelance photo-journalist Aung Nay Myo for uploading a satirical post to Facebook mocking the president's relationship with the military. The post depicted President Thein Sein and Military Commander General Min Aung Hlaing photo-shopped into a poster for a movie regarded as military propaganda, with the name of the film changed.<sup>211</sup> The Myanmar Special Branch accused Aung Nay Myo of harming, deterring and disturbing the functions of government and requested that action be taken against him under the 1950 Emergency Provisions Act. In an open letter to the president, parliament, Ministry of Information, and foreign embassies, journalists from upper Myanmar condemned the arrest as a threat against freedom of speech.<sup>212</sup>

Government surveillance of online activity is another emerging free expression concern, heightened after Wikileaks released emails on July 8, 2015, that included correspondence between a Myanmar company claiming to write on behalf of the Ministry of Defense and the Italian spyware company Hacking Team, which sells

software enabling extensive surveillance of computers and mobile phones.<sup>213</sup> Norway-based Telenor, one of the major mobile phone service providers in Myanmar, announced it would attempt to protect its customers from government wire-tapping and asked authorities to clarify interception rules and procedures. Early in 2015, however, it and the other foreign telecommunications company present in the market, Qatar-based Ooredoo, confirmed the government had asked them to hand over user information, including phone records and locations.<sup>214</sup> It is widely believed the military has stepped up surveillance by means of wiretapping, hacking, and intercepting voice-over-Internet calls.<sup>215</sup> The quasi-civilian administration is developing guidelines that are designed to regulate network shutdowns as well as officials' access to social media and mobile conversations, but thus far these efforts have not been forthcoming and there are effectively no constraints.<sup>216</sup>

In the meantime, independent journalists and editors cite cyber safety as a primary concern; they doubt that current laws provide sufficient guarantees for users' privacy and freedom, and worry about the harsh penalties imposed on those deemed to be undermining state security.<sup>217</sup> According to Sarah Oh of the Phandeevar: Myanmar Innovation Lab, neither journalists nor civil society actors are well trained in mobile security: "During the

crackdown on student protests in Letpadan earlier this year, for example, phones were commandeered by police. The fact that most phones weren't password protected likely facilitated this intrusion."<sup>218</sup> Given the uptick in cases of arrests involving social media use, training in mobile security is an urgent need for journalists, activists, and ordinary users alike.

As currently framed, laws and regulations governing the digital space fail to protect speech, and can and are actively being used to prosecute it. Meanwhile, a vacuum regarding regulations on online privacy enables invasive levels of government surveillance. Both areas are an urgent priority to ensure that legal, peaceful online expression is protected rather than criminalized. Specifically, the new government should:

- Repeal or substantially amend outdated laws regarding the Information and Communication Technologies (ICT) sector, including the 1996 Computer Science Development Law, the 2000 Web Regulations, and the 2004 Electronic Transactions Law to decriminalize online expression and possession of ICTs.
- Amend the 2013 Telecommunications Law to include protection for online freedom of expression and the right to privacy.
- Promulgate new laws to regulate official access to citizens' communications in order to ensure privacy rights and protection against unwarranted surveillance, in consultation with international experts and civil society groups.

## Freedom of Expression and Assembly

### *Association and assembly*

Broader rights of expression, association, and assembly also came under pressure in 2015, with a number of incidents tied to ongoing student protests during the year. As with the media and digital spheres, restrictive laws still in place—such as provisions of the Penal Code and the Peaceful Assembly and Peaceful Procession Law—were used by the government to arrest and bring charges against students and activists. At the March Letpadan rallies, in addition to the arrests of journalists discussed above, the police detained 127 student leaders and activists.<sup>219</sup> Approximately fifty individuals remained in custody by the November elections, facing criminal charges relating to rioting, harming public servants, and public mischief.<sup>220</sup> If convicted, they could spend up to a decade in prison.<sup>221</sup> For example, student leader Phyo Phyo Aung is facing nine years in prison.<sup>222</sup> After a September trial of more than fifty defendants in the Tharawaddy district court, the judge charged the Letpadan students' defense lawyer Khin Khin Kyaw with disrupting the court.<sup>223</sup> The charge was believed to have been in retaliation after she filed a motion demanding that police officers be held responsible

for excessive use of force during the protests.<sup>224</sup> Khin Khin Kyaw now faces two years in prison and the loss of her law license.<sup>225</sup>

