

# The state, the military, and the market: Capture in the new Burmese media landscape

JANE MADLYN MCELHONE

*Consultant with International Media Development Advisors*

This chapter uses in-field interviews and observation, media articles, and freedom of expression reports and analysis to examine media capture in the Burmese media landscape, as well as efforts to counter it. Although there has been notable media reform since the days of the military junta, it argues that the current extent of capture by the state, military, and their business cronies and partners is undermining efforts to build independent media that are resilient and sustainable, and to provide independent journalism and investigations. This, in turn, is threatening efforts to nurture a free expression and free media environment that promotes government transparency and accountability, open debate, and informed dialogue



Photo credit: Jane McElhone

as the foundation of Burma’s democratic transition. (This chapter will refer to the country as “Burma” except where the proper names of organizations require the use of “Myanmar.”)

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## Introduction

Soon after Burma’s Nobel Peace Prize-winning icon Aung San Suu Kyi<sup>1</sup> led her party, the National League for Democracy, to power in 2016, her new government released nearly 300 political prisoners (Wa Lone 2016), including four journalists and the top executive of a now-defunct weekly, *Unity Journal*. Two years earlier they had been sentenced to 10 years with hard labor, later reduced to seven, for reporting on what they claimed was a secret chemical weapons factory run by Burma’s military, the Tatmadaw (Ye Mon 2014). The amnesty was acknowledged in *The Irrawaddy’s* 2016 World Press Freedom Day tribute: “This condition—prisons without journalists—is a low but important bar for any country assessing its press freedom. Subjected to decades of censorship and persecution, a new era has dawned for Burmese journalists, but work toward consolidating a truly free and independent press remains” (*The Irrawaddy* 2016).

Unfortunately, such occasional signals of respect for a democratic approach to media have not proven to be consistent. Journalists and bloggers continue to face threats, intimidation and arrest when publishing critical views of the government and the military, according to watchdog groups such as PEN Myanmar, the Southeast Asian Press Alliance, Article 19, Human Rights Watch, and the Committee to Project Journalists. The dozens of criminal defamation cases that have been filed under Section 66(d) of Burma’s telecommunications law since the NLD assumed power in 2016, including by the military and the NLD, provide a

vivid example.<sup>2</sup> And despite promises in its election manifesto to reform the media sector and introduce an open media market (2015 Election Manifesto), the NLD has been unwilling to surrender the tools it uses to influence public opinion and news content. By retaining the Ministry of Information, as well as a formidable state-owned media, it has continued to limit the space allowed to independent media.<sup>3</sup>

While there remain many formidable challenges to press freedom in Burma's political transition, this chapter focuses on one threat that remains relatively neglected—that Burma's fledgling private media system may end up *captured*. With the exception of a group of struggling independent media companies—including private national outlets, small local media in the ethnic states and regions, formerly exiled operations, and digital start-ups—the state, the military, and the regime's business cronies and partners still dominate. And despite the very modest opening up of the broadcast sector through the allocation of digital content channels to five companies in April 2017, capture of that sector is the most extreme (*The Irrawaddy* 2017). As a result, although there are more media outlets and more independent journalism, the current pattern of media ownership still bears strong resemblance to that of the pre-transition period.<sup>4</sup> This chapter uses in-field interviews and observation, media articles, and freedom of expression reports and analysis to examine media capture in the new Burmese media landscape. It argues that the current extent of capture by the state, the military, and their business cronies and partners is undermining efforts to build independent media operations that are resilient and sustainable, and to deliver independent journalism and investigations. This, in turn, is threatening efforts to nurture a free expression and free media environment that promotes government transparency and accountability, open debate, and informed dialogue as the foundation of Burma's democratic transition.

While acknowledging the many determined efforts to build a more open and free media culture in the country, the chapter will show that continued efforts are needed to prevent Burma from becoming yet another lost opportunity. It is a story of a major transition that is laying the groundwork not for democratic media reform, but for far-reaching media capture that undoubtedly will affect the country's future.

