Myanmar: Guidance for Journalists on Promoting an Empowering Press Law

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This guideline is jointly prepared by the Southeast Asian Press Alliance (SEAPA) and the Centre for Law and Democracy (CLD) to provide support for the media community in Burma in addressing the anticipated introduction of a press law and a press council. Journalists and civil society groups are encouraged to use this guideline for their discussions and advocacy strategies. We only ask you to attribute the document to SEAPA and CLD.

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I. Introduction

The government of Myanmar is developing a new press law for the country, as part of a wider process of democratisation. It is universally recognised that a diverse and free media is a key part of any framework for democracy. Citizens receive the large majority of their news and current affairs information through the media, and this is central to their ability to participate in public affairs, which is at the heart of a democratic system of government.

The evidence suggests that the government aims to adopt a law which will significantly liberate the print media from the strict controls under which it has traditionally operated. However, good intentions are one thing, while delivery of a law which specifically ensures media freedom is another thing.

International law contains fairly detailed standards and rules regarding what is acceptable in a press law, in the sense of being consistent with the guarantee of freedom of expression. These standards are derived from primary guarantees of freedom of expression, including Article 19 of the Universal Declaration of Human Rights, as well as the interpretation of these guarantees by authoritative international bodies, such as the United Nations Human Rights Committee and the Special Rapporteur on Freedom of Opinion and Expression.

An informed media and civil society sector is a key means for ensuring that any press law which is adopted is as strong as possible in terms of compliance with international standards. This guide provides journalists and other media workers, as well as civil society more broadly, with information about those international standards, with particular reference to the content of a positive press law. In this way, it aims to contribute to the process of democratisation in Myanmar.

II. Self- and Co-Regulation: Pros and Cons

Different Systems of Regulation

The systems for regulation of the media can generally be divided into three categories: self-regulatory, co-regulatory and regulatory (or statutory regulatory). The first is where the media (or relevant media sector, such as newspapers or broadcasters) organises the system of regulation by themselves. In most cases, these systems consist essentially of developing a code of conduct or similar document setting out what is considered to be unprofessional media behaviour, and then establishing a body to receive and decide on complaints about this.

Co-regulatory systems are similar to self-regulatory arrangements, inasmuch as they are significantly run by the media or a media sector, but differ inasmuch as the system is backed up by legislation. Pure regulatory systems are where laws

establish oversight bodies which are not largely run by the media, although media representatives may participate in them. Both co- and self-regulatory systems often go beyond a simple complaints function and involve other forms of regulatory activity.

Which System is Preferable?

It is generally agreed that self-regulatory systems are, at least in theory, the preferred approach for the print media sector, most importantly because they are the least prone to government interference. There are, however, two good reasons to consider co-regulatory systems. First, in many countries, the media, or relevant media sector, lacks the maturity or coherence required to form a self-regulatory system. Indeed, even in relatively mature media environments it can be difficult to develop pure self-regulatory systems, among other things because different media outlets compete with each other – for example for market share and headlines – and this can make it difficult to cooperate.

A co-regulatory approach can resolve this problem. By establishing the key parameters of the system in law, it does not depend on different media outlets being able to reach complete agreement on them. This does not mean that media support and buy-in to the system is not important; proper consultations with the media and broad support from media outlets and workers for the system is essential to its success. But the push provided through legislation can be crucial to moving the project forward. Furthermore, a co-regulatory approach can require all media outlets to be part of the system, which avoids the problem of needing to get complete agreement among all actors before moving forward.

This relates closely to the second reason, which is that self-regulatory systems lack any means for enforcing compliance with their decisions. As a result, media outlets may ultimately ignore decisions which go against them, although there may be social costs to this, such as a requirement to withdraw from the system and exposure of their shortcomings. Co-regulatory systems, on the other hand, have legal backing which can render their decisions formally binding. This is not just an enforceability issue; it can also help bolster the credibility of the system in the eyes of the public. Public credibility is important because, if the public does not use the system (i.e. by making complaints) it will fail to achieve its goals.

