

# The print media reform in post-junta Myanmar

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**Myanmar’s internationally acclaimed regime reform has subtly impacted the media environment. Civil society was involved in the process of developing a new legal framework for the press but its liberalizing effects have been mitigated by the shift from *ex ante* to *ex post* censorship and the effects of privatization.**

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## **A political transition to “discipline-flourishing democracy”**

Since 2011, Myanmar has undergone a political transition on an unprecedented scale. In 2012, after decades of military rule (1962-2011), Thein Sein’s government launched a series of reforms marking the final step in a roadmap towards “discipline-flourishing democracy”. Such a roadmap provided the framework for the ongoing political transition, as planned by the military since 1990s. Following the 1988 uprising and the resignation of dictator Ne Win (1962-1988), the military junta that returned to power in 1988 (the *State Law and Order Restoration Council*), pledged multiparty elections and constitutional reform to meet the growing demand for democracy in the country. The 1990 elections resulted in a landmark victory for the *National League for Democracy* (NLD—the Aung San Suu Kyi’s party), but the army denied the results giving constituent rather than legislative power to the newly elected MPs. The National Convention, during which the elected members of 1990 were to participate in the drafting of a new Constitution, was finally adjourned in 1996 after three years of conflict. The *State Peace and Development Council* (new name of SLORC in 1997) reopened the transition process in 2004 with a seven-step roadmap to a “disciplined

and flourishing democracy": this roadmap provided for reconvening the National Convention (1); defining the steps for the emergence of a "disciplined democratic system" (2); drafting a new constitution in accordance with the National Convention (3) and adopting it by national referendum (4); holding general elections in accordance with the constitution (5); convening the newly elected Parliament (6); and building a "modern, developed and democratic nation" led by a President and a government elected by Parliament (7)<sup>1</sup>.

As a result, the "top-down" political transition allowed the army (*Tatmadaw*) to transform itself into a quasi-civilian regime, while retaining significant power on the political scene through the 2008 Constitution<sup>2</sup>. As the 2010 elections were boycotted by the NLD (Aung San Suu Kyi's party came to power in 2016), national politics was then dominated by the military-backed *Union Solidarity Development Party*, Thein Sein's party. Nevertheless, the new distinction between the State and the army since 2011 has transformed power relations. Those who support the *status quo* gain legitimacy by undertaking a series of reforms seen as positive for the country's future. Besides, non-military actors are gradually involved in collective decision-making processes: Aung San Suu Kyi and the NLD notably entered the political arena after [the 2012 by-elections](#) while civil society organizations (CSOs) strengthened their political engagement through the legalization of trade unions, the right to strike, association and public demonstration... In addition, international organizations, private donors, diaspora in exile progressively relocated in the country. On one hand, Thein Sein's government invited the diaspora to return and settle in the country. On the other hand, it initiated peace negotiations with the major armed ethnic groups, thus gaining the support of the international community, resulting in its resettlement in the country.

## **Democratization through the media reform?**

Within this agenda, the print media reform became one of the main symbols of the regime liberalization: pre-publication censorship was abolished, exiled newspapers returned to Yangon, the first independent daily newspapers and journalists' associations were created... Internet penetration in the whole country increased significantly, the widespread use of

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<sup>1</sup> See in French: Egretau, Renaud. « Birmanie : la transition démocratique selon la junte », *Critique internationale*, vol. no 24, no. 3, 2004, pp. 39-47.

[<https://www.cairn.info/revue-critique-internationale-2004-3-page-39.htm>]

<sup>2</sup>The army notably heads the three sovereign ministries (Ministry of Defense, Border Affairs and Interior) and holds a quarter of the seats in both chambers of the Union Parliament (*Pyidaungsu Hluttaw*) as well as in the 14 parliamentary assemblies at regional level. For an overview of the army's powers, see Egretau, Renaud, "Soldiers as Lawmakers? Assessing the New Legislative Role of the Burmese Armed Forces (2010–15)", in Egretau R. & Robinne F. (Eds.), *Metamorphosis: Studies in Social and Political Change in Myanmar*, 2016, Singapore: NUS Press, 450 pages, p.15-42.

smartphones and Facebook offering new ways of information and communication<sup>3</sup>. That is in such a context that I started focusing on the impact of the political transition in the field of journalism, a sector under transformation reflecting the degree of change in society. Despite initial positive signals, the results of my fieldwork conducted in Yangon with media professionals from 2015 to 2017 rather emphasize how the government retains a grip on information producers and news organizations in Myanmar. This article therefore seeks to show how censorship mechanisms remained despite Thein Sein's print media reform, especially the lifting of pre-publication censorship. I argue that this has shaped the current practices of Burmese journalists, as well as the new information market in Myanmar.

