Myanmar: Note on Professional Regulation of the Media

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Professional regulation of the media, meaning systems whereby professional standards for the media are set, normally in something along the lines of a code of conduct, and then applied, normally via a system of complaints which is overseen by an independent body, such as a press or media council, are found in countries around the world. Where they are effective, they can improve the professionalism of the media, provide ordinary citizens with access to redress where those standards are not respected to their detriment, and generally improve trust in and support for the media.

This Note[1] looks at how systems for professional regulation of the media work around the world, describing their key characteristics and the benefits they provide. It should be noted that these systems are mainly designed to promote and improve media professionalism rather than to punish the media for committing wrongs. This is reflected in their design and the remedies they apply, as well as the sorts of standards they promote.

This Note then explores how something along these lines might be set up for independent media focusing on Myanmar. This will not be easy given the complex and fractured nature of media focusing on Myanmar since the 1 February 2021 coup, when the military overthrew the democratically elected government and installed a repressive military regime. As of today, many independent media are based outside of the country, given the impossibility of co-existing with the regime, although there are also many independent media still based inside the country and those outside also have journalists based inside the country, in what has been described as a "one foot in, one foot out" approach. All media workers, but especially those operating inside of the country, face serious risks of retaliation from the regime which further complicates matters.

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Myanmar still has in place the residue of its earlier system for professional regulation of the media. When the News Media Law was adopted in March of 2014, one of its main thrusts was to establish the Myanmar Press Council (MPC) as an independent regulatory body for the media. In terms of regulation, a mini code of ethics for the media was included in the News Media Law, while it also referred to the idea of the Council adopting additional rules. This happened in May 2014, when the Council adopted the Media Code of Conduct, following extensive consultations with journalists and other stakeholders. Specific sets of rules for covering elections were adopted in the lead-up to both the 2015 and 2020 elections, and the MPC regularly considered and decided upon complaints against the media. It is not clear whether the current body continues to perform this function.

Two independent sets of members of the MPC were appointed, with the last group dissipating after the coup. The military regime appointed a new set of members, lacking both independence and credibility, in the fall of 2021 and this body still claims to be the Myanmar Press Council. Challenges to the new body sharpened following the Dili Dialogue Forum 2022 (held 25-26 August 2022), which was not only attended by U Aye Chan, a representative of the new body, but he also made specific statements of support there for the military regime. This ultimately led to a sharp rejection of the current body by the East Timor Conselho de Imprensa (press council), which included a statement to the effect that they would not recognise the current body as the proper press council of Myanmar.[2] This raises the issue of who might now represent Myanmar in regional and international meetings of press councils.

Overview of Systems of Professional Regulation

The Three Main Approaches to Professional Regulation

Systems of professional regulation can be broadly classified into three categories, namely self-regulation, co-regulation and statutory regulation. Most democracies rely on self- or co-regulation for the print media and on co-regulation or statutory regulation for broadcasters. As detailed below, many countries are also moving to a new form of co-regulation for social media platforms.

Self-regulatory systems are set up entirely by media professionals themselves, without any form of official involvement (such as legislation). In some cases, they operate at the level of an individual media outlet, such as via an in-house ombudsman, while in others they operate at the level of a media sector, such as the print or broadcast media, or the media as a whole. An example of this is the Swedish complaints system, consisting of the Media Ombudsman

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[2] See, for example, International Federation of Journalists, "Timor-Leste: Press Council condemns misleading representation of Myanmar press freedom", 16 September 2022, https://www.ifj.org/media-centre/news/detail/category/press-releases/article/timor-leste-press-council-condemns-misleading-representation-of-myanmar-press-freedom.html.

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and Swedish Media Council, which is set up and financed by four press organisations and four broadcasting companies.[3]

A co-regulatory system, in contrast, has some sort of legislative backing for the system but involves significant media participation. There are different ways to provide the legislative backstopping for the system. In the most common approach, the oversight body, or council, is itself set up by legislation. This is the case with the Indonesian Press Council,[4] for example, set up by the 1999 Press Law.[5] In this case, the nine members of the Press Council consist of three journalists nominated by journalists' associations; three executive members of media companies nominated by media owners' associations; and three public figures nominated by journalists' and media owners' associations together. The condition that the media play a key role in the system is satisfied by the fact that all of the members are nominated by media bodies.