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## Media capture and the state

In early 2012, Burma's quasi-civilian administration began taking concrete steps to increase media freedoms and freedom of expression, including assembly and association. Minister of Information, presidential spokesman, and former soldier Ye Htut—nicknamed the Facebook Minister—drove the reforms.<sup>5</sup> The government released thousands of political prisoners, including journalists and writers, and undertook numerous, albeit flawed, media sector reforms, including new laws for print media, broadcasting, and publishing. It lessened content restrictions, including the abolition of pre-publication censorship for print media, opened the digital

space, and licensed, for the first time in five decades, private daily newspapers. Although the military junta had long published state-controlled dailies, independent editors and journalists were previously restricted to heavily censored weeklies and monthlies. The first private dailies in 2013 were thus considered a major turning point (Spring 2013). Formerly exiled media established operations inside the country, as did ethnic media groups that historically worked in the borderlands. A semi-autonomous interim press council was established (Ye Mon 2015). These substantial media reforms were unexpected and unprecedented.

### Media outlet concentration in Burma



Source: Based on author's own research

For two years—2012 and 2013—a heady period of growth and experimentation swept the media sector. As Yangon Journalism School founding director and chief trainer Ye Naing Moe recalls, print media embraced new freedoms and independence, and, although practitioners struggled against entrenched self-censorship, journalism became more hard-hitting. At the same time, the professional divide between the print and broadcast sectors deepened. The crony broadcasters continued to protect the establishment, including the niches and interests they had carved out in the pre-transition period. The newly independent print sector struggled to do watchdog journalism and to build businesses.<sup>6</sup>

Yet, after a somewhat promising start, in 2014 nascent media freedoms came under threat, with journalists arrested and media organizations harassed (PEN America 2015). The quasi-civilian administration continued to use the Ministry of Information and state media, as well as its alliances with crony media and the military, to maintain its influence and control. An opaque legal environment, inadequate legal reforms, and a captured judiciary enabled the rollback on freedoms.<sup>7</sup> In October of that year, five members of *Eleven Media* were charged with criminal defamation after they published an article alleging that the Ministry of Information had paid more than market value for printing presses. In June 2015, 17 of *Eleven's* staff members were charged with criminal contempt of court after publishing testimony from its own defamation trial. Fourteen of its staff were convicted and fined.<sup>8</sup> Given *Eleven Media's* reputation for attacking the quasi-civilian administration and supporting Aung San Suu Kyi, these court cases were widely viewed as politically motivated. Esteemed writer and PEN Myanmar founder and former president Ma Thida notes that in the wake of the court cases, *Eleven Media's* coverage “quieted” down.<sup>9</sup>

In 2015 Burma was No. 9 on the Committee to Protect Journalists' list of the world's 10 most censored countries, below China and above Cuba. Among the reasons cited: media enterprises had special registration; laws continued to ban news considered insulting to religion, disturbing to the rule of law, or harmful to ethnic unity; and national security-related laws were used to threaten and imprison journalists who reported on sensitive military matters (Committee to Protect Journalists 2015). Later that year, Aung San Suu Kyi's party won a landslide victory in the November parliamentary elections. Its elections manifesto promised media freedom (2105 Election Manifesto 2015).

## **The Ministry of Information and media control**

To inaugurate his first day as NLD Information Minister, Pe Myint is said to have worked late into the night editing the state daily, *The Global New Light of Myanmar*. The next day the front page featured, for the first time, a picture of Aung San Suu Kyi.

Information Minister Pe Myint is a writer and former member of the Myanmar Interim Press Council (Lun Min Mang et al. 2016). Although media practitioners

were disappointed that the NLD retained the Ministry of Information, they initially applauded its choice of new minister, convinced that he would support their fight for increased independence and freedom. One year later, however, they say the NLD's media strategy remains unclear, with the exception of favoring government-controlled media.<sup>10</sup> They say the new minister is a writer—not a journalist—and does not seem willing or able to upset the status quo or to fight the entrenched militarization of the ministry. Given that the military has an influential media empire, they also believe that the NLD will never let go of its own government media.<sup>11</sup> While acknowledging the myriad challenges facing the country, including fragile peace talks, media practitioners are frustrated that the NLD is not making independent media and free expression a priority.<sup>12</sup> Instead, the government continues to play a central role in both owning and running major state-owned news outlets, and defining their content.