## **Is the new legal framework an inclusive process for civil society?**

### **Journalists' associations for legal reform**

The first step towards press reform was the drafting of a new legal framework replacing the 1962 *Printers and Publishers Registration Act* (PPRA). This law, created under Ne Win socialist dictatorship, had been at the core of the censorship system for over half a century. It created a body of prior censorship (the *Press Scrutiny Registration Division*) that examined all writings before publication and required press organizations to obtain a license to have the right to publish<sup>4</sup>. What is noteworthy is that Thein Sein's government chose a *Press Council*, an essentially civilian institution, to draft the new press law. Three new journalist associations, the *Myanmar Journalist Association* (MJA), the *Myanmar Journalist Union* (MJU) and the *Myanmar Journalism Network* (MJN), were invited to sit at this council, demonstrating an opening of the legislative process to civil society<sup>5</sup>. But the way in which

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<sup>3</sup> Few figures are currently available on Internet access and use in Myanmar. When it was first introduced in 2000, the Internet was controlled by state-owned provider (*Myanmar Post Telecommunication*) which monitored websites, applications, emails... and could block content to users. Since 2010s, the emergence of new telecom operators breaking the state monopoly, the access of low-cost smartphones and sim cards as well as the launch of Facebook in the country contributed to a major rise in Internet usage. As a result, the Internet penetration rate increased from 0.02% in 2001 to 21.8% in 2017. Facebook's penetration rate (which appeared in 2013 in the country) was close to that of the Internet, at 21.09% in 2017. So, it is estimated that 96.74% of Myanmar's Internet users are Facebook users... See in particular Chinn, Menzie D., et Fairlie, Robert W, « The Determinants of the Global Digital Divide: A Cross Country Analysis of Computer and Internet Penetration ». *Oxford Economic Papers* 59(1), 2006, pp. 16-44; Yung, Chunsing, « From Digital Divide to Facebook Divide, Reconstruct our Target Market Segments with Facebook Native and Facebook Immigrant ». *Jaipuria International Journal of Management Research*, 2017, 3(1): 8.

<sup>4</sup> See Allott, Anna, « Prose Writing and Publishing in Burma: Government Policy and Popular Practice », dans Tham Seong Chee (Ed.), *Essays on Literature and Society in Southeast Asia*, Singapore, University Press, 1981; Hudson-Rodd, Nancy, « "Not a rice-eating robot" Freedom to speak in Burma », dans *Political Regimes and The Media in Asia*, Routledge, 2008, 248 pages, p. 85-105.

<sup>5</sup> These associations, like many others, were created in 2012, as a result of a new permission to create associations: MJA, MJU and MJN are the three organizations defending journalists' rights and press freedom recognized at national level by the government. The most structured organization is the MJA with a national

these associations had to negotiate their participation and role in this council shows how unwilling the government actually was to change long-standing practices. This can be seen through the process of adopting the new legal framework, now consisting of two distinct press laws.

In August 2012, Information Minister U Kyaw Hsan announced the creation of a first press council, the *Myanmar Core Press Council* (MCPC), replacing and officially abolishing the previous censorship body. Its 20 members were appointed by the *Ministry of Information* (MOI) - none were from journalist associations. In addition, the MOI sent the Council a list of “responsibilities and duties”, denying it any participation in the drafting of the new law and giving it a strict monitoring role<sup>6</sup>. The [widespread public criticism](#) that followed the formation of MCPC probably prompted the resignation of Information Minister U Kyaw Hsan who was replaced by U Aung Kyi. The latter embarked in a two-week negotiation with journalist associations, who eventually obtained to appoint two thirds of the 27 members of a new Council, to draft a code of ethics for journalists and to participate in the drafting of the new press law. The interim *Myanmar Press Council* (MPC) was then established and asked to draft a *News Media Law* (NML), that would protect the work of journalists and ensure freedom of expression.