Pure regulatory systems for the print media are almost unknown in democracies, because there is no reason not to give the print media a strong role in the regulatory system, a key characteristic of self- and co-regulatory approaches. Where pure regulatory systems are in place, they have often been used to perpetrate serious abuses of media freedom.

III. Positive Protections

A good press law will not only establish regulatory mechanisms, but it will also elaborate positive protections for the print media. In many countries, these can be understood as more detailed elaborations of constitutional guarantees for freedom of expression and media freedom.

The following five types of protections are found in different press laws.

1. Media Freedom

Good press laws contain a general statement relating to media freedom. Such a statement should require the authorities to respect media freedom and may refer to the importance of this freedom in a democracy. A more detailed guarantee may also provide for protection of editorial independence, meaning that the State may not try to influence the editorial decisions of media outlets.

2. Prohibition of Prior Censorship

Closely related to the above, many press laws contain a prohibition on prior censorship of the print media. Such a statement should make it clear that the authorities may never engage in prior review of print media products (i.e. newspapers and magazines) before they are published. This does not, of course, mean that authors and editors will be protected from subsequent liability, if they publish material that is illegal. Many press laws also provide related protection for the print media against seizure of copies in the absence of a court order authorising such a seizure. Seizure of copies is not quite the same as prior censorship, but it is closely related and essentially just as harmful.

3. Right to Work as a Journalist

Under international law, the right to freedom of expression includes the right of everyone to work as a journalist, because this is a key means of exercising one's right to freedom of expression. It is, as a result, not legitimate to place conditions – for example relating to minimum age or levels of training – on who may work as a journalist or be recognised as a journalist. This can be reflected in a press law by stipulating that there are no conditions on who may work as a journalist. Although superficially conditions on journalists might be deemed to promote professionalism, in practice that is not the case, as demonstrated by the experience of the many countries around the world where these requirements are not imposed and yet the media is professional. Instead, such conditions, where they exist, are often used as a mechanism of control over the media. Of course this does not mean that voluntary associations may not set conditions regarding membership (i.e. on who may join them).

4. Right to Form Associations

Similarly, it is not legitimate under international law to require journalists, as individuals, to belong to any particular association or union. As with conditions on journalists, this has not proven to contribute to professionalism but has instead

been used as a means to control the profession in countries where such requirements are in place. Instead, journalists should have the right to form whatever associations they may wish to, with a view to undertaking activities such as supporting freedom of journalists, promoting professionalism and advocating for labour rights. A press law can state that journalists may not be required to belong to any particular organisation, and also that they have the right to form their own associations.

5. Protection of Sources

Another aspect of media freedom that has been clearly recognised under international law and in national laws in many countries is the right of journalists to protect the secret identity of their confidential sources of information. Journalists rely on the flow of information from such confidential sources to keep citizens informed about matters of public interest. Absent such protection, these sources will often not come forward in the first place, thereby depriving the public of access to the information.

An issue is whether such protection should be absolute or conditional, in which case it may be overridden in certain cases, for example where the authorities claim the information is needed for investigation of a crime. In many countries, such protection is absolute, and journalists themselves normally claim an absolute right to protect their sources. This is justified on the basis that it is up to the authorities themselves (i.e. the police) to investigate crimes; it is not appropriate for the police to rely on journalists to collect evidence for them, especially where this harms the ability of journalists to report in the public interest.

IV. Press Council: Composition and Independence

Ensuring Independence

The establishment of an oversight body – such as a press council – is at the heart of any system of regulation of the media. A key challenge here is to ensure that such a body is independent, mostly importantly and obviously of government, but also of commercial interests, including the media players it is supposed to regulate. While this may not seem like a great threat in Myanmar, given the history, in more established democracies, the threat of 'capture' of regulators by those they are supposed to regulate is often a greater risk than government control.

In a (true) self-regulatory system, there is normally little risk of government control, and the challenge is to ensure that the body is able to operate independently enough of the media to have credibility. In a co-regulatory system, a key guarantee of independence from government should be a high level of input into the system from the media, along with other interested stakeholders. Central to this is the membership of the body, and who appoints the members.