“You will get used to it.” A cartoon created by Northern Wolf on June 30, 2016 following the NLD’s landslide victory in the parliamentary elections. The lion is the symbol of the USDP party that was in power from 2010-2015. The peacock is the symbol of the NLD party.



## Media that is state-controlled<sup>13</sup>

The three state-run dailies—with privileged access to public funds, government advertising, printing presses, and distribution networks—continue to bring in a strong stream of revenues. Meanwhile, observers say the six surviving private national print dailies are struggling; the plight of the seventh, launched in 2017, remains to be seen.<sup>14</sup> After Aung San Suu Kyi publically stated that government-owned media were not good for democracy, many hoped that she would close or privatize state-controlled print operations.<sup>15</sup> Yet subsequent initiatives to further increase their reach,<sup>16</sup> coupled with their more competitive pricing that private media cannot afford to match, as well as efforts to improve their content and digital presence,<sup>17</sup> have made them more competitive than before, leading private media owners to say it is now even harder to compete.<sup>18</sup>

Because of their advantages—high print runs, nationwide reach, and the political advantage of supporting the government—state media were already popular with advertisers; now that the NLD is in power, a new stream of advertisers are said to be seeking space in the dailies they control.<sup>19</sup> Media analysts say print operations currently have an estimated 10 to 20 percent of the total media advertising market, and of that, the government and military are believed to control some 60 to 75 percent. That leaves a very small share for the private print media sector.<sup>20</sup> Even so, the content of state-owned media remains weak; PEN Myanmar founder Ma Thida describes it as “unreadable propaganda that has now become readable propaganda.”<sup>21</sup> For Burma’s independent media sector, it is clear that the government should focus on expanding press freedom and free expression, protecting journalists, and improving the overall environment for independent media ownership, including getting out of the print media business. Yet there is no consensus on how to achieve these goals. Closing state media would throw thousands of people out of work. If put up for sale, it is likely that only business cronies—who already wield enormous power in the media sector—could afford to buy them. Private media actors also have suggested a third option: transforming state print media

# THE GLOBAL NEW LIGHT OF MYANMAR

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<p>Daw Suu has a soft spot for Tatmadaw</p>  <p>By [Name] 1000 words Page 2</p>	<p>Survey team discovers new species in Putao</p>  <p>By [Name] 1000 words Page 3</p>	<p>Water levels alert along Ayeyawady River</p>  <p>By [Name] 1000 words Page 4</p>
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## ONE MORE DEBATE

### Amoytha Hluttaw members give nod to State Counsellor Bill

The proposed State Counsellor Bill that would create the post of the State Counsellor for Aung San Suu Kyi in the new cabinet was passed by the Amoytha Hluttaw (Upper House) by 137 to 68 votes.

The bill, proposed by The Global New Light of Myanmar, would guarantee Aung San Suu Kyi's right to conduct government administration, organizations, associations and individuals to be elected, but will not be accountable in her duties to the Pyithone Hluttaw.

During the debate yesterday morning representatives of the opposition have decried the bill as being possibly unconstitutional.

Uy-Cho Khin Maung Aye, Defence Service personnel through the Hluttaw representative, decried the bill through the State Counsellor bill amendments in that he criticized it contributing to and supporting the creation of the State and all Myanmar citizens the bill seems to be intended to vest both legislative and executive power in a single individual belonging to one political party. The bill is found to adversely affect Article 111(a) of the constitution, which is an important basic principle, he added.

Article 111(a) says, “The three pillars of the Democratic power of the State—the legislative power, the executive power and the judiciary power shall be separated as much as possible and exercise their respective powers.”

He also suggested the bill be referred to the Hluttaw in line with the constitution before it is enacted into law.

**See Page 2**



Daw Aung San Suu Kyi arrives with army officers ministers appointed by army the handover ceremony of presidency in Nay Pyi Taw. Photo: MHA

### New govt should invest more in transportation sector: ADB

The new Myanmar government should invest more in the transportation sector in order to develop the country's economy, said a report released by the Asian Development Bank (ADB).