In a related case, in late March, Myanmar's highest religious authority, the state-controlled Sangha Maha Nayake Committee, indefinitely banned prominent Buddhist monk Shwe Nya Wah Sayadaw from speaking publicly.<sup>226</sup> A renowned human rights defender and National League for Democracy supporter, Shwe Nya Wah Sayadaw had aided students calling for educational reform, and criticized the government for not respecting freedom of assembly.<sup>227</sup> These cases evince the government's intolerance of peaceful protest, and readiness to target those who criticize the state's heavy-handed response to the protests themselves. Human rights experts have also strongly criticized the authorities' responses, noting that the crackdown has had a broader chilling effect on both freedom of expression and journalism.<sup>228</sup>

In another instance, in July student activists from Yadanarpon University's All Burma Federation of Student Unions were arrested on charges of unlawful assembly after allegedly using spray paint to write messages on the front of the university, including "We don't want the National Education Law" and "Release students in Tharawaddy prison immediately."<sup>229</sup> While a vandalism-related charge may have been warranted if the allegations were founded, in August the students were charged with incitement, rioting, abetting, and unlawful assembly under Sections 143, 147, and 505 (b) of the Penal Code and Section 18 of the Peaceful Assembly and Peaceful Procession Law. Their requests for release on bail so they could sit their exams were rejected. They are currently in solitary confinement, some engaged in hunger strikes.<sup>230</sup>

Overall, PEN and other human rights groups have documented dozens of cases of individuals—including journalists, students, labor and land rights activists, and civil society leaders—facing detention and legal charges in 2015.<sup>231</sup> At the end of her third visit as the UN Special Rapporteur on Human Rights in Myanmar, in August, Yanghee Lee expressed concern at the rising number of arrests, stating that "civil society actors, journalists and ordinary citizens exercising their rights to freedom of expression, assembly, and association are not threats...and they play a vital role in contributing to and sustaining a robust democracy, and in advocating for the promotion and protection of human rights."<sup>232</sup>

### *Public creative expression*

Creative artists generally have faced fewer constraints than others exercising their free expression rights. Human Rights, Human Dignity Film Festival organizer Mon Mon Myat believes it is partially a question of their smaller audience.<sup>233</sup> While authorities are keeping a close eye on media outlets, filmmakers, documentary-makers, and



photographers are less visible, and can more easily tackle sensitive topics. Yet they have not been immune from reprisals and attempted censorship during 2015.

All of the films chosen for the annual Human Rights, Human Dignity Film Festival are required to be submitted to the Myanmar Film Classification Board before they can be publicly viewed. The documentary film *Chair Formula*—about Than Shwe, the leader of Myanmar’s military junta from 1992–2011—was rejected and could not be shown at the 2015 festival. In 2014, the film festival itself decided to cancel the showing of *The Open Sky*, about anti-Muslim violence, saying they did not want it to inflame Buddhist–Muslim tensions or to place the rest of the festival at risk. It later played in Yangon at the U.S. Embassy, British Council, Myanmar Institute of Theology, and the Press Show at the Royal Rose Restaurant.<sup>234</sup>

Licensing regulations that control exhibitions in public spaces place limits on artists and photographers. Such exhibits must be approved by local authorities two weeks before they can be displayed,<sup>235</sup> although landlords at times agree to hold exhibitions without obtaining official permission.<sup>236</sup> On January 31, photographer Htein Win was denied permission for a hotel lobby exhibit of his photographs of the 1974 protests (already published in book form) that was scheduled for the following day. He linked the decision to rising tension over the student educational reform rallies that started in January.<sup>237</sup> In April, the Documenting Burma’s Long March exhibition was held at the Thing Art Gallery in Yangon; the exhibition documented the three-hundred-mile education reform march from Mandalay towards Yangon that was stopped by police barricades in Letpadan, where violence subsequently broke out. According to *The Irrawaddy* photographer and exhibition contributor, J Paing, a police officer told them on the exhibit’s first day to move two images depicting police brutality to poorly lit corners of the exhibition space. The landlord eventually decided to shut down the exhibition early out of fear that the material was too sensitive.<sup>238</sup>

To ensure that citizens are able to express their views through association and assembly, whether using public space to express their protest or their creativity, the following reforms should be prioritized:

- Decriminalize peaceful protest including through the repeal of relevant sections of the penal code and the Peaceful Assembly and Peaceful Procession Law.
- Release all students currently in jail for exercising rights to free expression and assembly.
- Withdraw licensing regulations that control artistic exhibitions.