Types of Members

A key question to be decided is which sectors should be represented on a press council. There is no magic formula for the right membership, and different formulas exist in different countries. This really depends on a multitude of local factors and what is the best way, in very practical terms, to ensure that the body is sufficiently independent, taking into account the social and political context. It is a given that an important proportion of the members should come from the media community. In some countries, the law includes only generic definitions of the other members, while in other countries, these members come from specific sectors.

In Indonesia, for example, the Press Council comprises 9 members, three of whom represent journalists, three of whom represent media owners, and three of whom represent the overall public interest ("public figures"). Individuals in the latter category have included academics, lawyers, civil society representatives and others who are well respected in the community.

In India, 13 of the 29 members of the Press Council are working journalists, of whom exactly six are editors and seven non-editors, with at least three and four of these members, respectively, working for local language newspapers. Six are owners or managers of newspapers, one is from a news agency, three are, respectively, from the sectors of law, education and science, and literature and culture, five are parliamentarians, and there is in addition a chair.

Another question is whether a government representative should sit on the council. There is no such representative in either Indonesia or India, and this certainly represents better practice. As a practical matter, there is no need for a government representative, and this does not even provide any operational benefits. However, in many countries governments feel they should have a seat at a body like this and it is sometimes necessary to negotiate on this issue. A compromise is to include parliamentarians, as in the case of India, although it is probably unnecessary to have more than one, and certainly as many as five, as is the case in India.

Appointment of Members

There is, once again, no magic formula for who should appoint the members of the press council, which, like types of members, essentially depends on the questions of how best to ensure independence and effectiveness. In Indonesia, the media community nominates all of the members of the press council. Journalists nominate their representatives, owners nominate their representatives and the two work together to nominate the public representatives. Actual appointments are done by the president, but this is a legal formality and the president plays no role in choosing members. The chair and vice-chair are appointed by the members, from among themselves.

In India, the different sectors essentially nominate their own representatives. The important position of the chair is nominated through a special procedure, involving a representative elected by the other members and the parliament. As in Indonesia,

the government formally appoints members, to meet legal requirements, but plays no role in deciding who sits on the council.

These two countries illustrate the key mechanisms for nominating members, one with the media community nominating both their own and the public representatives, and the other with different sectors nominating their own representatives. Both are robust from the perspective of independence, as long as the government cannot influence the choices.

How to Choose

Once a decision is made as to who will be responsible for nominations, the question remains as to how specific selections of individuals will be made. For the media, in particular, the issue is how such a diverse group can come together to make their nominations, whether these be just their own representatives or also representatives of the wider public.

Once again, there are essentially two models, again reflected in the laws, respectively, of Indonesia and India. In Indonesia, the law is silent as to the specific mechanisms of appointment, leaving it up to the media communities involved to manage this themselves. In practice, the communities have devised their own fairly detailed procedures for selecting members, both by journalists and owners separately, and for the two groups to work together to select public members.

In India, in contrast, the law includes far more detail on how the process should work for media representatives, while the specific nominating organisations are stipulated for other members. Essentially, the Council itself recognises the relevant media associations, and the retiring chairman invites those associations to nominate members.

There is much to recommend the Indonesian approach, which minimises the risk of government interference, for which the Indian system has been criticised. On the other hand, for this approach to work does require a certain degree of maturity and coordination on the part of the media community, albeit far less so than is required for a purely self-regulatory system.

Other Membership Issues

The independence of a press council can also be enhanced by prohibiting certain individuals from being appointed. It is, for example, common to prevent individuals with strong political connections, as demonstrated by their being elected or holding senior posts in political parties, from being appointed as members. It is also common to prohibit individuals who have been bankrupted or convicted of a serious crime from being appointed. Positive requirements may also be imposed, such as that individuals must have certain kinds of relevant expertise – for example in the areas of communications, law, management or finances – and to be individuals in good standing in the community.