### **Civil society vs. government: the drafting of two separate laws**

However, at the beginning of 2013, the MOI discreetly submitted to Parliament its own draft law, the *Printing and Publishing Enterprise Law* (PPEL). Under this bill, the government retains the power to grant and revoke licenses, continues to impose severe penalties on journalists and controls the contents of newspapers. The prohibition of subjects "disturbing the rule of law", "causing instability" or "violating the 2008 Constitution or other laws" also imitated the vagueness of the 1962 law. After months of negotiations on the first draft, the MOI presented a revised draft to Parliament in June 2013: it was to include the amendments published by the MPC, especially the abolition of the licensing system for press organizations. In the meantime, the press council submitted to the MPs its own draft, the *News Media Law* (NML). Parliament finally decided, contrary to what was expected, not to merge the two laws. The *Printing and Publishing Enterprise Law* (PPEL) was adopted by the Lower House without any of the amendments requested by civil society<sup>7</sup>. Despite protests and the [postponement of the vote](#) by the Upper House, Parliament approved both bills

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council elected by regional committees. The MJN is a network made up mostly of young journalists. As for the MJU, it describes itself more as a union. In practice, these share the same goal: to support journalists affiliated to them when they are prosecuted or detained and to promote press freedom through mobilization actions (petitions, demonstrations, rallies, etc.).

<sup>6</sup> MCPC was forced to follow the ministry's rules, such as “collecting evidence of violations of the law and punishing journalists” or “monitoring the press so that it does not act against “the interest of the people”, the “dignity of the state”, and “national sovereignty””.

<sup>7</sup> The only amendment was the reduction to fines rather than prison sentences for violating the law.

[simultaneously](#) on March 14, 2014. On the one hand, the NML defines the *Press Council* as the responsible body for solving conflicts that may arise and for avoiding legal lawsuits against journalists or media organizations. On the other hand, the PPEL [perpetuates](#) the licensing mechanism for press organizations, as in the 1962 Act<sup>8</sup>. Subjects that could harm "ethnic groups", "Buddhism" and "other religions", "the rule of law" or "provoke violence", "expose nudity", "encourage crime", "cruel behavior", "gambling", "the use of opium or abusive drugs", remain prohibited. No article should be published if it violates the 2008 Constitution or other laws.

By opening the law-making process to a predominantly civilian institution, Thein Sein's government showed that it accepted a new way of solving conflicts and opening the political field to non-military actors. Nevertheless, after months of negotiations, the adoption of the new legal framework composed of two overlapping laws tells a different story: journalists associations were certainly able to express their grievances but had a very slight impact on the final decision-making process. Thein Sein's government has retained the power to grant and revoke press licenses and could prohibit publications potentially damaging the State. In addition, those new press laws were added to a variety of colonial laws that were not abrogated, despite the calls from journalists and human rights associations:

#### **Most colonial laws used to restrict freedom of expression**

The 1923 Official Secret Act: any topic can be "classified" by a military officer's decision. No journalist has the right to investigate, write an article or question information classified as "secret". This concerns in particular military issues. Journalists currently do not have access to the list of classified topics.

The 1908 Unlawful Association Act: Any association that interferes with the administration of law and the preservation of law or order, or that constitutes a danger to peace, may be declared illegal. Journalists can be convicted if they refer in their articles to an "illegal" organization, i.e. an entity that has been banned by the state. While the list of "illegal associations" has not been made public, this law is used to convict and/or arrest people in areas of ethnic conflict or in contact with insurgents in these areas.

The 1957 Penal Code: This law is used in defamation cases. It protects local officials, the government and the army from articles published against them or statements that put them at fault.

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<sup>8</sup> Any organization wishing to launch a newspaper must register and obtain the authorization of the "registration officer" in a new division, the Copyright and Registration Division (CRD) in the Ministry of Information (MOI). The CRD may revoke the certificate if the publishing company discloses "false information" or if it does so with "bad intentions". Similarly, authorizations may be suspended if the publication is declared "illegal".

Thein Sein's government thus applied judicial censorship through a legislative framework that is as diverse as it is imprecise, using mainly pre-existing colonial laws rather than the two new ones passed in Parliament in March 2014, to condemn information producers. The use of colonial laws allowed the government to continue to punish the press on subjects previously prohibited by the censorship body: *ex post* censorship has therefore been applied (and still applies) instead of prior censorship.

## **Lifting prior censorship, a new “responsibility” for information producers**

The abolition of the historic censorship body (the 1962 *Press Scrutiny Registration Division*, PSRD) marked a new era for information producers: private sector journalists had never practiced their profession without any censorship body. Since 2012, mandatory procedure before publication is no more. This appears to be the most spectacular signal Thein Sein's government has sent to the press. However constrained journalism may have been by the prior censorship system, information producers (whether journalists or media companies) could not be prosecuted. What each of my interviewees described is that the lifting of prior censorship generated a new sense of “responsibility” among them, leading to self-censorship. They now consider themselves legally liable for writing their article since an *ex post* censorship may apply. So how did the previous censorship system operate, and how did it evolve?

