

# Note on Opposition Media Policies in Myanmar

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## Introduction<sup>1</sup>

In April 2024, two opposition-linked governance bodies in Myanmar, the Interim Executive Council of Karenni State (Karenni IEC) and the Karen National Union (KNU), both released documents establishing conditions for certain media operating within territories under their administration (contained in Annexes 1 and 2, respectively).<sup>2</sup> Some specific restrictions on media activities may be warranted in conflict zones in view of operational and security concerns. The codification of appropriate standards for journalists operating in such areas can contribute to freedom of expression by laying down clear ground rules for both journalists and those regulating them. This can help avoid misunderstandings or inconsistent applications of rules and is ultimately in the best interests of all parties. Despite the potential for improved certainty as to the applicable rules, adopting standards also creates a risk of overly onerous or restrictive conditions on journalistic work being introduced or formalised, with clearly negative implications for freedom of expression. Several provisions in the Karenni and KNU policies raise freedom of expression concerns. This Note provides a brief

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<sup>2</sup> *Directive on the Media Code of Conduct No. 08/2024*, 16 April 2024 (Interim Executive Council of Karenni State), available in English at <https://www.law-democracy.org/wp-content/uploads/2024/06/Media-Code.Karenni-State-IEC.pdf> and in Burmese at: <https://eraseye.com/2024/17/23087>. *KNU Policy and Regulations for Conducting Tasks Relating to Information*, Chapter 12, available in English at: <https://www.law-democracy.org/wp-content/uploads/2025/04/KNU-Code.pdf> and in Burmese at: [https://www.facebook.com/100066756515394/photos/768060975429113/?paipv=0&eav=AfaHgoUQq4OrVsYWWH0TWnfwAdPc\\_ckYD9RiIFY86AxEMY3N8uaHGsnXAKhIL7XyIUU&\\_rdr](https://www.facebook.com/100066756515394/photos/768060975429113/?paipv=0&eav=AfaHgoUQq4OrVsYWWH0TWnfwAdPc_ckYD9RiIFY86AxEMY3N8uaHGsnXAKhIL7XyIUU&_rdr).

overview of these documents and analyses their alignment with international standards on freedom of expression.

## I. Overview of the Media Policy Documents

The Karenni State Media Code of Conduct comprises eight rules which are applicable to “freelance journalists”, including both local and foreign news media, who wish to cover news in Karenni State. Specifically, they must provide a “notification” to the Karenni IEC, along with a “recommendation letter” from the relevant news agency (clause 1). Although this is referred to as a “notification” rather than an application, the second rule indicates that where “permission” is granted, they must “notify the relevant village/ward, village tract, and township administrations”, suggesting that authorisation for reporting from within Karenni State may be denied in certain circumstances. Freelance journalists must also obtain the approval of relevant commanding officers and forces before traveling to the location from which they intend to provide news coverage, and the reason given for this is to ensure media personnel safety (clause 3). When engaging in information gathering and news coverage in the field, journalists are required to wear the appropriate media “uniform” and to “present their journalist ID to request access to news or information” (clause 4).

Although the Code of Conduct indicates that the Karenni State's Interim Executive Council will not control the media” and “any media outlet IEC “will have unrestricted access to information”, it prohibits “acts that impair the Karenni State's military operations and governance and actions that support an illegitimate military junta during the revolution” (clause 5). In the event of violations of the Code of Conduct, the Karenni IEC will gather the “appropriate news media agencies” together and conduct a “mediation/arbitration” process (clause 6). The media are required to respect the “culture, traditions, and customs of the ethnic groups and ethnicities in Karenni State” (clause 7). The Code of Conduct also specifies that freelance journalists, both domestic and foreign, will be allowed to cover news if they follow the Code of Conduct (clause 8).

The KNU’s policies on journalists operating in their territory are contained in Chapter 12 of the KNU’s Policy and Regulations for Conducting Tasks Relating to Information. This chapter is titled “Procedures that external news agencies must follow” and is split into four sections, the first of which, section A, is titled “Requesting permission to collect information”. “External media agencies” coming to KNU administrative areas are required to obtain advanced authorisation from “headquarters” (clause (A)(1)). In their requests for pre-

authorisation, they must include the news agency's name, the journalist's ID, the "intended place of collecting information" and the "content of the news" (clause (A)(2)).