Protection of tenure is widely recognised as being an important way to contribute to the ability of individuals to operate independently once they have been appointed. The press law should, therefore, stipulate clearly the duration of the position – for example of four or five years – and whether individuals may be reappointed and how many times (a system of allowing one reappointment or two consecutive terms is common). Protection may also be provided against removal. This may be absolute or set clear conditions for removal both of a substantive nature (i.e. what the grounds for removal are, such as incapacity or breach of the prohibitions on appointment) and as to procedure (i.e. who decides to remove a member, normally the nominating body or the other members of the council, for example by a two-third majority vote).

Funding and Accountability

Funding for a press council is also important from the perspective of independence because, as the expression goes, 'he who pays the piper calls the tune'. An ideal solution is for the media to cover the costs of the council. Contributions from the media are envisaged in many countries, but in practice this rarely happens in co-regulatory or statutory systems.

Instead, in most cases, statutory councils are funded from the public purse. Better practice is for the body to submit its annual budget to, and have it approved by, parliament. This provides for relatively strong protection against interference, because of the multi-party nature of parliament and its limited capacity to interfere through this mechanism. Having the budget approved by a ministry is the least protective system, since this provides a direct route for government control.

It is important for a public body like a press council to be accountable to the public. As with funding, it is preferable for this to be achieved through reporting to parliament than to a ministry. Another accountability mechanism will be a requirement for the body to have its accounts independently audited.

V. Press Council: Role and Functions

Complaints

A primary function of all press councils is to entertain complaints from the public about media professionalism. To do this properly, councils need to set clear minimum standards regarding what behaviour is expected of the media, normally in the form of a code of conduct or similar document. They also need to establish clear procedures for the processing of complaints. Both of these themes are developed further in the next section.

An initial issue is who or what is bound by the code. Better practice is for this to be media outlets themselves, for example newspapers and magazines, rather than individual journalists. There are two main reasons for this. First, although

individuals are responsible for writing articles, the decision to publish is, ultimately, a collective editorial decision taken by a media outlet, rather than an individual journalist. Furthermore, in most cases, it is publication by the media outlet, and the fact that this results in dissemination of the article to a wide readership, that causes the harm which led to the complaint. Second, the most important and effective remedy offered by most media complaints systems – publication of a statement acknowledging the breach of the code – is something that media outlets are uniquely positioned to provide.

The complaints system is not supposed to replace the civil, let alone criminal, law, even if there is some overlap in the issues they address. The aim of complaints is to provide accessible, light relief to individuals who feel that the media has failed to meet required minimum professional standards. As described below, only limited relief, mainly in form of a statement acknowledging the wrong, is available through the complaints system. Individuals seeking financial compensation should use the civil law, and should journalists actually engage in criminal behaviour, this should be addressed through the criminal justice system.

Promoting Media Freedom

Many press councils have a general mandate and responsibility to promote and protect media freedom, over and above their complaints resolution function. On the promotional side, this can involve awareness raising among different sectors of society, including media workers, about the nature and importance of media freedom in a democracy. A variety of activities can be undertaken to this end, such as workshops and seminars, which can be directed at different sectors of society or focus on different thematic issues, awareness campaigns through the media, popular outreach activities and publications.

Protection of media freedom can also potentially involve a wide range of activities, in part depending on the need to respond to threats to this freedom. In some cases, press councils have the right to comment on draft legislation affecting media freedom before it is adopted. They may also protest against threats to or attacks on media freedom. In some cases, they may even engage in direct protective activity, such as providing legal assistance to victims, getting involved in legal cases, or providing safety support to journalists, for example in the form of training or safety equipment.

In most cases, press laws simply include this function within the mandate of the council, leaving it to the body to decide how best to do this, within the limits of the resources available to it. In many cases, councils raise extra-budgetary funds for this sort of work, and it is important that this be reflected in the legal rules establishing the body (i.e. that they be allowed to raise such funding).

Registration

Many countries operate registration systems for newspapers and it is often assumed, without much critical thought being given to the matter, that this is not

only legitimate but even necessary to serve some important social purpose. Closer analysis, however, suggests that registration is of limited utility, while experience in some countries demonstrates that it can be abused, for example to harass media outlets which are critical of the government.