The Myanmar Press Council was essentially designed as a co-regulatory body along these lines (i.e. with the body being created directly by legislation). Article 13 of the News Media Law[6] provides for 15 to 30 members of the Press Council to be appointed by the President, with one representative being proposed by each of the President, Chair of the Pyithu Hluttaw and Chair of the Amyotha Hluttaw, along with "representatives proposed by news media men, news agencies, printers, publishers, writers, poets, cartoonists according to the stipulated proportion" and "representatives elected by the civil societies comprising intellectuals and intelligentsias relating to sociology, economics, literature, culture, science and technology". However, while it is clear that a majority of the members shall be proposed by independent actors, such as the media, civil society and poets, the law is unclear as to how many members shall be proposed by each sector and, indeed, as to how many members there shall even be. This leaves scope for political interference, while the Law also fails to put in place strong other protections for independence. As such, it was relatively easy for the military regime to appoint a non-independent group of members following the coup.

There are also other options for establishing co-regulatory bodies. For example, the Canadian Broadcast Standards Council (CBSC)[7] is a national voluntary self-regulatory organisation which was created by Canada's private broadcasters and which receives and decides upon complaints about broadcasting. However, the official regulator, the Canadian Radio-television and Telecommunications Commission (CRTC),[8] has formally recognised the CBSC

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[3] See https://medieombudsmannen.se/english/.
[4] See https://accountablejournalism.org/press-councils/Indonesia.
[5] Available in English at: https://dewanpers.or.id/assets/ebook/buku/2011241422_2016-09_BUKU_Indonesian_Press_Law_&_Regulations_of_the_Press_Council.pdf.
[6] Available in English at: https://www.burmalibrary.org/docs17/2014-Media_Law-en.pdf and in Burmese at: https://myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2014/pyidaungsu-hluttaw-law-no-12-2014-news-media-law-burmese.html.
[7] See https://www.cbsc.ca.
[8] See https://crtc.gc.ca/eng/home-accueil.htm.

in Public Notice CRTC 1991-90,[9] and renders the latter's decisions effectively binding on broadcasters via the mandatory licensing and regulation of broadcasters that it provides.

In the modern era, another approach to co-regulation is emerging for social media platforms, as reflected in the European Union Digital Services Act (DSA),[10] which entered into force recently, on 16 November 2022. Among many other obligations, the DSA imposes a number of risk assessment obligations on very large platforms. They are required to undertake an annual assessment of any significant systemic risks relating to dissemination of illegal content, negative impacts on the human rights to privacy, freedom of expression, freedom from discrimination and the rights of the child, and intentional manipulation of their service, "including by means of inauthentic use or automated exploitation of the service", which have a foreseeable negative impact on issues like health, civic discourse and elections (Article 26). They then need to create "reasonable, proportionate and effective mitigation measures" for these risks, which may extend to changing their content moderation or recommender systems, their decision-making processes or their terms and conditions (Article 27). Not only are these measures required by law to be implemented, but they are also overseen by statutory regulators. As such, this is clearly a form of co-regulation.

Finally, across the European Union, as well as in many other countries around the world, a large majority of all broadcast regulators are statutory in nature.[11] This in in part because the European Union Audiovisual Media Services Directive (AVMSD)[12] only recognised co-regulation when it was amended in 2018, by which time most European Union Member States had already established had their systems of broadcast regulation. It should be noted that even where professional issues for broadcasters are dealt with via a co-regulatory system, it will still be necessary to have a statutory body undertake licensing, because this cannot be done by a body which is heavily influenced by actors which already have licences (i.e. existing broadcasters). Thus, in Canada, while the CBSC addresses professional issues, the statutory CRTC undertakes licensing.

When considering a new system for regulation, there are a number of both advantages and weaknesses of both self- and co-regulation. The strengths of self-regulation include that it is normally very well protected against government interference due to the fact that there is no official role in the system. This can be undermined where the government exerts control over an important part of the relevant media sector, but that normally only occurs in very repressive contexts. For the same reason, the system is normally very sensitive to the needs of the media, so that its decisions are likely to take the working realities of the media fully into account. However, this can also be a weakness, for example if it is seen as being too

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[9] Available at: https://crtc.gc.ca/eng/archive/1991/pb91-90.htm.
[10] Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM(2020) 825 final, 15 December 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825&from=en.
[11] A full list of the European ones is available here: https://digital-strategy.ec.europa.eu/en/policies/audiovisual-regulators.
[12] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, 18 December 2018, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218.