### Challenges for Free Expression in the Ethnic States

The environment for free expression in Myanmar’s ethnic

states was historically even more restrictive than at the national level.<sup>239</sup> Since Myanmar’s independence in 1948, many of its diverse ethnic groups have fought for either partial or complete autonomy. The national military junta has responded with repressions in various forms, including conscription, compulsory labor, ill-treatment and extrajudicial executions of ethnic minority villagers in conflict zones, the forcible relocation of entire villagers, and land confiscation.<sup>240</sup> In the context of the general opening of the last five years, improvements have included peace talks, the strengthening of civil society, the return of exiled ethnic media, and the resurgence of ethnic languages in literature, journalism, and other forms of creative expression.<sup>241</sup> In March 2015, bilateral ceasefire agreements were signed between the government and 17 ethnic armed groups, yet on October 15 only 8 armed groups signed the so-called Nationwide Ceasefire Agreement (NCA) that was meant to conclusively end the decades of conflict.<sup>242</sup> Only one of the main armed groups—the Karen National Union (KNU)—signed. Those that did sign were removed from Myanmar’s terrorism lists, and were promised access to development and investment, freer movement, and the freedom to participate in political life.<sup>243</sup> In a sign that important freedoms of opinion do exist within the ethnic communities, it is notable that Karen civil society groups have openly criticized the KNU for signing the ceasefire, without apparent reprisals thus far.<sup>244</sup> At present, ethnic political parties are demanding the establishment of a federal system granting them significant autonomy, a lasting ceasefire, political rights and a share of the country’s natural resources.<sup>245</sup> Since the National League for Democracy won a majority in the November 8 elections and the ethnic parties did not do as well as expected, their future role and leverage is yet to be determined. The future status of the Nationwide Ceasefire Agreement is also unclear.

### Covering conflict: access, safety, and independence

Covering peace and conflict in Myanmar’s ethnic states poses a major challenge for local journalists, as the ongoing influence of the military in politics perpetuates a climate of fear wherein probing into these sensitive topics is perceived to be perilous.<sup>246</sup> Conflict is currently ongoing in Shan and Kachin states.<sup>247</sup> Although the ceasefires and relaxation of restrictions on some ethnic armed organizations in other states have generally had a positive impact on freedom of expression, significant challenges and a number of worrying restrictions persist. Despite an easing of the enforcement of the Unlawful Associations Act, which prohibits belonging to, managing, assisting, or promoting an “unlawful association,” armed groups are still officially considered illegal associations. This



poses a threat of prosecution against journalists, activists, and others who associate with them even if they are not themselves involved in armed activity.<sup>248</sup> For example, on May 3, 2015, World Press Freedom Day, the military sent a statement to the interim press council saying that anyone who published or broadcast statements by the Myanmar National Democratic Alliance Army (MNDAA), an armed group operating in Shan State's Kokang region, would be prosecuted.<sup>249</sup>

Apart from official pressure, ethnic journalists based in and covering news from ethnic areas have traditionally had to play a careful balancing act in terms of the tone and type of their reporting.<sup>250</sup> As it is believed that this is the language of the armed ethnic groups and not that of ethnic communities at large, covering mainstream issues from ethnic areas—such as abuses by the national army and subsequent political solutions like federalism and power-sharing—has often resulted in ethnic media being accused of bias and a lack of balance by mainstream media. Contributing to the problem is that the history, politics, and culture of the ethnic states, not to mention their local languages, are often little understood by mainstream Yangon-based media as they have grown up on the other side of the conflict.<sup>251</sup> Sai Lek, an ethnic Shan from Kachin State and the outgoing editor of Burma News International's *Myanmar Peace Monitor* project, sees both sides in the conflicts seeking to use the media to their own advantage. As a result, he says, journalists struggle if they want to gain access to all parties, to be balanced in their coverage, and to understand the complexities of peace and conflict. Although he is critical of both the national and the ethnic media's superficial coverage of the peace process, he nonetheless notes “a growing awareness of the ethnic states and ethnic minorities, of the peace talks and the importance of peace” among the majority Burman population.

A culture of fear affects media freedom and constrains free expression in ethnic areas. In a positive sign, Karen Information Center director Nan Paw Gay notes that local ethnic communities are now less fearful of speaking to journalists, particularly if they have gained some understanding of media and ethics.<sup>252</sup> Yet journalists still believe that caution is warranted when delving into a myriad of sensitive issues: peace talks and ceasefires; human rights abuses such as extrajudicial killings; forced labor; land confiscation; border conflicts; refugees, returnees, and internally displaced peoples; child soldiers; human trafficking; environmental degradation or resource extraction; drugs; corruption; and development.<sup>253</sup> Moreover, most ethnic media outlets lack the capacity, resources, or mandates to carry out deep investigations into these issues and thus tend to confine their coverage to publicly visible developments such as protests.<sup>254</sup> Some ethnic media outlets place their most sensitive

stories online, rather than in their printed journals, and/or give them to national media partners in order to limit the exposure of their journalists and editors to legal and physical risk.<sup>255</sup> Ethnic media also point to access to information as a major roadblock, particularly with regard to state authorities.<sup>256</sup>