Section B outlines the rules that "external media agencies" must follow. Where they engage in "information inquiries, textual reporting" and "video recording", they are required to base their reporting on "reliable information and the response of spokespersons" (clause (B)(1)). News agencies are prohibited from reporting information, photographs and videos related to KNU in "misleading news" and news outside of "proposed content" (clause (B)(2)), the latter of which presumably refers to content outside the scope of the "content of the news" identified in the initial request for authorisation. News agencies authorised by KNU must abide by permission given with respect to "content, place and duration" (clause (B)(3)). News agencies are prohibited from video recording KNU areas (villages, townships, districts or central area) which are restricted due to security concerns, as well as video recording "prohibited areas" and content beyond the scope of what has been authorised (clause (B)(4)). News agencies are required to "avoid activities that could impact the security, dignity and image of the Karen National Union" (clause (B)(5)). News agencies are required to show their recorded videos and photos to the responsible person where necessary (clause (B)(6)). Before using any information, photos or videos shared publicly by KNU, permission is required and KNU must be credited (clause (B)(7)).

Section C, titled "Taking action on the external news agencies", begins with "To apologize and describe the correction for false news" (clause (C)(1)). In the translation, this provision is unclear but it may be a general requirement for external news agencies to issue a correction in case of errors. Clause (C)(2) provides that KNU will take actions in the event that news agencies breach the "regulations listed above", including by adding the journalists and news agencies to a "blacklist" and reporting to the "news media council", possibly a reference to the Independent Press Council of Myanmar. Section D contains a sample form for journalists seeking authorisation to report from within KNU territories.

## II. Human Rights Framework

The issue of the extent to which non-State actors are bound by international human rights law obligations is a complex and contested subject, which falls outside of the scope of this Note. However, the practice of intergovernmental organisations, including the United Nations, indicates that non-State actors which exercise "government-like" functions should

respect human rights within areas under their control.<sup>3</sup> Freedom of expression is among the rights which some UN experts and organisations have found to be applicable to certain non-State armed groups.<sup>4</sup>

The right to freedom of expression is protected in the *Universal Declaration of Human Rights* (UDHR), which is widely recognised as a foundational source of human rights standards. Myanmar reaffirmed its commitment to the UDHR in the 2012 Association of Southeast Asian Nations (ASEAN) Human Rights Declaration. Freedom of expression is also enshrined in international covenants and treaties such as the *International Covenant on Civil and Political Rights* (ICCPR).<sup>5</sup> While Myanmar has neither signed nor ratified the ICCPR, it still reflects an important source for interpreting fundamental rights. In addition, freedom of expression is directly and indirectly recognised in conventions that Myanmar has ratified relating to the rights of children and persons with disabilities.<sup>6</sup>

### III. Media Authorisation Systems

Limiting access of journalists to certain geographic areas constitutes a restriction on freedom of expression and should thus comply with requirements for such restrictions under

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<sup>3</sup> See, for example, *Academy In-Brief No. 7: Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council* (2016, Geneva Academy), pp. 26-28, [https://preview.geneva-academy.ch/joomlatools-files/docman-files/InBrief7\\_web.pdf](https://preview.geneva-academy.ch/joomlatools-files/docman-files/InBrief7_web.pdf).

<sup>4</sup> See, for example, Special Rapporteur on extrajudicial, summary or arbitrary executions, in the context of his mission to Sri Lanka, 27 March 2006, para. 85, <https://undocs.org/E/CN.4/2006/53/Add.5> (noting that “The LTTE should refrain from violating human rights, including those of non-LTTE-affiliated Tamil civilians. This includes in particular respect for the rights to freedom of expression, peaceful assembly, freedom of association with others, family life, and democratic participation, including the right to vote”); See also Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali, 7 January 2012, para. 37, <https://undocs.org/A/HRC/22/33> (noting the restrictions on freedom of expression and the right to information in Northern Mali following the arrival of armed groups).

<sup>5</sup> UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>6</sup> Specifically, the *Convention on the Rights of the Child*, UN General Assembly Resolution 44/25, 20 November 1989, entered into force 2 September 1990 (CRC); and the *Convention on the Rights of Persons with Disabilities*, UN General Assembly Resolution 61/106, 13 December 2006, entered into force 3 May 2008 (CRPD). Myanmar’s ratification status for these and other international human rights treaties can be found at <https://indicators.ohchr.org/>.

international human rights law. Article 19(3) of the ICCPR provides a strict test for when restrictions on freedom of expression are justified, providing that they must be provided by law and be necessary to protect a legitimate interest. This article provides an exhaustive list of legitimate interests, namely: respect of the rights or reputations of others and the protection of national security, public order, public health and public morals.