The report says Myanmar needs to invest US\$60 billion more in transportation sector

than the GDP by three or four per cent, said Peter Brimble, the deputy country director of the ADB in Myanmar.

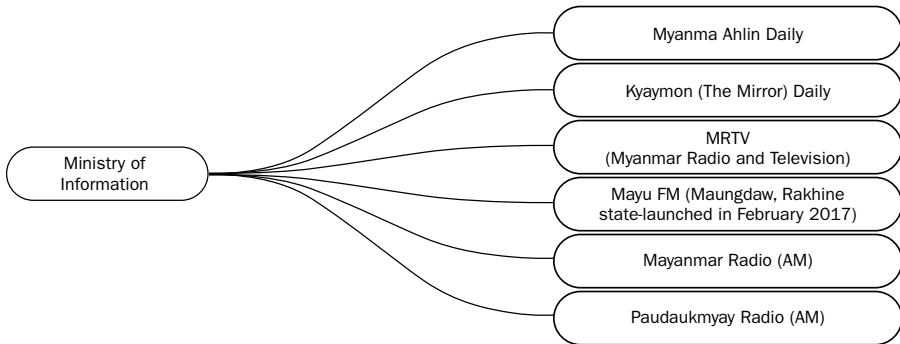
The report said Myanmar needs to invest US\$60 billion more in transportation sector



The circular train is seen at a station in Yangon. Photo: Asean Eye

*An April 2, 2016 issue of the Global New Light of Myanmar features a picture of Aung San Suu Kyi laughing with generals, a sign of new times in Burma.*

## State-controlled media in Burma



into public companies with public shareholders.<sup>22</sup> In the meantime, the Ministry of Information is continuing to expand state media, most recently by announcing the launch of a digital version of its English-language print daily. Information Minister Pe Myint talked about this new initiative in the *Myanmar Times*: “We don’t want people to assume that this is a business or personal competition with the newspapers. We are just trying our best to do our jobs“ (Pyae Thet Phyo 2017).

The MOI is also continuing to encourage private media to produce content for the state media that it controls. This approach, where independent media act as content producers for government-controlled media and thus depend on it for income, is a risky undertaking. For some media, however, including Mizzima Media Co. Ltd., producing programming for MRTV has proven to be a lucrative venture.<sup>23</sup>

The future of the state broadcaster Myanmar Radio and Television (MRTV) also remains uncertain (Australian Broadcasting Corporation 2017). While the plan to transform MRTV into a public service broadcaster enjoys wide support,<sup>24</sup> the wrenching reform process has made little concrete progress. Despite numerous attempts around the world in the past quarter-century, from South Africa to Central Europe to Afghanistan, it is difficult to point to a successful and sustainable transformation of a state into a genuine public service broadcaster.<sup>25</sup>

The dozens of ethnic media in Burma are also struggling. Operating in the country’s resource-rich ethnic states, and instrumental in the coverage of peace and conflict, ethnic media present a unique challenge and opportunity for the government. In the pre-election period, the Ministry of Information made concerted efforts to capture struggling ethnic media with offers of direct financial support and partnerships with state media. At the 4th annual Ethnic Media Conference in Mrauk Oo, Rakhine State in February 2016, the then-MOI permanent secretary, and former head of the now defunct censorship board, Tint Swe, declared that the survival of ethnic media was linked to that of state media.<sup>26</sup> Yet ethnic media leaders were quick to counter this unsubstantiated claim. Instead of offering direct financial support that could jeopardize their independence, they called