The legal and regulatory framework also affects outlets in the ethnic states. In October 2014 in Chin State, considered the most remote and poorest state in Myanmar, four ethnic-language papers were shut down by state authorities as a result of not being registered.<sup>257</sup> They included the Lai-language bi-weekly *Hakha Post*, in the Chin State capital Hakha, the weekly Zomi-language *Tedim Post*, in Tedim, and the bi-monthly Zomi-language *Zomi Times*, which have managed to reopen with registration. The fourth, the daily Falam-language *Falam Post* in the city of Falam, was also struggling financially and is now defunct. All received letters from their township authorities who said they acted under the instruction of the Chin State government. Chin Media Network coordinator Salai Hung Tun Gei said there was some confusion as to whether media needed licenses,<sup>258</sup> but only licensed media can easily access information, particularly from state authorities. According to the network, there are an estimated 23 independent media currently operating in Chin State in a variety of ethnic languages. Although most are small, shoestring operations, they seek to play a role in the preservation of local ethnic languages and traditions, and to fill an information gap in their remote, mountainous region. A reform of the broadcast sector and ongoing digital roll-out could have a significant impact on information flow and freedom of expression in this remote state.

To improve the free flow of information within and between Myanmar's regions, the coverage of localized issues in ethnic states, the accessibility of media in minority languages, and more informed and robust expression and debate, steps should be taken to:

- Strengthen provisions for protecting the physical security of journalists in areas of conflict while allowing reasonable access.
- Reform the Unlawful Associations Act so that journalists and civil society groups are not threatened with prosecution for reporting on armed groups.
- Expand media access to ongoing discussions and negotiations so that ethnic media outlets can inform the populations in these states of key developments affecting their future.
- Improve channels by which ethnic media can access official information.
- Support training, cross-community reporting, and other routes to build journalistic capacity and counteract obstacles to reporting on important but sensitive issues.

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# AN INDIFFERENT SILENCE: ADDRESSING FREE EXPRESSION CHALLENGES IN A DIVERSE SOCIETY

In the areas of free expression noted above, the military and its government allies have threatened Myanmar's democratic progress through stalled constitutional, legal, and regulatory reform efforts and unwillingness to allow critical discourse in the media, through free assembly, and online. However, Myanmar also faces challenges to free expression and the development of an open society that include hate speech and rising extremism. In these areas, authorities have taken a passive, indifferent approach that has allowed threats to Myanmar's democracy and social cohesion to expand. Democratic governments have an affirmative responsibility to enable and support healthy speech and open discourse, and leadership is particularly critical in a multi-ethnic and religious society such as Myanmar.<sup>259</sup> Fostering a stable and vibrant civil society that contributes to tolerance and peacebuilding is also vital. The following section details areas in which positive intervention will need to replace inaction if free expression rights are to be realized and entrenched as a fundamental foundation for democratic progress.

## Combating Religious Intolerance and Racial Hatred

A freer Myanmar has opened the way for a steady rise in public expression of anti-Muslim rhetoric by hardline nationalists and Buddhist extremists who focus their vitriol on the Rohingya, a Muslim minority concentrated in Rakhine State that was stripped of citizenship by the military junta. Racially charged hate speech has become more common across a range of online and offline platforms, with the implicit backing of authorities who have declined to reject the inflammatory rhetoric much less speak out forcefully for tolerance.<sup>260</sup> At the same time, it has become more difficult to speak or write freely either about the Rohingya question or about Buddhist extremism.<sup>261</sup>

Radical Buddhist monks have played an increasingly prominent role in the Myanmar polity, intimidating other

voices into silence.<sup>262</sup> Founded in 2013, the monk-led Association to Protect Race and Religion—commonly known as Ma Ba Tha—achieved a new prominence in the run-up to the November parliamentary election, intensifying its anti-Muslim campaign during this period.<sup>263</sup> A Facebook profile page of the best-known leader of the group, Ashin Wirathu, has thousands of supporters, and he has launched his own news app to propagate anti-Muslim speech.<sup>264</sup> Ma Ba Tha's vitriol extends to those who speak in support of Muslim rights. In January 2015, Wirathu called UN Special Rapporteur Yanghee Lee a "bitch" and a "whore" after she defended the Rohingya, comments that were widely circulated by extremists and online commentators.<sup>265</sup> Authorities thus far have not taken any action against Wirathu or other hatemongers,<sup>266</sup> which has allowed such views to gain legitimacy and a growing audience.<sup>267</sup>