The UN Human Rights Committee, which is the official body which oversees compliance with the ICCPR, has indicated that restrictions on the ability of journalists to travel to conflict-afflicted areas generally fail to respect the requirements for restrictions under Article 19(3) of the ICCPR:

It is normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or **to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses).**<sup>7</sup> [emphasis added]

Following Russia's full-scale invasion in February 2022, Ukraine adopted a controversial system which, contrary to these principles, required journalists to obtain accreditation from the Ukrainian military to report from certain areas of the country.<sup>8</sup> Under this system, military commanders have been required to classify areas as green, yellow or red zones. Initially, accredited journalists were allowed to work freely from green-classified zones, whereas they had to work under military supervision in yellow zones and were barred from red zones, a system which attracted criticism from free press advocates for imposing excessive restrictions on the media, as well as due to the lack of clarity and transparency in the qualifications for obtaining accreditation.<sup>9</sup> More recently, as a result of a 3 February 2024

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<sup>7</sup> *General Comment No. 34: Article 19: Freedoms of opinion and expression*, 12 September 2011, para. 45, <https://undocs.org/CCPR/G/CG/34>.

<sup>8</sup> Order of the Commander-in-Chief of the Armed Forces of Ukraine, No. 73 of 3 March 2022, <https://www.mil.gov.ua/content/zmi/ORDER%2073-English.pdf>.

<sup>9</sup> See Reporters Without Borders, "Reporters Now Barred from More than 50 Municipalities in Ukraine", 23 March 2023, <https://rsf.org/en/reporters-now-barred-more-50-municipalities-ukraine>. See also Institute of Mass Information, "Excessive Restrictions on the Work of Journalists in Ukraine are Unacceptable", 20 March 2023, <https://imi.org.ua/news/nadmirni-obmezheniya-roboty-zhurnalistiv-v-ukrayini-neprypustymi-zayava-i51568>; and Committee to Protect Journalists, "Ukraine journalists say opaque

order of the Commander-in-Chief of the Armed Forces of Ukraine, the rules applicable to the zones have been relaxed, with journalists now allowed to report from red zones under military accompaniment and with photos and videos subject to a review, in addition to now being allowed to work unaccompanied from public areas in yellow zones, subject to approval of the route by a commander, with accompaniment by a public relations officer only being mandatory for military sites.<sup>10</sup>

More commonly, militaries in several countries have instituted authorisation requirements within the context of so-called ‘embed’ programmes under which permission is granted for journalists or other media workers to accompany soldiers, often in situations where operational considerations limit the number of media workers who may be accommodated. There is a potential for abuse here as well with some commentators maintaining that journalists’ selection for embedded reporter status has often been influenced by their outlet’s relationship with the government or military.<sup>11</sup> This may undermine the freedom of expression of journalists, as well as the public’s freedom of expression, which includes the right to seek and receive a diversity of information.

It is well-established under international law that any body which exercises regulatory powers over the media – whether this be in relation to licensing, accreditation, allocation of subsidies or any other issue – should be independent in the sense of being protected against interference of a political or commercial nature due to the evident risk that regulatory powers could otherwise be used for improper purposes. However, in practice, militaries often retain

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accreditation process hampers war coverage”, 9 June 2023, <https://cpj.org/2023/06/ukraine-journalists-say-opaque-accreditation-process-hampers-war-coverage>.

<sup>10</sup> See Appendix 1 to Order No. 73 of the Commander-in-Chief of the Armed Forces of Ukraine 2022, as amended on 2 March 2024, available in Ukrainian at [https://www.mil.gov.ua/content/files/nakaz73\\_zi\\_zminamu\\_2024.pdf](https://www.mil.gov.ua/content/files/nakaz73_zi_zminamu_2024.pdf). See also Reporters Without Borders, “Two years of war in Ukraine: RSF welcomes progress in journalists’ access to the front line”, 8 February 2024, <https://rsf.org/en/two-years-war-ukraine-rsf-welcomes-progress-journalists-access-front-line>; and NUJU, “‘Yellow’ and ‘red’ zones: Chernivtsi media workers learned about the rules of work in war zones”, 11 April 2024, <https://nuju.org.ua/yellow-and-red-zones-chernivtsi-media-workers-learned-about-the-rules-of-work-in-war-zones/>.