One potential reason for registration is to ensure that those who are harmed by the activities of a media outlet can locate that outlet for purposes of bringing legal suit against it. In practice, however, the vast majority of media outlets are already registered as legal entities, for example as corporations. In the United Kingdom, only media outlets which are not otherwise registered, for example as corporations, are required to register as media outlets, with the objective of ensuring that members of the public can bring legal cases against them. Another justification sometimes put forward for registration is that this is necessary to collect information about the media, such as the number of newspapers. Once again, other systems, in particular registration as a corporation, can serve as systems for central collection of this information.

If registration is retained as a requirement for newspapers, the risk of abuse can be substantially mitigated by having a press council oversee the system. This is the way it works in Indonesia, for example.

Resolving General Social Disputes

When societies move rapidly to become more democratic, this often disrupts traditional understandings and relationships. This is nowhere more the case than with freedom of expression. For their part, journalists sometimes think that freedom of expression allows them to write and publish whatever they want, which is not the case. At the same time, other social actors often find it challenging to understand and respect the new boundaries of media freedom. For example, politicians may not be used to being subjected to strong criticism in the media, while others may not be used to having difficult social issues discussed in newspapers and magazines.

To address this, in some countries press councils have a wider dispute resolution role that goes beyond just addressing individual complaints. In Indonesia, for example, the Press Council has worked well to resolve disputes between the media and Muslim associations, where there has been disagreement and misunderstanding about appropriate limits on media behaviour. They have similarly worked to resolve disagreements between the media and the government.

Promoting Professionalism

Another role of press councils in many countries is to help prevent complaints in the first place by promoting greater professionalism among journalists. This is a major task, given the number of journalists in most countries, and primary responsibility for this lies with other actors, including the government and media outlets. However, it can be beneficial to use the expertise which the council will inevitably develop in training and other initiatives to enhance professionalism. It is most

efficient to limit the role of councils in this area to certain strategic interventions, such as providing trainers or participating in curriculum development.

VI. Developing and Applying Codes of Conduct

Developing a Code of Conduct

A code of conduct lies at the heart of any system of media complaints. For the public, the code serves as an indication of what standards of behaviour they can expect from the media. This is important, particularly in a transitional phase towards democracy, where misunderstandings about this are quite common, as noted above. If members of the public use the code as a reference for appropriate media standards, this will serve as an awareness-raising tool and help mitigate friction between the media and society.

For the media, the code serves as notice of the minimum standards of behaviour that they are expected to observe. This has an awareness-raising element, for while certain journalists will be closely involved in preparing the code, others may not be so familiar with it. It is also central to ensuring that the system is fair, for it would hardly be appropriate to expect journalists to meet standards which had not been described clearly to them. Finally, having a clear written code helps ensure predictability, in the sense that the rules will be applied consistently over time, which is also part of fairness.

The press council is ultimately responsible for adopting the code. At the same time, it is of the greatest importance to give all interested stakeholders a chance to provide input into the development of the code. It is particularly important that journalists are closely involved in this process. The code should reflect realistic standards of professional media behaviour, and to do this it needs to be rooted in an understanding of the challenges facing the media. This, in turn, can only be achieved if journalists are involved in developing it. Furthermore, it is important that the journalist community as a whole, and particularly leadership figures within that community, have some ownership of the code, in the sense that they feel that it captures values which they believe in. This is at least as important as the formal complaints system in promoting compliance with the code, because it promotes voluntary compliance, which can be very effective. A good press law should place an explicit requirement on the council to consult widely in the development of the code.

Content of the Code

Codes of conduct vary somewhat from country to country and also depending on their scope of application (i.e. to media outlets or journalists). At the same time, there is quite a lot of consistency among codes, or there is at least a core of standards that are found in most. Most cover both content issues (i.e. what actually

gets published in the newspaper) and behavioural issues for journalists (i.e. what journalists can do to get their stories).