The quasi-civilian government bowed to pressure from Buddhist extremists on a range of policy issues during the year, signifying the growing political strength of this hardline constituency. As a result of protests in early 2015, a plan that included voting rights for Rohingya in the November elections was rescinded.<sup>268</sup> Ma Ba Tha's ultra-nationalist propaganda drove Parliament's passage in 2015 of four controversial "race and religion laws" regulating religious conversion, monogamy, population control, and interfaith marriage.<sup>269</sup> The laws were criticized for their anti-Muslim bias and potential to further stoke religious tensions and legitimize extremism, as well as for curtailing women's rights and religious freedom.<sup>270</sup> Analysts allege that, by signing the laws, Myanmar's quasi-civilian administration pandered to Ma Ba Tha in the hope of gaining extremist votes in the parliamentary elections.<sup>271</sup>

Activists such as the prominent women's rights and peace campaigner May Sabe Phyu who have spoken out against these laws received death threats and were branded "traitors" by senior monks and their lay supporters.<sup>272</sup> In another case, following complaints by members of Ma Ba

*Democratic governments have an affirmative responsibility to enable and support healthy speech and open discourse, and leadership is particularly critical in a multi-ethnic and religious society such as Myanmar.*

Tha to authorities, three men—one from New Zealand and two from Myanmar—were sentenced in March to 30-month jail terms on charges of “insulting religion” after posting a psychedelic image of the Buddha wearing headphones on the Facebook page of a Yangon bar in December 2014. The men were charged even though the picture, which advertised the bar, was taken down the day it was posted.<sup>273</sup>

The rise of Ma Ba Tha, and of Buddhist extremism in general, is now one of the most sensitive issues in public discourse in Myanmar. Former National League for Democracy official U Htin Lin Oo, for example, was sentenced in June 2015 to two years in prison with hard labor on charges of insulting religion following a speech in which he criticized Buddhist extremism and advocated religious tolerance.<sup>274</sup> After reference was made to Ma Ba Tha as a safety threat at a recent journalism training program in Mandalay (that was evidently infiltrated by an informant), Ashin Wirathu lashed out at the journalists and trainers on his web site.<sup>275</sup> Local editors and lawyers point to a politically driven double standard and patterns of selective enforcement of media and expression laws.

Zayar Hlaing, *Mawkun* founding editor and General Secretary of the Myanmar Journalists Network, sees authorities prosecuting journalists for criticizing the military yet turning a blind eye vis-à-vis the politicking of Ma Ba Tha—even though the election law technically prohibits using religion in campaigns.<sup>276</sup> The fact that those who speak in support of religious tolerance and against Buddhist extremism receive extralegal threats or are subject to prosecution, while those that foment hateful speech are not countered in any way, is deeply troubling. Official double standards and the coddling of Buddhist extremist groups will only exacerbate ethnic and religious tensions, and this pattern is in need of urgent redress by the new government.

The National League for Democracy (NLD) and its leader Aung San Suu Kyi have not to date offered a consistent or compelling alternative approach centered on the embrace of pluralism and respect for ethnic differences in Myanmar. Despite a worsening of the Rohingya crisis from mid-2012 onward, Aung San Suu Kyi

and other party members stayed largely silent on the topic. When pressed, she has commented that it is a “sensitive” issue that needs to be addressed “very, very carefully.”<sup>277</sup> Observers noted that in the period leading up to the elections, and with the rising power of Buddhist right-wing groups, the NLD appeared cognizant of the perceived need to be seen as a party that represents the Burman majority, and not to antagonize these groups or alienate Buddhist voters.<sup>278</sup> Others pointed to her desire to cement a majority for the NLD before attempting to address the Rohingya issue from inside government.<sup>279</sup> Noting that she wanted to avoid making statements that could heighten ethnic tensions and cause a backlash against Rohingya in an extremely polarized environment, Aung San Suu Kyi herself said: “I am silent because, whoever’s side I stand on, there will be more blood.”<sup>280</sup> Tellingly, the NLD, like the Union Solidarity and Development Party (USDP), had no Muslim candidates in the 2015 elections.<sup>281</sup>

The sweeping NLD mandate and forthcoming change in government offer a chance for Aung San Suu Kyi and her party to take immediate steps to address the issue in a way that acknowledges the asymmetrical violence and abuse meted out to the Rohingya as well as the need for speed and clarity to resolve the issue of their citizenship. This will be among the most visible tests of her leadership internationally and may determine whether her status as a global human rights icon survives her transition to politics, although such actions risk negative impact on her domestic support.