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media friendly or if it is in fact too lenient on the media. If this happens, it may fail to garner public trust and then not be relied upon by the public as a means of addressing professional failures by the media. Closely related to this, self-regulatory systems have limited powers to enforce their decisions, given their entirely voluntary nature. Media outlets may simply refuse to implement remedies, even if they are light in nature, and, in extreme cases, members may simply leave the system rather than cooperate with it.

A very different challenge with self-regulation is that experience demonstrates that it is not very easy to set up one of these systems in practice. Media outlets, essentially by definition, compete with each other for audiences and they often have difficult relations with each other. That can be particularly true of different sorts of actors within a media sector, such as more high-brow newspapers as compared to so-called tabloids However, setting up a self-regulatory system requires close cooperation and trust among media outlets, especially in the early days when it is being created. It can be difficult to foster this cooperation in many situations. It can also be difficult to get media outlets to contribute the funding required to run a system of self-regulation.

Co-regulation largely avoids these challenges. Since it is set up by law, it does not require the same degree of close cooperation among media outlets. Instead, it is enough if they all provide inputs to those who are leading on the drafting of the law, normally a ministry. Also, again due to its legal backstop, it does not have the same problem of enforcing its decisions. Indeed, media are normally legally required to implement the orders of the oversight body.

On the other hand, these systems can also lack some of the strengths of self-regulation. In particular, they may not be as robustly independent from government as most self-regulatory systems are. Much depends on the detail that is provided for in the law. The experience of Myanmar highlights the risks here. The first two Press Councils were robustly independent because the government respected the need to appoint independent people to the body. But this quickly fell apart under the military regime, which absolutely failed to respect the need for the body to be independent. While laws can do more or less to protect independence, it can be difficult to provide absolute protection against a government which is determined to control the oversight body. In some cases, these systems also provide for unduly harsh sanctions, so that they more resemble civil or even criminal systems than professional complaints systems.

Key Features of Self- and Co-Regulation

A starting point for developing a system of professional regulation is to determine who it will cover. These systems are essentially designed to apply to media outlets, as such, and not to individual journalists. There are a number of reasons for this. First, it is dissemination of content via the media that mainly causes the harms that these systems are designed to provide redress for. While a journalist can invade someone's privacy when producing a report, it is the dissemination of that report via the media that constitutes a far more serious invasion of privacy. In addition, the primary remedy in most of these systems is a requirement to disseminate a reply or other statement in the media, which can only be

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provided by the media and not an individual journalist. Of course that does not preclude journalists' association from adopting codes of ethics for their members, and many do just that. But these are not usually applied via a complaints system.

As noted above, it is common for countries to have in place different systems for the print and broadcast media sectors. This is driven in part by the very different overall approach to regulation of these two sectors in democracies – in particular the fact that broadcasters are licensed while the print media are often not subject to any particular rules regarding their establishment – and in part by the very different nature of these two media sectors, in particular in the way they disseminate content (via print versus the airwaves). Although this is starting to break down in the modern era, with print media also disseminating video and audio content online and broadcasters also disseminating text, again online, the primary differences remain relevant. If the system is to cover both types of media, consideration should be given to having different codes of conduct for each sector or at least dedicated rules in the code for each one (for example, scheduling of content which is challenging for young children is only relevant for broadcasters).

With the growth of online actors which resemble media, as well as some that are less similar, it is important for any system to define clearly which online actors it covers. There are different ways to do this. In Europe, it is common for regulatory systems to be limited in application to actors which, in addition to their other media qualities, subject content to an editorial system, meaning a person or system with control over the selection, finalisation and organisation of content who is different from the author of that content. Under this approach, bloggers would not be considered to be media outlets (and of course private social media accounts would also not qualify). In Indonesia, online actors can essentially opt into the system, subject to certain controls and limitations, at which point they both enjoy its benefits and become subject to its obligations. This then permits but does not require bloggers to join.