Some common, indeed almost universal, features of codes include requirements to strive to be accurate, rules on protection of privacy, rules on treatment of children involved in news stories, obligations to protect confidential sources of information and rules on payment for stories. In some cases, key features that are to be addressed in the code are outlined directly in the press law, although the detail is left to be elaborated in the code itself.

A key difference between a complaints system and the civil or criminal law is the relatively light nature of the remedies or sanctions that are available for a breach of the rules. In exchange for this, however, it is common for codes to impose more onerous standards in some areas than the civil or criminal law. For example, while international law limits States' criminal powers to banning incitement to hatred, many media codes go beyond this and call on media outlets to avoid promoting stereotypes or discrimination.

Processing Complaints

In most cases, as with the code itself, the details regarding the processing of complaints are left to the press council to determine, and it may also revise and update them from time-to-time. In many cases, however, the law sets out a basic framework for the processing of requests, for example by requiring them to be fair and timely. It may also include some more specific rules, for example regarding the timeframe for processing requests and the right of the parties to make representations before the council.

Enforcement

As noted above, in most cases the system of enforcement for the code of conduct involves only light sanctions or forms of redress. By far the most common sanction for breach of the code is a requirement for the newspaper to carry a statement acknowledging the breach. In many cases, the council will prepare this statement and in some cases the newspaper may be required to print their whole decision or key parts of it.

The granting of a right of correction or reply is also a very common response to breaches of codes of conduct. A correction is where the newspaper is required to print a statement correcting an earlier statement which was inaccurate. A reply is where a party who has been wronged in the media is given the right to respond to the original article in their own words. A correction is far less intrusive from the perspective of freedom of expression, so it should be used whenever the breach was simply the printing of an erroneous statement.

While a right of reply is a recognised remedy for breaches of codes of conduct, at the same time it can be abused, for example by powerful politicians to gain access to the media every time they are criticised. It is, as a result, important to limit the

circumstances in which this right is applied. It should be available only where the council decides that the media has, through the breach of the code of conduct, breached the legal rights of the party claiming the right of reply, for example because the article was defamatory or an invasion of privacy. The reply itself should be limited in length and also in scope, specifically to redressing the breach of the code (i.e. it should not be used to introduce other points or raise new issues).

Practice varies as to whether press councils have the power to impose fines on media outlets. These have considerably greater impact on freedom of expression and so are not available through the self- or co-regulatory systems found many countries. On the other hand, they can also be an important way of signalling that a breach is particularly serious. If a press council does have the power to impose fines, it is better practice to limit the maximum amount of such fines, and to set clear rules regarding when they may be imposed (i.e. that they should be limited to more serious breaches of the code).

One of the important differences between a self- and a co-regulatory system is that in the latter, the decisions of the council are normally legally binding. The precise means of achieving this depends on the nature of the legal system. In Common Law countries, for example, this may be done by giving the council the power to register its decision with a court, so that failure to follow the decision becomes a contempt of court. The regular systems for enforcing court judgments can then be used to enforce the decisions of the council.

VII. Other Issues

Concentration of Ownership

In some countries, press laws set out rules regarding concentration of media ownership. In other countries, these may be found in a broadcasting law or another law dealing more generally with issues of ownership monopolies. There are important differences between concentration of ownership of the media and the wider issue of monopolies. For many products and services, two properly competing providers are enough to ensure market competition. Far more diversity is desirable in relation to the media, because just two different perspectives are not enough to promote the informed citizenry that is central to a democratic system. It is thus useful to have such rules in a media law, whether it be the print law or a broadcasting law.

Actual rules on ownership can be expressed in terms of limits on the ownership of numbers of media outlets (as in no more than two daily newspapers) or market share (as in no more than 25% of the total market). There are pros and cons of each approach. Limits on numbers of outlets are easier to set and apply, but tend to be less precise (for example because one may own two very small circulation dailies). It

is also common to have rules regarding cross-media ownership (i.e. ownership of different types of media, such as newspapers and broadcasters).

In many countries, the rules on ownership are supplemented by specific rules on transparency of media ownership. There are different ways to achieve this, but it can be useful to have the system overseen by the press council, at least in a co-regulatory system. It will, of course, be necessary at least for the regulator to be informed about media ownership if it is to be able to apply the rules on concentration of ownership, but it is far preferable for them to be available to the whole public.