Threats from Ma Ba Tha and other groups, compounding widespread discriminatory attitudes within Myanmar society, make open discussion or balanced coverage of the Rohingya extremely difficult. With some notable exceptions, mainstream and social media are filled with intolerant, nationalistic coverage and, at times, hate speech.<sup>282</sup> Others have adopted a more subtle, less inflammatory approach—stressing messages along the lines of “we need to ensure the country is stable”—while effectively conveying that the rights of the Rohingya can legitimately be subordinated to other national interests.<sup>283</sup> According to Thant Sin, a contributor to the respected *Global Voices*



## *Efforts to monitor and counter intolerance and hateful speech are a positive approach by civil society and the public and need to be bolstered by high-level officials echoing their messages.*

citizen journalism platform, the Rohingya are the most sensitive issue for online writers and bloggers: “That is what divides the activist and free expression community in two groups—those willing to speak out and those who are not. When they criticize the military and the quasi-civilian administration, they have the people on their side. If they speak out in defence of the Rohingya, they risk losing their audience and also becoming the target of threats and harassment.”<sup>284</sup>

A few individuals and organizations have launched campaigns to promote tolerance, and these efforts should be encouraged. The #friendshiphasnoboundaries campaign, for example, was initiated in May by the Rohingya activist Wai Wai Nu to encourage people to post “selfies” with friends from different religious and ethnic backgrounds on social media to raise awareness about the strength of diversity, and to “reduce discrimination, hatred, hate speech, and extreme racism based on religion, ethnicity, nationality, color and gender.”<sup>285</sup> Last year the Myanmar IT for Development Organization launched the Pan Zagar (flower speech) campaign to monitor and report hate speech online<sup>286</sup> and is currently collaborating with Facebook to develop a Myanmar-specific reporting system for incitement.<sup>287</sup> A small group of activists who want to remain anonymous are trying to counter hate speech online through rapid response.<sup>288</sup> Burma News International is the only network in Myanmar with both Buddhist Rakhine and Rohingya members. It has held annual media conferences in various ethnic states, including a planned 2016 conference in Rakhine state.<sup>289</sup> These efforts to monitor and counter intolerance and hateful speech are a positive approach by civil society and the public and need to be bolstered by high-level officials echoing their messages.

Drawing from the experience of other racially, ethnically and religiously diverse societies and the goodwill of many sectors within Myanmar’s own society, the incoming government must assign top priority to address what many believe is the most potent threat to the future of Myanmar’s democracy. It is imperative that the government:

- Ensure use of respectful and tolerant language by top government officials, and uphold the rejection and rebuttal of hate speech.

- Prosecute hate crimes including incitement to imminent violence with diligence.
- Foster interethnic dialogue and exchange in an ambitious and focused campaign.
- Support efforts by activists and NGOs to promote counter- or positive speech.

### **Fostering Ethnic Voices**

Expanding the diversity of ethnic voices in public discourse is a key facet of promoting tolerance and ensuring inclusion of civil society in the ongoing political dialogues and peace negotiations between the national government, the state governments, ethnic constituencies, and armed groups. In the past few years, greater freedom of expression in the ethnic areas has enabled the emergence of ethnic media and regional literature. However, a range of limitations remain. The government should take additional affirmative steps to foster the growth of these sectors in order to provide a strong foundation for peace and tolerance in Myanmar.

Given ongoing difficulties with print media production and distribution in the ethnic states and rural areas due to poor and/or non-existent printing facilities and transport networks, including roads, as well as low literacy rates also affecting online media, the broadcast sector needs urgent reform. With the passage of the Television and Radio Broadcast Law, the Ministry of Information (MOI) should establish independent, fair and minimally intrusive procedures to grant licenses for independent community and private radio and television stations. This would be welcomed by the many print and web outlets eager to expand to broadcasting.<sup>290</sup> Recently, the MOI met with a small group of ethnic media outlets to discuss the development of an ethnic media policy, including potential financial support for individual outlets.<sup>291</sup> The MOI should shift gears: It should exclude a role for itself in ethnic media, liberalize restrictions on ethnic media’s access to public advertising, and implement a substantial redistribution of subsidies currently in place for state media to be used to foster truly independent ethnic and community-based outlets.<sup>292</sup> Bolstering the quality and level of education, especially in local languages, which has until recently been restricted, also should be a key priority for the government, as this would in turn have

a positive impact on expression, discourse and dialogue, including through media, in the ethnic states. Access to information is also cited as a major problem by most ethnic media, and while it can be challenging to access information from both state authorities and armed ethnic groups, it is the former that is widely viewed as the most difficult.<sup>293</sup>