### **Prior censorship as a “filter”**

In spite of the computerization of censorship in 2005, the pre-2012 checking process still took about a week, making the news obsolete at the time of publication. The editors were each required to submit their draft newspapers to the PSRD for review of articles, layout, comics, advertisements, clothing in photos, etc. If certain parts were deemed unacceptable, publishers had to modify or delete them and re-present their project until validation. The longer PSRD took to validate the layout of a newspaper, the less regularly it was published. And if the PSRD decided to sanction a newspaper, rather than halt publication, it could also delay publication or invalidate many articles so that the newspaper was unable to publish its edition. Such a policy was particularly detrimental to the profits of media companies. However, only the owners of the newspaper's license (not information producers) could be sentenced to prison, temporary suspension of publication or its closure. Interestingly, in the past, licenses were owned by businessmen, ministries or military officers, who granted or sublet them to the media. This dates back to 1975, when Ne Win's administration decided to

limit the number of licenses to 3,000 for the entire publishing sector. Since then, the license has become a marketable property, with the licenses being leased by their owners to the media.

The censorship process, routinized for nearly half a century, acted as a "filter" for information producers: only the censorship body or the license holder could be held liable for the articles eventually published. The government can thus disappear as a repressive institution to legitimize its democratic discourse, the punitive strategy being transferred from the administration to the judiciary on the basis of the principle of "civil responsibility"<sup>9</sup>. Articles that concern military matters, armed conflicts (including the drug trade), corruption and papers criticizing the government, its representatives, the army, etc. are no longer censored *stricto sensu* but remain extremely risky. Since then, the government has had a broad legislative framework to prosecute information producers, using both old and new laws to censor the production of information.

## **The compromise of sustainability for non-state newspapers**

In this context, 16 non-state news dailies [reappeared](#) in 2013, which had been unprecedented since the newspapers nationalization in 1964. In the absence of prior censorship, it has become structurally possible to publish daily newspapers, while the government has also made the media licensing process smoother. Previously dispersed publications – state daily newspapers, privately-owned magazines, exiled dissident newspapers – have thus competed on the same market. This has been beneficial both to well-established private media groups that created daily versions of their weekly or monthly newspapers and to dissident media returning from exile that could publish their first dailies in the country and to privately-owned independent publications. Anyone can now apply for a license and start one's own newspaper. In spite of such a liberalization process, the freedom of expression of press companies is still constrained as the government retains the power to grant and revoke licenses.

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<sup>9</sup> See Foucault, Michel, "Governmentality", in Burchell, G., Gordon C. & Miller P. (Eds.), *The Foucault Effect: Studies in Governmentality*, 1991, 1 edition, Chicago: University of Chicago Press, 318 pages, p. 87–104.

## From exiled newspaper to media company

What is at stake now is the financial sustainability of privately-owned newspapers. This is a classic model of press privatization: when the press emancipates from state control to become independent, this autonomy implies finding an economic model to survive in a highly competitive market. In Western democracies, it is well established that the financial sustainability of the media through advertising and belonging to tycoon press conglomerates, restricts the plurality of alternative opinions and points of view<sup>10</sup>. Such trends can also be seen in the media sector privatization in Myanmar. Let us take the example of one major media that returned from exile in 2012, *Mizzima*. This dissident media, funded by private donors from the diaspora in exile or by international civil society support programs, had to transform itself into a commercial media soon after it relocated in the country and established a partnership with a finance and real estate tycoon in 2013. However, unwilling to compromise on its political line, *Mizzima* quickly ended this business alliance. Since then, the group has [stopped](#) publishing its daily newspapers in Burmese, maintaining its website and a business weekly in English, both financed by advertising and the sale of news content on state television (MRTV).

## New content censorship: the use of the word Rohingya

As mentioned above, private media in liberal economies face new constraints because the way they finance their activities can have an impact on what type of information is published. This is also observable in Myanmar, especially for advertisers, who can influence the editorial line of private newspapers. In particular, local media organizations have been under pressure from their advertising investors not to use the term Rohingya in local privately-owned newspapers in Burmese language. In 2012, this Muslim minority in Northern Arakan state (Rakhine), which asks for recognition as a "national minority"<sup>11</sup>, already faced repeated persecutions by extremist movements fanned by monk U Wirathu's anti-Muslim preaching. Such a situation culminated in the "Rohingya crisis" which was largely instrumentalized by the Islamophobic propaganda of these ultra-nationalist movements on Facebook. This dramatic situation resulted in the 2017 humanitarian crisis, now qualified as genocide by the United Nations. Massacres perpetrated by the Burmese army, in reprisal for attacks on police stations by the *Arakan Rohingya Salvation Army* (ARSA), have caused a massive exodus of 700,000 Rohingya to Bangladesh.