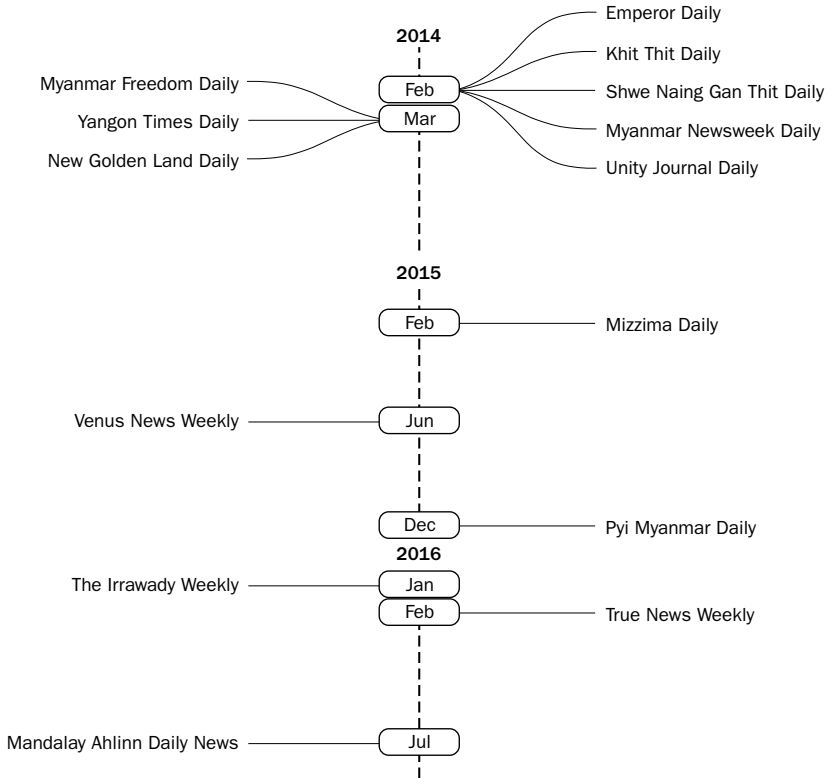
on authorities to create a more level playing field and an enabling environment for free expression in the ethnic states.<sup>27</sup> Nonetheless, to diversify their revenue sources and to become more resilient, some ethnic media, along with their national media peers, are acting as content producers for state media, including the national broadcaster, as well as for crony broadcasters and the country's private satellite broadcaster DVB Multimedia Co. Ltd.<sup>28</sup>

## How media business problems lead to capture

As in other parts of the world, the business struggles of independent media in Burma are making it easier for wealthy cronies of the government and military to maintain and strengthen control over the media sector. After 17 months in operation, the closure of the only private daily in Mandalay—*Mandalay Alinn Daily News*—in mid-2016 tells part of this story. Owners say it had long-term financial difficulties, exacerbated by increased competition from state media for audience and advertising (Maung Zaw 2016). The two remaining dailies—*Mandalay Daily Newspaper* and *Yadanarpon Daily Newspaper*—are owned, respectively, by the Mandalay City Development Committee (government) and the Tatmadaw (military). Of the 13 daily print newspapers launched since the beginning of the transition, the six survivors are *Daily Eleven*, *7 Day Daily*, *The Voice Daily*, *The Standard Time Daily*, *Democracy Today*, and *the Myanmar Times* (Cunningham 2014). A seventh (Burmese-language) daily was launched in early 2017 by Myanmar Consolidated Media Ltd., owner of the English-language daily *The Myanmar Times*.

Private media in Burma share a common struggle with their peers around the world: identifying viable revenue models to support independent journalism. Pointing to increased competition for advertising revenues, competition from state media,<sup>29</sup> as well as increased digital competition for audiences due to a rapid growth of Internet penetration, private media say they are being killed in the marketplace, and that one can survive only if supported by a rich patron. The state, the military, and its cronies have powerful joint ventures that serve their common interests, and also benefit from media cross-ownership and years of having enjoyed preferential treatment and prior existence in the market. Practitioners underscore the need to break up monopolies and, since broadcasting is by far the most lucrative part of the media market, open up the broadcast sector to independent players.<sup>30</sup>

## Key Burmese publications that have closed (2014-2016)



## A glance at government and private media joint ventures in Burma

Media business cronies and tycoons<sup>31</sup> are among the big winners in Burma's political transition. The country's own class of oligarchs, some have consolidated media power bases long entrenched under the military dictatorship, while others have used their wealth since the beginning of the transition to buy existing media operations and/or create new ones (Rutherford 2015). One of the most prominent broadcasting companies, Shwe Than Lwin Co., for example, built a large construction and media conglomerate during the time of the military regime that owns the Sky Net satellite television channel and other media interests (Ye Mon 2016).