<sup>11</sup> Paul G Buchanan, “Facilitated news as controlled information flows: The origins, rationale and dilemmas of ‘embedded’ journalism”, *Pacific Journalism Review*, Vol. 17, No. 1, p. 103, <https://ojs.aut.ac.nz/pacific-journalism-review/article/download/374/450#:~:text=Embedded%20journalists%20are%20often%20selected,The%20relationship%20is%20symbiotic>.

control over accreditation of journalists or media outlets for the purposes of embedding programmes. There may be practical reasons for this but there should at least be procedural protections against political interference.

Some militaries have taken steps to mitigate risks of abuse stemming from the journalist selection process. One approach is to grant access to limited spaces on a ‘first come, first serve’ basis.<sup>12</sup> Alternatively, under the UK’s ‘Green Book’, which details “working arrangements with the Media” during conflicts, the Ministry of Defence retains discretion to award a kind of accreditation which is a prerequisite to be embedded with UK forces, but it “accepts the importance of accrediting a broad range of media reflecting a variety of opinions” and provides that the “reasons for any restrictions and/or limitations on numbers will be explained”.<sup>13</sup>

To the extent that some parts of the territory controlled by the Karenni and KNU may not be subject to active conflict and are accessible to non-journalist civilians without the need for prior authorisation, the need for a special authorisation system for journalists which is applicable broadly to Karenni and KNU territory is unlikely to be a necessary restriction on freedom of expression. In contrast to the approach of several militaries which focus on when to grant privileged access to journalists, the Karenni and KNU documents both appear to create special restrictions on media access which are not applicable to ordinary citizens. Both Karenni and KNU documents require advanced authorisation for journalists to be allowed to report from any of their territory. This is unduly broad and differs from most military policies which impose restrictions on accompanying the military on so-called “embed”

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<sup>12</sup> See, for example, National Defence, “Operation NANOOK Media Embed Opportunities”, 12 July 2022, <https://www.canada.ca/en/department-national-defence/news/2022/07/operation-nanook-media-embed-opportunities.html> (wherein the Royal Canadian Navy advertised the possibility of embedding in an arctic naval mission, noting: “Bunks being limited, interested media must register to benefit from this opportunity. Registration will be conducted on a first-come first served basis”). A ‘first come, first serve’ approach was also used at certain points by the Dutch Ministry of Defence regarding embedded journalists in Afghanistan, although they moved away from this approach. See Ulrich Mans *et al.*, “Eyes Wide Shut? The Impact of Embedded Journalism on Dutch Newspaper Coverage of Afghanistan”, April 2008, section 5.3, <https://hcss.nl/wp-content/uploads/2008/04/Eyes-Wide-Shut.pdf>.

<sup>13</sup> UK Ministry of Defence, *MOD working arrangements with the Media for Use Throughout the Full Spectrum of Conflict*, Joint Service Publication 580 (31 January 2013), para. 17, [https://assets.publishing.service.gov.uk/media/5a78d0aae5274a277e68fadd/greenbook\\_v8\\_20130131.pdf](https://assets.publishing.service.gov.uk/media/5a78d0aae5274a277e68fadd/greenbook_v8_20130131.pdf).

missions, which are out of reach of the general public, but do not apply to non-embedded reporters operating in the country.

An exception to this was the controversial Ukrainian media access system, where journalists needed accreditation to report from some areas they would have had access to as ordinary citizens.<sup>14</sup> However, after much criticism of the initial version of this system, the 2024 amendments now grant journalists access to yellow sites which are accessible to the general public, and they are now able to report with certain restrictions from the most sensitive parts of the country (i.e. the red zones). These changes thus appear to represent a shift away from imposing special access restrictions on media (or at least reducing them substantially).