The specific professional standards which the system requires of the media need to be set out in written form, normally in a code of conduct or similarly-named document. These are often quite detailed so as to elaborate clearly what is expected of the media. Practice varies as to who actually adopts the code. In self-regulatory systems, it is often senior media representatives who adopt the code, who may be different from the individuals who decide on complaints. Thus, the United Kingdom's Independent Press Standards Organisation (IPSO) has a special Editors' Code of Practice Committee, which is different from the Complaints Committee which decides on complaints.[13]

The specific content of these codes varies but most address both content issues (what content is not permitted in the media) and behavioural issues (what sorts of actions the media or journalists should not or should undertake). Despite variations, there is a common core of standards that are found in most codes of conduct, such as the obligation of media outlets to strive only to disseminate accurate content and to respect privacy, subject to serving the public interest. Most also often contain fairly strict rules on the dissemination of discriminatory or group-based derogatory speech, often going far beyond the limited

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[13] See https://www.ipso.co.uk/what-we-do/people/.

prohibitions on this that are reflected in hate speech laws. In terms of behavioural issues, many codes call on journalists to do such things as respect promises of confidentiality that they have made to sources, grant a reply in appropriate circumstances and show respect for those suffering from grief. Some codes also require the media to demonstrate balance and impartiality in their reporting, especially of news and current affairs programmes, while others accept that media outlets may operate in a politically biased manner.

Every regulatory system will, by definition, need to allocate the power to decide on complaints to an oversight body. The way in which these bodies are appointed is central to their independence, as well as the quality and integrity of the system, not to mention the trust they earn from society. The selection of members in a self-regulatory system is often done by the media, but sometimes with other actors playing an intermediary role. Thus, for the CBSC, the Chair recommends board members who are approved by the rest of the board but formally appointed by the Canadian Association of Broadcasters, which represents its members, who are broadcasting outlets. The board then appoints the list of adjudicators who sit on the various panels (such as the English-Language and French-Language Panels).[14] In the Swedish system, the Media Ombudsman is appointed by a committee comprised of the Chief Parliamentary Ombudsman, the chair of the Swedish Bar Association and the chair of the National Press Club. The Media Ombudsman essentially screens complaints and then forwards those that raise serious issues to be decided by the Media Council, which comprises four judges, who act as chairmen, 16 representatives from the four press organisations and four broadcasting companies which created the system (and which draft the Code of Ethics), and 12 representatives of the general public.[15]

Just because the media play a role in appointing members of the complaints body does not necessarily mean that those members represent the media. Thus the CBSC adjudication panels comprise both media representatives and representatives of the general public. The United Kingdom Independent Press Standards Organisation's Complaints Committee has a majority of members who are not connected to the press.[16]

For co-regulatory systems which establish the oversight body by law, such as the Indonesian Press Council, the law will set out the manner in which members are nominated and then formally appointed. In Indonesia, as mentioned above, journalists' and media owners' associations nominate all nine members, three each representing their respective members and three representing the public. In most countries, there are a limited set of actors who can formally appoint members of such bodies, such as the head of State. Thus in both Indonesia and Myanmar the president formally appoints members. It is a fundamental principle of international law that bodies which exercise regulatory powers over the media should be independent of government (or protected against government interference).[17] This applies

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[14] See https://www.cbsc.ca/about-us/structure/.
[15] See https://medieombudsmannen.se/english/.
[16] See https://www.ipso.co.uk/what-we-do/people/.
[17] Centre for Law and Democracy and International Media Support, Briefing Note Series on Freedom Of Expression: Independent Regulation of the Media, in English at: http://www.law-democracy.org/live/wp-content/uploads/2015/02/foe-briefingnotes-4.pdf and in Burmese at:

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with at least equal force in the context of professional regulation of the media, which involves the sensitive matter of adjudicating content. The exact way to ensure independence will depend on the context but the manner of appointing members is one of the more sensitive issues here.

There also needs to be a clear procedure for making and then deciding upon complaints. The former should be simple and it is good practice to have a simple form for this, so as to help ensure that complainants provide all of the necessary information. It is often left to the bodies which make up the system to adopt the procedure for deciding complaints, which should at least give both parties (the complainant and the concerned media outlet) the chance to make representations and to respond to claims made by the other party.