By contrast, DVB Multimedia Group, the only Burmese-owned independent broadcaster currently operating inside the country, continues to broadcast by satellite from Thailand, much as it did before the political transition began. It cannot

obtain a license to broadcast inside the country until the broadcasting law becomes operational.<sup>32</sup>

DVB was one of five companies awarded a digital channel by the government in April 2017. With a view to lessening media capture, at first glance these new content provider contracts seem a solid step in the right direction. In reality, though, they are a multi-edged sword.<sup>33</sup> The fact they are digital means potential audiences will be comparatively small (estimates range from 2 to 5 million).<sup>34</sup> This stands in stark contrast to the government, military, and crony broadcasters whose monopoly over terrestrial (analog) broadcasting<sup>35</sup> gives them privileged access to an estimated 20-40 million viewers.<sup>36</sup> Given their small potential audience share, the new digital broadcasters will face a significant challenge attracting a piece of the crowded advertising market. Thiha Saw, veteran journalist and Myanmar Journalism Institute executive-director, says the government is “trying to appease noisy people by offering a small piece of the cake. The takers know it is not the real cake, but they cannot afford to stay away from the table.”<sup>37</sup> Another issue is that in two years the five companies awarded the contracts will have to reapply for permits, with no guarantee of success. As they will likely not begin to make returns on their investments during the first two years, this means that they will be making a substantial investment, along with taking a big risk. It is feared that they may suffer the same fate as Burma’s many short-lived print dailies.

It is interesting that only two of the five contracts were awarded to independent news media (and that both were formerly exiled); the other three have gone to businesses with, in one case, banking and airline interests, and in another, historic links to the military.<sup>38</sup> It is also significant that all of the companies are obliged to use state-owned infrastructure and networks; this means they will have control over their content, but the government will retain “the switch” to shut them down.

Analysts estimate that between 70 and 90 percent of the available advertising market—said to be upward of US \$200 million per year—goes to broadcasting. Forever Group is believed to control 75 percent; the other 25 percent is shared by the government and military, and to a lesser extent, by the aforementioned Sky Net, owned by Shwe Than Lwin Co.<sup>39</sup>

And television is not the only challenge. With the exception of tiny online initiatives, there are no independent media operating in the radio sector.<sup>40</sup>

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## Crony capitalism

Burma’s media reforms have had a rough ride, says media business consultant and Burma expert Michelle Foster. The country has opened from an artificial economic environment under the former military junta to a nascent capitalism where many important resources are still held under opaque ownership. For independent news

media, it is a particularly challenging environment. The media market expanded initially without concurrent growth in advertising revenues, reporting capacity, distribution channels, or legal protections and infrastructure. Since 2012, however, advertising revenues have grown significantly. Yet much of that growth, she says, has been captured by state-owned media, which is uniquely advantaged: the state owns the broadcast infrastructure and uses state resources to distribute its newspapers. Independent news media struggle in this environment to compete.<sup>41</sup>

Media Development Investment Fund Asia Director Tessa Piper concurs: “The horrible irony is that, after being denied existence for half a century, now that independent media is finally free in theory to flourish, the existence of very well-funded and long-established state- and crony-owned media means that, in practice, they face Herculean obstacles to survival.”<sup>42</sup>

The dozens of private and independent media in Burma’s seven ethnic states also are struggling to build viable businesses.<sup>43</sup> Most survive on a mix of sales, bits of advertising (although this latter sector is under-developed outside of the main centers), investments by local businesspeople, their own money, and community contributions.<sup>44</sup> Some also receive funding from donors, the diaspora, and religious organizations. Others are housed by non-governmental organizations and educational institutes.<sup>45</sup> With a few exceptions, there has been little media development in the country’s seven non-ethnic regions (Nyan Hlaing Lynn 2016).