Clause Three of the Karenni Code requires further approval from commanders and commanding forces to travel to specific locations to cover the news in order to “ensure media personnel safety”. While States have general obligations to protect journalists, ensuring the safety of journalists and other media personnel is not in itself a legitimate interest for restricting the media’s own rights to freedom of expression, and journalists who elect to cover conflict zones usually have agreed to assume some degree of risk. There are limited circumstances where there is a real risk that a journalist who has accompanied soldiers on a risky mission would be injured and killed and, in such a manner that this would impact military operations, such as by endangering soldiers who may have to engage in rescue operations. In such limited circumstances, certain access restrictions may be necessary on public order or national security grounds or to protect the rights of others. However, the Karenni Code of Conduct’s requirement for approval for coverage represents a significant restriction on freedom of expression in that it applies to any location within Karenni territory, which appears to go beyond what is needed to protect legitimate interests and even what is applied to ordinary citizens.

Where authorisation is necessary to protect a legitimate interest, such as to protect a military operation by controlling access to militarily sensitive areas off limits to the general public, exact criteria for denying access (i.e. the reasons why access could be legitimately denied) should be specified so as to comply with international standards, in particular the “provided

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<sup>14</sup> Reporters Without Borders, note 8.

by law” requirement for restrictions on freedom of expression which requires legal rules to be sufficiently precise. Neither the Karenni nor the KNU documents conform to this standard.

The KNU’s application procedure for authorisation to report from their territory raises further concerns by requiring journalists to specify in advance the “intended place of collecting information” and the “content of the news” (clause (A)(2)). Journalists may have a general idea of what they would like to cover but may have to modify this based on new information they receive while reporting or in reaction to new developments on the ground. In failing to reflect these newsroom realities, the advanced authorisation procedure unduly hinders the work of journalists who require sufficient flexibility to be able to do their important work effectively.

It is also unclear what exactly is meant by the need to specify “content of the news” and whether a general description of the overall topic is sufficient or a more detailed plan is necessary. In addition to failing to meet the “provided by law” standard due to its ambiguity, the need to provide the topic of media coverage is unnecessary and is susceptible to abuse, for example where a journalist is intending to cover a topic which authorities suspect may depict them in a negative light. Ultimately, such an approach is counterproductive. If a journalist’s intended story is based on faulty preconceptions, allowing access would help set the record straight and clear up the faulty preconceptions. On the other hand, if journalists are preparing a story on actual problems, allowing access may improve the story and help spur necessary reforms.

## Recommendations

- The relevant Karenni and KNU authorities should both consider removing the requirements for authorisation for media to report in their territory (Karenni Media Code, clauses 1-2; KNU Policy and Regulations, clauses (A) (1-2)). To the extent that an accreditation system is maintained by Karenni or KNU authorities, it should be limited to one of permission to access operationally sensitive areas which are off limits to the general public.
- Consideration should be given to allocating the power to issue authorisations for journalists/medias to access sensitive locations to an independent body, based on clear and transparent procedures elaborated in consultation with the media. As an alternative, some sort of system of accountability for these decisions should be put in place.

- Karenni authorities should consider removing the requirement for media personnel to obtain permission to travel to sites where they intend to engage in news coverage (Karenni Media Code, clause 3) and limiting requirements for authorisation to operationally sensitive areas.
- KNU authorities should consider removing the requirement to specify the content of news coverage in advance (clause (A)(2)).

#### IV. Content Restrictions

Some militaries with programmes for embedded journalists have established rules about the kinds of content which journalists may and may not release. For example, a US embedded media policy in use during the Iraq War lists 14 categories of releasable information,<sup>15</sup> including things like the approximate strength figures for friendly forces and information on and location of previously attacked military targets and objectives,<sup>16</sup> while also specifying 19 categories of information which may not be released on the grounds that it could “jeopardize operations and endanger lives”.<sup>17</sup> This includes, for example, information regarding future operations and photos which show the security levels at military installations or encampments. It does not include information which is simply not flattering to the military, and the document elsewhere indicates that the ground rules agreed upon by the media are “in no way intended to prevent release of derogatory, embarrassing, negative or uncomplimentary information”.<sup>18</sup> Similarly, Canada’s current maritime embedding programme, which covers journalists who are embedded on Royal Canadian Navy ships, lists 10 categories of releasable information,<sup>19</sup> six categories of information which “shall not

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<sup>15</sup> *Public Affairs Guidance (PAG) on Embedding Media During Possible Future Operations/Deployments in the U.S. Central Commands (Centcom) Area of Responsibility (AOR)*, Freedom of Information Act Release of 29 January 2008, Ref. No. 06-F—3337, section 4.5, <https://sgp.fas.org/othergov/dod/embed.pdf>.