There are nascent efforts to support creative expression in ethnic languages. For example, in September 2015 the British Council and PEN Myanmar collaborated on *Hidden Words, Hidden Worlds*, a compilation of original short stories that emerged from workshops held in the ethnic states with local writers.<sup>294</sup> The goal was to marry traditional forms of ethnic storytelling, including oral and traditional literary forms of short-story writing, and to experiment with contemporary themes in the ethnic states. The writer, PEN Myanmar member and former political prisoner Let Yar Tun, travelled to Chin State to mentor the local participants: “We encouraged them to write about their own experiences. But people are still fearful and don’t seem to really know what freedom of expression means. It’ll take a long time to get real freedom and to understand we can create what we want and innovate in our own personal styles.”<sup>295</sup>

The Yangon Film School<sup>296</sup> and the annual Human Rights, Human Dignity Film Festival<sup>297</sup> support freedom of expression through film and documentary making. At this year’s festival, one award winner, *Touching the Fire*,<sup>298</sup> told of a clash between villagers and the Thai Toyo Company after it tried to set up a charcoal factory in a village in Mon State. The documentary was a collaboration between filmmaker Min Than Oo and the Human Rights Foundation of Monland,<sup>299</sup> offering a compelling example of how creative artists and civil society can work together to tell sensitive stories about the ethnic states.

Another film, *Across*, covers a natural gas and petroleum pipeline project and its impact on villagers along its route. Filmmakers collaborated with local civil society groups to identify those featured in the film.<sup>300</sup> Similar initiatives that receive government support without conditions on the content would allow for a greater diversity of voices and perspectives to be heard and publicized, and could contribute to greater understanding of Myanmar’s myriad cultures and ethnic groups.

Supporting ethnic voices and building capacity in the ethnic states should be a key priority for the new governments on both the national and state levels. In particular, the incoming administration should:

- Liberalize the radio and televisions sectors by licensing community radio and television stations, particularly in ethnic languages.
- Redistribute the subsidies currently in place for state media so that private and financially struggling ethnic-language outlets have a more level playing field.
- Prioritize upgrades to Information and Communications Technology infrastructure, such as Internet access, availability of broadband, and a steady electricity supply, in the ethnic states.
- Strengthen the ability of journalists in ethnic states to access official information from state government officials.
- Expand financial support for education, literacy, and creative and artistic expression in the ethnic languages.
- Encourage the activities of groups playing an important role in fostering mutual understanding and interaction between different ethnic groups in Myanmar, while respecting their independence.

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# CONCLUSION AND RECOMMENDATIONS

To fortify Myanmar's nascent democracy, free expression must be an essential pillar of the incoming government's agenda. The country has already gone some way toward opening the space for expression, including reducing constraints on media, digital technology, assembly, and association. However, the lack of a thoroughly reformed legal environment that protects freedom of expression, as well as an erosion of freedoms in 2014 and 2015 as the elections approached, have threatened this progress. The role of the military in limiting these freedoms through legal prosecutions, official and unofficial censorship and editorial "guidance," and other forms of retaliatory harassment will need to end. Key steps include constitutional and legal amendments, reform of the regulatory framework, and a reduction in the powers of the Ministry of Information, as well as the release of those journalists and activists imprisoned for free expression and association.

Conversely, government action has been lacking in specific areas including fostering civil discourse and tolerance. In an environment where hateful speech directed at racial and religious minorities by Buddhist extremist groups has multiplied, officials have allowed hatemongers free rein, while those who speak out against vitriol face threats and prosecution. A dramatic change in approach is needed to quell religious extremism and promote multiethnic and religious tolerance and society-wide pluralism. To start, official rhetoric needs to counter hateful speech, not endorse it, and those who speak out in favor of tolerance need official support, not prosecution or condemnation.

The coming year will be a critical test of political evolution and democratic reforms at the national level, as well as an opportunity to solidify stability in the ethnic states where ceasefires are in place and where armed hostilities have abated. As the ability of media, civil society, and creative artists to express themselves freely and engage in these processes is crucial, the new elected government should make free expression a priority in 2016. The fact that there will be a change in government, and a National League for Democracy majority, offers a chance for deeper reforms to continue along a path that will entrench respect for free expression as a cornerstone of further democratic progress.

On the basis of these conclusions, and on this report's findings, PEN American Center makes the following recommendations:

## To the new Government of Myanmar:

- Ratify the International Covenant on Civil and Political Rights (ICCPR).
- Build explicit protections for freedom of expression, including media freedom and the right to information, into any revision of the constitution.
- Abolish or amend provisions of the penal code and other laws that unduly restrict free expression and association in accordance with best practice international standards.
- Decriminalize defamation, sedition, and peaceful assembly.
- Pass an Access to Information law, as well as mechanisms to ensure implementation, particularly for journalists in the ethnic states.
- Amend the Printing and Publishing Enterprises Law, the News Media Law, and the Television and Radio Broadcast Law to ensure the independence of the regulatory bodies, an end to content-based regulation by the Ministry of Information, and broader access to licenses by independent media outlets.
- Reform the state-owned media sector to reduce state ownership, and develop a fully independent and truly public service broadcaster that does not compete unfairly with private media.
- Develop a community media sector, prioritizing outlets serving minority-language and rural communities.
- Refrain from using laws to jail or fine media outlets as well as individuals for online expression.
- Release individuals imprisoned for exercising their rights to free expression and assembly, including through journalism, creative expression, online speech, and public protests.
- Investigate cases of physical harassment or killing of journalists and others exercising free expression, and ensure that perpetrators are held accountable.