The system will also need to set out what sanctions or remedies may be imposed. It is of the essence for these system that those sanctions not be unduly heavy or severe, otherwise the system will start to resemble a civil or even criminal law approach. These professional regulatory systems are not supposed to be a replacement for the content restrictions that are found in the civil and criminal law rules, which normally continue to apply to the media. Rather, they envisage more detailed, higher standards for the media in exchange for light sanctions. In some countries, such as Indonesia, complainants are formally required to pursue remedies via the professional regulatory system before they go to court where the matter is against a media outlet. This rule has led to there being very few legal cases against the media in Indonesia. And in every case, courts should at least take remedies imposed by the professional regulatory system into account when assessing damages or other sanctions against the media. Thus if a complainant in a defamation case obtained a reasonably prompt correction or right of reply from a media outlet through a professional complaints system, their legal damages should be correspondingly lower.

In many systems, sanctions are limited to public warnings, requirements to correct mistakes or publish a reply, and requirements to publish a statement acknowledging the breach, normally a statement of the decision. In some cases, the penalties also extend to fines. Thus, in the Swedish system, media outlets found to be in breach will need to pay a fee to the Media Ombudsman. In the United Kingdom, IPSO can impose fines of up to GBP 1,000,000,[18] but this is highly unusual, especially for a self-regulatory system.

Benefits and Other Roles

Systems of professional regulation have a number of general benefits for the public, the media and society in general. For the public, they essentially represent the only really accessible system of redress for media unprofessionalism. While civil or criminal wrongs committed by the media, like defamation or invasions of privacy, may be pursued through the courts, this remedy is simply too expensive and time consuming for the vast majority of

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http://www.law-democracy.org/live/wp-content/uploads/2015/02/Brief-4.independent-regulation.Myanmar.pdf.
[18] See https://www.ipso.co.uk/monitoring/standards-investigations/.

citizens. And, as noted above, many of the standards set out in the various codes of conduct, such as respect for grief or not making group-based derogatory comments, are simply not found in the civil or criminal law (and, indeed, would represent a breach of the right to freedom of expression if they were).

For the media, these systems have a number of benefits. They tend to route complaints away from the courts, where they are expensive, time consuming and potentially involve harsh sanctions. More importantly, however, they help clarify what professional standards are appropriate for the media, a complex matter which is often not very clear. This happens in part simply through the adoption of the code of conduct, which should describe the relevant standards in some detail. But it also happens through the decisions of the complaints body, which clarify those standards in relation to different specific contexts. For example, a code will normally provide for respect for privacy, subject to the overall public interest, and then specific cases will clarify how that public interest override applies in practice in different situations.

For society as a whole, these systems are often effective in improving overall professionalism in the media which, in turn, increases trust and reliance on the media as a source of news. This latter has always been important but it is of far greater importance, while also being far more at risk, in the modern environment of not only a bewildering array of sources of information but also of a massive proliferation of unreliable sources and, indeed, of dis- and misinformation.

In many cases, these professional systems play roles that go far beyond merely deciding upon complaints. As a closely related activity, in some cases the systems not only decide on complaints but also proactively monitor the media and take action in light of unprofessional behaviour. In some cases, however, the system goes much further than taking direct action on breaches of the code. In Indonesia, for example, Article 15(2) of the 1999 Press Law allocates the following roles to the Press Council:

- to protect freedom of the press from interferences by other parties;
- to carry out studies to enhance the development of the press;
- to sanction a Journalism Code of Ethics and to supervise its implementation;
- to consider and help settle public complaints over press publication-related cases;
- to facilitate communications among the press, the people and the government;
- to help press organizations in formulating regulations in the field of the press and to improve the quality of the profession of journalism; and
- to set up a data bank on press corporations.

This therefore covers issues such as generally protecting media freedom, research and facilitating communication among the media, the people and the government, which the Council has understood broadly to include taking measures, such as by facilitating discussions and raising awareness, to resolve social conflicts around media freedom.