<sup>16</sup> *Ibid.*, sections 4.F.1 and 4.F.5.

<sup>17</sup> *Ibid.*, section 4.G. The Guidance also outlines special procedures for covering “wounded, injured, and ill personnel”. See section 4.H.

<sup>18</sup> *Ibid.*, section 4. The US policy also restricted the publication of identifying information of casualties for 72 hours or upon verification that family members had been notified (whichever is sooner). See section 4.H.2.

<sup>19</sup> *Maritime Component Commander’s Media Embedding Program: Guidelines, Ground Rules, and Documentation for His Majesty’s Canadian Ships*, released on 24 May 2024 by the Department of National Defence in

be visibly recorded”<sup>20</sup> and 23 categories of information which “shall not be released”,<sup>21</sup> including a flexible category encompassing any “other information the Commanding Officer orders restricted for operational reasons”.<sup>22</sup>

In terms of enforcement, some countries have relied in significant part on what is called “security at the source”, which refers to soldiers’ obligations in their interactions with journalists.<sup>23</sup> Thus, for example, the US’s embedding programme in force during the Iraq War provided that for certain operationally sensitive information, journalists were to be informed in advance of restrictions on its use and disclosure, and, where exposure to such information occurred inadvertently, media were to be briefed on what they should avoid covering.<sup>24</sup> Where it is believed that a journalist will be exposed to sensitive information, access will be granted to it if the journalist voluntarily agrees to a security review, the purpose of which is not to make any editorial changes but only to remove or embargo information until it is no longer classified or sensitive.<sup>25</sup> Violation of any ground rules by the media could also lead to termination of the media’s “embed opportunity”.<sup>26</sup>

Canada’s current maritime embedding programme for Royal Canadian Navy ships grants the ship’s commanding officer the right to “review and require changes in media products containing potentially sensitive information”, but changes must be factual and not editorial in nature and must be made only to the extent necessary to ensure operations security is not breached.<sup>27</sup> The policy also clarifies that operations security reviews should safeguard some information which has an “important operational impact” on missions, while ensuring that Canadians have access to as much information as possible about the ships and their

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response to Access to Information Request A-2024-00183, section 9, <https://www.law-democracy.org/live/wp-content/uploads/2024/06/Canada-Maritime-Embedding-Program.pdf>.

<sup>20</sup> *Ibid.*, section 10.

<sup>21</sup> *Ibid.*, section 11.

<sup>22</sup> *Ibid.*, section 11(w).

<sup>23</sup> Ulrich Mans, *et al.*, “Eyes Wide Shut? The Impact of Embedded Journalism on Dutch Newspaper Coverage of Afghanistan”, note 12, section 8.1; and *Public Affairs Guidance (PAG) on Embedding Media During Possible Future Operations/Deployments in the U.S. Central Commands (Centcom) Area of Responsibility (AOR)*, note 15, section 6.A.

<sup>24</sup> *Public Affairs Guidance, ibid.*, section 6.A.1.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, sections 3.M and 4.

<sup>27</sup> *Maritime Component Commander’s Media Embedding Program: Guidelines, Ground Rules, and Documentation for His Majesty’s Canadian Ships*, note 19, para. 11.

activities.<sup>28</sup> In addition, failure to abide by the rules for embedded journalists may lead to a termination of the embedding agreement and removal from the ship.<sup>29</sup>

In contrast to such military policies, the Karenni and KNU documents contain several overbroad content restrictions. The Karenni Code of Conduct prohibits the publication not only of “acts that impair the Karenni State's military operations”, but also “actions that support an illegitimate military junta during the revolution” (clause 5), the latter of which is unduly vague. It is unclear what constitutes “support” in this context, and a restriction on coverage which portrays the junta in a positive light is unnecessary to advance national security or any other legitimate interest. The requirement that media respect the “culture, traditions, and customs of the ethnic groups and ethnicities in Karenni State” (clause 7) is also ambiguous. Reporting in a manner which is respectful of ethnicities, local traditions and cultures is a laudable professional goal for the media. However, it also raises complex issues of when reporting on such issues amounts to a breach of professional standards and when it does not, which is often not very clear. The development and enforcement of appropriate standards in this area would be best left to a body with specialised expertise in professional media standards, namely an independent press council such as the Independent Press Council of Myanmar.