- Prioritize diversification of the telecommunications sector, allowing more private actors to enter the market.
- Support faster roll-out of broadband telecommunications services into underserved areas, including in the ethnic states.
- Abolish or amend restrictive laws governing the Information and Communications Technology sector, to ensure protection for user privacy and free expression rights online.
- Provide greater support for education, literacy, media, and publishing in the ethnic languages.
- Expand the ability of journalists to report from and in the ethnic states.
- Ensure senior officials proactively speak out to counter hateful speech and religious extremism.

#### To the international community:

- Encourage Myanmar to sign protocols such as the ICCPR and undertake the recommendations put forth during the Universal Periodic Review process.

- Raise concerns with vigor regarding religious intolerance and hateful speech.
- Support civil society organizations and initiatives defending free expression and those countering hate speech.
- Supply financial and technical assistance regarding media law reform, digital freedom, and other regulatory frameworks.
- Press for free expression rights for ethnic minorities, including through community media, digital innovation, and true public-service media.

#### To local and international civil society actors:

- Monitor violations of free expression rights and advocate for greater protections for freedom of expression.
- Continue to promote diversity of media ownership and of voices in the media and other forms of creative expression.
- Employ creative means to foster inter-ethnic and inter-religious dialogue.

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# ENDNOTES

1 Throughout this report, the term “Myanmar” is used to refer to the country, and the term “Burmese” is used to refer to the language. The majority of people in Myanmar, widely referred to as Burman (Bamar), are reported to make up approximately 60% of the population. Daniel Maxwell, *Burma Elections 2015 – The Ethnic Minority Vote*, ASIAN CORRESPONDENT (Nov. 4, 2015), <http://asiancorrespondent.com/2015/11/burma-elections-2015-the-ethnic-minority-vote/>. Much of the conversation, both in Myanmar or by those commenting on the country, refers to Myanmar’s various ‘minorities,’ ‘ethnicities,’ or ‘ethnic minorities,’ among other terms. In some cases, particular groups find the use of these words derogatory as they can exclude non-majority groups. Martin Smith, *ETHNIC GROUPS IN BURMA: DEMOCRACY, DEVELOPMENT AND HUMAN RIGHTS 36* (1994), available at [http://www.ibiblio.org/obl/docs3/Ethnic\\_Groups\\_in\\_Burma-ocr.pdf](http://www.ibiblio.org/obl/docs3/Ethnic_Groups_in_Burma-ocr.pdf). For the purposes of this report, the term ‘ethnic minority’ is used to identify non-Burman (Bamar) ethnic groups. Because of the rich history in Myanmar of its many ethnic minorities, it is important to recognize the important role that these ethnic minorities have in the country both singularly and collectively.

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customary law binding non-parties").

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- 106 Series of interviews in the ethnic states with journalists and editors (Oct. & Nov. 2015). *See also Freedom in the World 2015: Myanmar*.
- 107 Media Law, Mar. 2014 (Myan.), *available at* [http://www.burmalibrary.org/docs17/2014-Media\\_Law-en.pdf](http://www.burmalibrary.org/docs17/2014-Media_Law-en.pdf); Printing and Publishing Enterprise Law (March 2014) (Myan.), *available at* <https://www.article19.org/data/files/medialibrary/3679/Printing-and-Publishing-Enterprise-Law-Bill.pdf>.
- 108 Printing and Publishing Enterprise Law, at ch. 2 § 3; ch. 6 § 16; ch. 7 § 20-22.
- 109 § 7. A printer or a publisher must not publish the publications which fall under any of the following conditions – (a) expressing subject matters which may cause harm to an ethnic group or among the ethnic groups, or those which may insult other religions; (b) provoking for the purpose of deteriorating the rule of law or encouraging mass violence; (c) expressing nudity; (d) encouraging and stimulating crimes, cruel behavior, violence, gambling and the act of committing crimes using opium and abusive drugs; (e) publishing expressions and texts which are against and violate the provisions of the Constitution and other legislations.
- Printing & Publishing Enterprise Law, §7.
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