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Ideas on Professional Regulation for Myanmar Today

The main drivers for a system of professional media regulation – namely providing an accessible complaints system for unprofessional media behaviour and improving media professionalism in general – apply just as forcefully to media focusing on Myanmar despite the very peculiar situation which applies there today. Indeed, both the professionalism that such a system can promote and the credibility and trust that come with it are needed even more by media focusing on Myanmar than media operating elsewhere. At the same time, it is patently clear that the Myanmar Press Council is not a legitimate body and cannot serve as the oversight body for any system of professional media regulation for media focusing on Myanmar.

Any body wishing to move forward to establish a system of professional media regulation for media focusing on Myanmar will need to think carefully about how to address each of the four main key features of a self- and co-regulatory body, namely who it will cover, what the code of conduct will say and who will adopt it, who will serve as the body that decides on complaints (and how will they be appointed) and what sanctions will apply.

There is another issue which will need to be thought about, namely whether the body is intended to remain as a self-regulatory body over time and how it might relate to the Myanmar Press Council over time, and specifically once the country returns to democracy and the Council could again be appointed and operate independently and in support of media freedom and professionalism.

At the beginning, this Note highlighted the need to replace the representational role that has been played by the Myanmar Press Council, for example at regional or international meetings. For a new, independent system of professional regulation to be accepted as a legitimate body to take on this role, it would need to be set up properly, including by having appropriate rules and internal systems. The discussion below is geared towards creating a system that met those conditions.

Self- or Co-Regulation Over Time

For the time being, the only viable option for a system of professional regulation would seem to be a self-regulatory one. While the military regime does still pass legislation, that is obviously not an option for this system for a number of reasons, starting with the illegitimacy of that regime in the first place. Theoretically, the National Unity Government (NUG) could be approached to adopt something along the lines of legislation to backstop the system. Without entirely ruling that out, there would appear to be a number of drawbacks to it.

However, whatever is established now should consider a long-term perspective. Hopefully the military regime in Myanmar will be removed or replaced in due course and Myanmar will be able to return to its path towards democracy. The current arrangements should give some thought to what would be intended, and what the transition would look like, at that time. A few options are possible.

The first is that the current arrangement would be seen as an interim, exceptional arrangement for an exceptional time, and that upon a return to democracy the country would simply revert to the *status quo ante*, i.e. to using the Myanmar Press Council established under the News Media Law as the professional regulator. That is at least a simple approach both conceptually and to prepare for. The downsides of this, however, include that it might be difficult to rebuild the Myanmar Press Council into a democratic body after serving for a period (i.e. now) as an undemocratic one, that there were always some flaws with the way the Myanmar Press Council operated (such that it might be better to take advantage of the environment in which democracy was restored in Myanmar to press for something better) and that, similarly, there were always problems with the News Media Law which might also be improved upon a return to democracy.[19] In addition, it is far from impossible that the current arrangement will grow into a strong, effective system of professional media regulation, in which case it would be counter-productive just to shut it down.

A second option is to envisage the current arrangement continuing after a return to democracy and abolishing the Myanmar Press Council. This would at least require an amendment to the News Media Law. One option could be to include relevant provisions in a revised News Media Law to recognise the current arrangement (i.e. to transform it into a co-regulatory system). Alternatively, it could be left to run as a self-regulatory body.

And a third option is not to worry too much about this right now, given that no viable path towards a return to democracy for Myanmar is currently evident, such that it might take quite a long time for that to happen and any number of intervening occurrences might change things considerably.

Which Media to Cover

It is reasonably important for any system of professional media regulation to define fairly clearly which media it covers. This is a challenge in relation to media focusing on Myanmar today, which encompass "one foot in, one foot out" independent media with their headquarters outside of the country, independent media still operating from inside the country and non-independent media also operating inside of the country. And within at least the first two categories here, there are a range of "media" actors going from well-established outlets with a number of staff to smaller actors which produce news less regularly to individual efforts which are actually closer to active social media accounts than media actors *per se*.

Given the challenges, a more flexible approach to defining who is covered might be justified. At a practical level, it might make most sense to start by bringing together a few key media players who were interested in this idea and willing to work together to make it happen, and

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[19] See, for example, Centre for Law and Democracy and International Media Support, *Reforming Myanmar's News Media Law and Printing and Publishing Enterprises Law*, 2019, https://www.law-democracy.org/live/wp-content/uploads/2019/01/Media-Law-and-PPEL-Note.Jan19.final_.pdf.

kick off the system with just those media. But in this case it would be important to have a system for adding new actors over time, as they both wanted to be included and were qualified to do so. It would thus be important for the system to have some definition of what types of actors would qualify for inclusion in the system.