It is preferable to put in place rules on concentration of ownership before actual patterns of concentration start to emerge. It is extremely both controversial and difficult to dismantle a media empire after it has been created, so it is better to prevent this from happening in the first place.

Accreditation

Accreditation, properly understood, is a system for ensuring that journalists can access limited space venues. Many countries have special accreditation systems for parliament, and some also have them for the courts. In most cases, the institutions themselves run these systems, issuing passes to journalists who specialise in covering the respective bodies. The rationale for this special privilege is that most members of society depend on journalists for news about these important institutions, and so it is important to ensure that journalists can access those institutions.

It is very important to distinguish accreditation from licensing or registration of journalists which, as noted, is not legitimate. In other words, accreditation should not be used as a hidden system of licensing through a requirement on all journalists to obtain accreditation.

In some countries, a parallel system exists whereby independent media associations or unions issue press cards to their members, who may then use them to access crowded places, such as accident scenes. In the United Kingdom, for example, 16 different media associations have come together to issue a common press card. The police, in turn, recognise the card as indicating that the holder is indeed a journalist.

The Internet

Countries around the world are trying to grapple with the question of whether, and if so how, to regulate the Internet. Very few democracies have put in place special overall regulatory systems for the Internet, recognising that it is not like any other communications medium and that general regulatory measures are not needed. At the same time, almost all democracies have put in place dedicated systems to address unique features of the Internet, for example to enable e-commerce and/or to address breaches of intellectual property rights.

In too many cases, however, States have sought to create specific regimes for regulating crimes and other wrongs on the Internet, which then run in parallel to the general criminal or civil law. In some countries, these rules have been included in e-commerce laws. Where this has been done, or proposed, it has often been harshly criticised by civil society and others, among other things because it is simply not necessary to create parallel criminal rules for the Internet.

It is not recommended to include the Internet within the scope of a press law for various reasons. These include the fact that, although modern newspapers are also distributed over the Internet, it is a fundamentally different medium from the print media. Trying to impose similar regulatory rules on the Internet will simply not work.

Conclusion

The adoption of a good press law would be a very positive development for Myanmar. It could promote a strong print media sector, and ensure predictability for media outlets. It could also establish protections for media freedom and privileges for journalists which are necessary to enable the media to fulfil its proper role in society, namely to contribute to the free flow of information and ideas. Finally, it could put in place a system for redressing media excesses which strikes the right balance between respecting freedom of expression while still giving citizens the opportunity to lodge complaints against unprofessional behaviour.

On the other hand, the adoption of a repressive press law would be extremely problematical for the country. It could stymie the ability of the print media to develop and to grow into a strong and professional media sector, providing citizens with varied and reliable news and other information. And it could allow the government to continue to exercise undue control over the sector, again to the detriment of the free flow of information and ideas in society.

Furthermore, there are a number of other laws and rules in place in Myanmar which are problematical from the perspective of media freedom, including some rules in the Penal Code. While there have recently been some changes to these laws, many remain in place. To bring the legal system into line with international standards will require a full review and amendment as necessary of all laws impacting on media freedom.

This Report describes the various features which distinguish a good from a bad press law. No law is perfect, but certain minimum requirements are needed for the law to be able to have a positive impact on society. Key among these is the need for any oversight body – such as the press council – to be independent of government. The press council also needs to have the right package of powers, including the power to develop a code of conduct and to hear and decide on complaints that

newspapers have not respected the rules in the code. Finally, the press law needs to establish various positive protections for media freedom, including a prohibition on prior censorship and positive guarantees for the right of everyone to work as a journalist, and the rights of journalists to form their own associations and unions and to protect their confidential sources of information.

It is hoped that the government of Myanmar will introduce positive proposals regarding the press law. This Report should help journalists and others to assess whether or not that is the case when the draft law is finally published. Getting the press law right is crucially important to the overall success of the process of democratisation in the country. Now is not the time to compromise on this important issue.