Given the past political environment, ethnic media have had little to no opportunity to develop business skills and operations. This means they are effectively starting from scratch and facing a steep learning curve.<sup>46</sup> Past reliance on donor support—which was critical to their survival—is, in part, responsible for the challenge of changing their mindsets to adapt to a commercial environment. Offers to become content producers for national media, and state and crony broadcasters, are, therefore, financially attractive. It may prove to be a struggle, however, for small operations to assume this new role, as well as guarantee their independence and the survival of their own independent operations.

The explosive growth of digital media has done little to ameliorate this dire business outlook. Media outlets are struggling with a common difficulty: the search for digital platforms that can monetize online content.<sup>47</sup> Facebook is undisputedly the primary place where Burmese citizens get their news, disseminate it, and discuss it.<sup>48</sup> So if media operations are going digital, it is not because of the money, but rather because that is where the audience is.

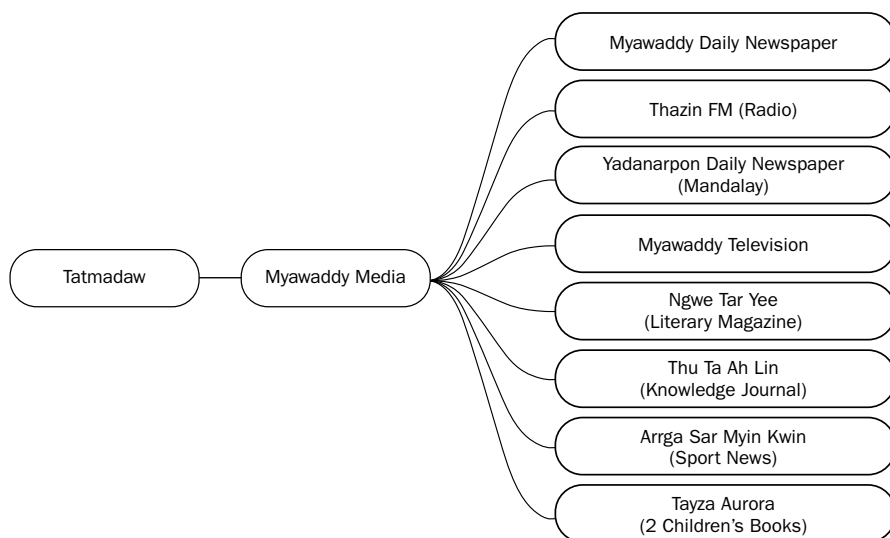
Burma’s digital space does offer something of a refuge from media capture, at least for the time being. Given the prohibitive cost of traditional media platforms, it remains one of the few places independent journalists can afford to practice their craft. This is particularly true in the ethnic states, where cross-border media continue to publish stories deemed “sensitive” online from their offices in the border lands.<sup>49</sup> Yet Burmese journalist, and founder of the award-winning digital news

site Myanmar Now, Thin Lei Win adds: “There really is nothing to stop digital media from being captured by the government and the cronies as well. And I think there is a concern that it’s not a question of ‘if’ but ‘when’ that happens.”<sup>50</sup>

## Media control and the military

Burma’s military—officially called the Tatmadaw—continues to wield significant power in the parliament, key ministries, the economy, the civil service, and the media sector.<sup>51</sup> Although it pledged to develop better relations with the media, practitioners say the military continues to perpetuate a climate of fear that restricts free expression and threatens peace. After 50 years as a key power-holder this is hardly surprising (Wa Lone 2016). According to Burmese press council member and media trainer, Myint Kyaw, media capture by the military remains one of the media community’s biggest setbacks.<sup>52</sup>

### Military-controlled media in Burma



Three diverse incidents in mid-2016 illustrate the military capture of media and free expression. In June, the Ta’ang Women’s Organization was forced to cancel a press conference about human rights abuses committed by the military in northern Shan State (Ta’ang Women’s Organization 2016). In the same month, the military blocked the screening of “Twilight over Burma” at Burma’s renowned Human Rights, Human Dignity International Film Festival, saying it would damage the military’s image and national reconciliation. The film tells the story of an Austrian woman who fell in love with an ethnic Shan prince, and the impact of the 1962 military coup on their lives (Coconuts Yangon 2016). The festival is obliged to submit films to the censor board before they can be screened; this is not the first time

a film has been blocked.<sup>53</sup> The festival's out-going Executive-Director Mon Mon Myat says the decision demonstrates the military's continued power. She does, however, point to one positive change: the state broadcaster Myanmar Radio and Television (MRTV) is now willing to broadcast many of the human rights-themed films screened at the festival.<sup>54</sup>