The system should probably be neutral as to how the actor distributes content (i.e. whether over the airwaves, social media, a website and so on). There would be an obvious argument for excluding non-independent media. First, these media would not be able or willing to meet the professional standards that the system would set. Second, these media are essentially anti-democratic and thus fail to respect a core foundational principle of the system. But any such approach would need to be applied fairly, based on accepted and acceptable standards (such as that media to be included should not be controlled by or beholden to the military regime and that this was reflected in the content they disseminate).

It might also make sense to have some conditions on media having demonstrated at least a minimum level of capacity to respect professional standards. This would be justified since, otherwise, these media might place undue pressure on the system (since there would likely be a lot of complaints about their performance). Also, it would be damaging to the credibility of the system if it was obvious that many of the media which were included in the system were just not very professional. There could also be a sort of induction period whereby media would be approved to join in principle but would need to go through a period of training and development during which they put in place systems to enhance their ability to respect professional standards.

Consideration should also be given to what sort of cut-off might apply for actors that were simply too small or irregular to be included. As noted above, European rules generally require media to have some sort of editorial process in place, thereby excluding one-person outfits. Alternately, something more along the Indonesian lines could be envisaged, whereby there were some minimum conditions (for example updating news content substantially at least three times per week) and then a sort of application process.

Assuming the system does kick off with a few key partners and then expands from there, it will need some sort of process for this. That should involve a simple application form, publication of conditions for inclusion and a procedure for deciding on whether or not to admit applicants. The latter would probably require a small admissions committee to be appointed and to consider applications essentially on a rolling basis or perhaps once every couple of weeks, depending on need.

The Code of Conduct

The system will also need to develop a code of conduct or other document setting out its standards. Here, again, some sort of committee or working group would be needed. There are plenty of examples from other countries to draw upon, including the previous Media Code of Conduct adopted by the Myanmar Press Council. Ideally, a draft code would be

subject to a process of consultation whereby the media which were part of the system could provide feedback on the draft.

Institutional Features

Some thought needs to be given to the institutional features of the system. Two committees – namely focusing on admissions and drafting the code – have already been mentioned. There will also need to be a body which decides on complaints, which could be the same one as the drafting committee for the code or a different one. There may also be a need for another body to oversee the management and running of the system. Ideally, the body which decides on complaints should have some independent public representatives as well as media representatives, while the other bodies could just include media representatives. At the beginning, at least, it would be sufficient just to have a management body (such as a board or executive committee) appoint the different bodies. Over time, more complex arrangements could be put in place as needed.

The board could at the beginning just be comprised of representatives from the main media which were included in the system. Alternately, if these were already too many even in the early phase, all of those included could elect the board or executive committee, say for a period of one or two years. That approach – i.e. of electing the board – could also prove robust over time as the number of included media grew.

Conclusion

Many of the new democratic systems and approaches that were being put in place in Myanmar prior to the coup are no longer functional either at all or in a democratic manner. This certainly includes the system of professional regulation under the News Media Law, including its main institution, namely the Myanmar Press Council. And yet the need for a system along these lines is crucially important for media focusing on Myanmar, to support professionalism, to increase the credibility of and trust in the media, and, ultimately, to give individuals a means of redress where media unprofessionalism has harmed them. As a result, despite the special challenges this involves, it would be great if such a system could be established for media focusing on Myanmar.

This Note outlines the main characteristics, institutional arrangements and approaches of systems of professional media regulation around the world, focusing on self- and co-regulatory systems (which is the category that the system under the News Media Law fell into before the coup). It then highlights some of the special considerations which will need to be taken into account when developing such a system for Myanmar. The goal, ultimately, is to support the possibility of establishing a system of professional regulation of the media for Myanmar notwithstanding the challenges this involves.

The Centre for Law and Democracy is a non-profit human rights organisation working internationally to provide legal expertise on foundational rights for democracy.

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