The KNU Policy and Regulations contain more extensive content restrictions. This includes the prohibition on reporting “misleading news” (clause (B)(2)). While certain misleading information may create risks for operations security and thus legitimately be restricted, as is the approach, for example, under the above-mentioned Canadian policy, a blanket restriction on “misleading news” goes far beyond what is necessary for operations security and is susceptible to abuse due to differing opinions on what is in fact misleading.

The requirement to base reporting on “reliable information and the response of spokespersons” (clause (B)(1)) is also problematic. It is unclear how it is to be determined that information is reliable or not for the purposes of this requirement and, ultimately, the KNU authorities should not be responsible for making such determinations. Moreover, in some circumstances, for instance where a news story is urgent and spokespersons have not been

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<sup>28</sup> *Ibid.*, para. 12.

<sup>29</sup> *Ibid.*, para. 9(b).

timely in issuing a response, it may be appropriate for media to publish a story before an official response has been issued.

As for the requirement for media to “avoid activities that could impact the security, dignity and image of the Karen National Union” (clause (B)(5)), this restriction problematically goes beyond security and attempts to protect the reputation and image of the KNU. This is inappropriate, as individuals should be able to discuss and criticise public institutions freely. As noted by the UN Human Rights Committee:

[I]n circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high...Accordingly, the Committee expresses concern regarding laws on such matters as ... disrespect for authority, disrespect for flags and symbols.... States parties should not prohibit criticism of institutions, such as the army or the administration.<sup>30</sup>

In addition, while content which is likely to pose a risk to the KNU’s security may be legitimately restricted or embargoed until it no longer poses a threat, the formulation “could impact the security” establishes far too weak a nexus to be a legitimate restriction on freedom of expression. As noted by the Human Rights Committee, States must be able to establish a “direct and immediate connection” between the expression and a threat when restricting freedom of expression.<sup>31</sup>

The requirement that news agencies not show content outside of “proposed content” (clause (B)(2)), presumably a reference to the content of the news identified in advance as part of the authorisation application (clause (A)(2)), likewise raises freedom of expression concerns. It is unnecessary to restrict media coverage to stories agreed to in advance and, as noted above, this raises several practical concerns for journalists who are likely to gain new leads while reporting.

The KNU requirement that news agencies show videos and photos to the person in charge (clause (B)(6)) also raises concerns since it is unclear when this may be required, what the purpose of this is and what actions may be taken following an inspection. As such, this provision is susceptible to abuse, particularly in view of the broad powers to take unspecified “actions” in response to any violations of the Policy and Regulations (clause (C)(2)). Lastly,

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<sup>30</sup> *General Comment No. 34*, note 7, para. 38.

<sup>31</sup> *Ibid.*, para. 35.

the requirement to ask permission from KNU before using information, photos and videos it has released (clause (B)(7)) is an unnecessary restriction on reuse of publicly available information.

Ultimately, both the Karenni and KNU documents would be improved by focusing more narrowly on content or actions which raise legitimate security concerns in view of the conflict and leaving more general issues of professionalism to an independent body with specialised knowledge of media standards, such as the Independent Press Council of Myanmar.

### Recommendations

- The Karenni and KNU authorities should consider leaving issues of broader media professionalism to an independent, specialised body and focus the content restrictions on content which is likely to harm security in view of the ongoing conflict.
- Karenni authorities should consider removing from their Code of Conduct the restriction on “actions that support an illegitimate military junta during the revolution” (clause 5) and the requirement that media respect the “culture, traditions, and customs of the ethnic groups and ethnicities in Karenni State” (clause 7).
- KNU authorities should consider removing from their Policy and Regulations the restrictions on “misleading news” (clause (B)(2)) and should consider replacing the requirement that news agencies “avoid activities that could impact the security, dignity and image of the Karen National Union” (clause (B)(5)) with a restriction on disseminating certain clearly delineated kinds of information which is likely to harm KNU security.
- KNU authorities should consider removing the requirement that news agencies not show content outside of “proposed content” (clause (B)(2)).
- KNU authorities should consider removing the requirement to show videos and photos to authorities (clause (B)(6)). To the extent that any sort of pre-publication review of content is retained, this should be limited to situations where journalists have been granted access to information which is likely to impact operations and the possible outcomes of these reviews should be limited to embargoing or deleting material the disclosure of which would create a serious likelihood of harm for national security or another legitimate interest, such as privacy.