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<sup>10</sup> See among others: Kuhn Raymond & Neveu Erik (Eds.), *Political Journalism: New Challenges, New Practices*, 2002, 1<sup>st</sup> edition, London; New York, Routledge.

Herman, Edward S. & Chomsky, Noam, *Manufacturing Consent: The Political Economy of the Mass Media*, 2002, New York: Pantheon, 480 pages

<sup>11</sup> Hein Patrick, "The Re-ethnicization of Politics in Myanmar and the Making of the Rohingya Ethnicity Paradox". *India Quarterly: A Journal of International Affairs*, 2018, 74:4, 361-382.

The use of the term Rohingya appears to have been informally banned since 2013 and replaced by Bengali, through the lobbying efforts of *Ma Ba Tha*. This ultra-nationalist Buddhist group led by U Wirathu became popular in 2013 with its campaigns for the protection of race (Burmese) and religion (Buddhist). This group has managed to use social networks and especially Facebook in spreading information, political and religious discourse... but also rumors, fake news and Islamophobic messages. As a result, Islamophobic discourse has spread to traditional media and political institutions, sometimes legitimizing atrocities perpetrated against Muslims in Rakhine State<sup>12</sup>. Thein Sein's government, reputedly close to this radicalized group permitted hate speech to spread against these "foreigners" he calls Bengali and whose existence it does not acknowledge. Consequently, private businesses buying advertising inserts in newspapers hold back from funding publications still using a controversial word such as Rohingya. The economic elites financing the print media do not seem willing to offend the government or take a stand in this debate. Provoking the anger of nationalist groups could also threaten newspaper sales, as boycott campaigns are their popular mode of action. The privatization of daily newspapers as a result of the lifting of prior censorship and a relaxation of the license ownership rule seems to have shifted the lines of censorship. Once exercised by the censoring body, nowadays it amounts to economic censorship, with financial investors following the government's political agenda.

## Conclusion

A look at three aspects of the reform shows how dramatic the change for print media has been. Within a few years, it has shifted from a handful of censored publications to an information market flooded with political news. But has the reform deeply transformed institutional structures and government practices against the print media? The way in which the new press legal framework was adopted rather shows a continuity of practices and how Thein Sein's government confined the role of civilians to mere consultation. Similarly, the lifting of prior censorship imposes new constraints on information producers. Censorship has shifted from license owners to journalists themselves, who are forced to self-censor in order to face their new "responsibility". The prevalence of State authoritarian modes of governance can also be seen in the emerging information market. The new economic actors who finance the private press are taking on a new role as censors. Unwilling to overstep the invisible political line set by Thein Sein's government, they ensure economic viability for these companies in

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<sup>12</sup> See among other: Brooten Lisa, Verbruggen Yola, "Producing the News: Reporting on Myanmar's Rohingya Crisis". *Journal of Contemporary Asia*, 2017, 47:3, 440-460; Cheesman Nick, "Introduction: Interpreting Communal Violence in Myanmar". *Journal of Contemporary Asia*, 2017, 47:3; Frydenlund, Iselin, "Buddhist Islamophobia: Actors, Tropes, Contexts". *Handbook of Conspiracy Theory and Contemporary Religion*, 2018, September, 279-302; McCarthy Gerard, Menager Jacqueline, "Gendered Rumors and the Muslim Scapegoat in Myanmar's Transition", 2017, *Journal of Contemporary Asia*, 47:3, 396-412; Osman, Mohamed N. M. « Understanding Islamophobia in Asia: The Cases of Myanmar and Malaysia », *Islamophobia Studies Journal*, 2017, 4 (1) : 17-36.

exchange for depoliticizing information. Finally, the new political configuration that opened up with Aung San Suu Kyi's accession to power in 2016 has not fundamentally changed the ground rules for the press. Her government has adopted values of justice and has therefore striven to respect the "rule of law"... which is actually made up of the same legal and institutional framework. Information producers can therefore still be harshly convicted in writing controversial topics. Things have become even harder for journalists with the "Rohingya crisis", as it has become impossible to talk about the situation in the local private press. Two Burmese Reuters journalists have just been released after 500 days in prison, sentenced to seven years' imprisonment under the 1923 State Secrets Act for covering the conflict.

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