## V. Uniform and ID Requirements

Under international humanitarian law, journalists are not required to wear particular clothes in order to benefit from the protection which is afforded to them as civilians.<sup>32</sup> While the conflict in Myanmar is a non-international armed conflict, it bears noting that in the leadup to the adoption of Additional Protocol I to the Geneva Conventions, which regulates international armed conflicts, a proposal to introduce a requirement for journalists to wear a unique protective emblem which is visible from a distance in order to access certain protections was rejected largely due to fears this could in fact place some journalists and the surrounding population at greater risk.<sup>33</sup> The unfortunate reality is that journalists continue to be targeted, in violation of international humanitarian law, in various conflicts throughout the world and visible identification of journalists does not always advance their safety.

Under clause 4 of the Karenni Code of Conduct, journalists are required to wear the appropriate news organisation's "uniform". There is a risk that, in the event of nearby active conflict, this requirement may place some journalists at risk of being targeted. In practice, many journalists may decide to identify themselves as such on their clothing, but it should ultimately be their decision as to whether it safe for them to do so. Journalists should not be required to wear uniforms or any identifying insignia, or at least to make this optional where doing so may raise safety concerns, as has been the approach in Ukraine.<sup>34</sup>

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<sup>32</sup> International Committee of the Red Cross, *Customary International Humanitarian Law*, Rule 34, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule34#:~:text=protection%20of%20journalists-.Rule%2034,a%20direct%20part%20in%20hostilities>.

<sup>33</sup> International Committee of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977: *Commentary of 1987*, para. 3254, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-79/commentary/1987?activeTab=undefined>.

<sup>34</sup> Regulations on the Work of a Media Representative in the Area of Armed Forces, Appendix Four to the Order of the Commander-in-Chief of the Armed Forces of Ukraine, No. 73 of 3 March 2022, para. 3, <https://www.mil.gov.ua/content/zmi/ORDER%2073-English.pdf>.

## Recommendation

- Karenni authorities should consider removing from their Code of Conduct the requirement that journalists wear a uniform (clause 4) or at least making this optional where this may place them at risk.

## VI. Sanctions

The Karenni Code of Conduct does not provide details of sanctions for journalists, other than providing generally that following the code of conduct is a prerequisite for domestic and foreign journalists who arrive in Karenni State to be allowed to cover news (clause 8). This implies that violations of the Code could lead to authorisation for reporting in the territory being revoked which, in view of the broad territorial scope of the authorisation process, is a fairly harsh punishment. The Code of Conduct specifies that violations are to be dealt with through a “mediation/negotiation” process (clause 6), but no details of this process are specified.

The KNU Policy and Regulations appears to include a requirement to correct “false news” (clause (C)(1)) but, at least in the English translation, this is unclear. At any rate, further details would be needed as to how this is to be implemented in practice, including how and by whom it is determined that news is false and what, if any, procedures may be followed if the media outlet wishes to contest this assessment. To comport with international standards, it would be best to leave the issue of overseeing the correction of errors to an independent body, such as the Independent Press Council of Myanmar. There is some suggestion that something along these lines is being contemplated in clause (C)(2), which refers both to the power of KNU to take “actions” against journalists and media outlets, including, but apparently not limited to, blacklisting, and to the idea of reporting to the news media council. However, clause (C)(2) is currently too vague and expansive to meet the provided by law standard. It would be preferable if the only action to be taken was to refer the media outlet to the Independent Press Council of Myanmar, and to mention this body specifically by name. Otherwise, if the power of KNU authorities to take actions against journalists and media outlets is retained, details should be provided on the process to be followed, how it is determined which kind of action is appropriate in any given circumstance and any available appeal process.

## Recommendations

- Karenni authorities should consider adding details on how matters of non-compliance are dealt with, including elaborating the relevant sanctions, dispute resolution and appeals process, into the Code.
- KNU authorities should at least clarify the requirement to correct “false news” (clause (C)(1)) but ideally this issue should be left to be assessed by an independent body, specifically the Independent Press Council of Myanmar.
- If the KNU authorities retain the power to take action against the media, they should clarify what specific actions they are authorised to take and what procedure will be followed, including as to any available appeals process.