In the third and arguably most controversial case, in July 2016 a military officer filed a lawsuit against one of the country's most popular and respected daily newspapers, *7Day Daily*, claiming that one of its stories portrayed the military as disloyal and unwilling to cooperate with the government. The officer used section 131 of Burma's penal code that punishes anyone "abetting mutiny or impacting on an officer's allegiance or duty" with a prison sentence of up to 10 years. It was the first time the military attempted to prosecute a media outlet under the new government. Although the officer filed the suit without informing the Burmese press council (officially called the News Media Council), the latter intervened behind the scenes and the charges were subsequently dropped (Wa Lone and Toe Wai Aung 2016).

Though the case was believed to have been politically motivated, and *7Day* publically stated it had not violated any laws, it nonetheless published an apology that was fiercely criticized by its journalistic peers for undermining media ethics, the independence of editors and journalists, and citizens' right to know. The decision also highlights the media's lack of trust in the judiciary and the fear that a lack of cooperation could impact negatively on a media outlet's survival, not to mention other business interests (PEN Myanmar 2016).

In its published apology, *7Day* promised to be careful when reporting on future military matters.

The press council notes that it seldom issues statements related to the military; in light of the extreme sensitivity of this case, it says it carefully chose its words. Both the press council and the Minister of Information recommended that priority should be placed on mediation and negotiation in the future (*The Irrawaddy* 2016). When the military threatened to sue *The Voice Daily* for criminal defamation in 2017, therefore, it was viewed as a positive step when the military turned first to the press council for mediation instead of to the courts. Yet the talks broke down and on June 1, 2017, *The Voice Daily* Editor-in-chief Kyaw Min Swe and a satire columnist who writes under the pen name British Ko Ko Maung were arrested. They were the 67<sup>th</sup> and 68<sup>th</sup> criminal defamation cases filed under section 66(d) of the telecommunications law.<sup>55</sup>

## **Laws, safety, and self-censorship**

The death of freelance journalist and former democracy activist Aung Kyaw Naing (Par Gyi) in one of the country's seven ethnic states, Mon State, while in military custody is the first of two documented killings of journalists since the beginning of



Burma's political transition. A secret military court acquitted two soldiers accused of his murder in May 2015, underlining the problem of longstanding impunity. *Daily Eleven* crime reporter Soe Moe Tun was the second journalist killed, this time in Monywa, Sagaing Region in Upper Burma, in December 2016 (Committee to Protect Journalists 2016). Still unresolved, these cases have had a chilling effect on the media community (Committee to Protect Journalists 2014).

During the time of the military junta Burma's legal framework for journalism, free expression, and media independence was considered one of the most restrictive in the world. Unfortunately, since the beginning of the political transition legal and regulatory reforms have not kept pace with political ones (PEN America 2015). Although Article 23 of the Association of Southeast Asian Nations (ASEAN) protects the right to free expression in member states, Burma's own constitution does not explicitly protect press freedom or access to information.<sup>56</sup> Some relevant laws have been amended (the Peaceful Assembly and Peaceful Procession Act), enacted (the Citizens Personal Privacy and Personal Security Law), and abolished (the Emergency Act and the State Protection Law), although not always according to international standards. And laws from the military and colonial eras are still being used to charge and prosecute journalists and editors.<sup>57</sup> Criminal defamation provisions in both the Penal Code and the News Media Law, for example, continue to be used against journalists. In Kachin and Shan States and Tanintharyi Region, to name a few, defamation cases have been wielded by private companies, ethnic armed groups, and regional governments.<sup>58</sup> According to Human Rights Watch, the "legal architecture of repression" that has put journalists behind bars remains largely in place (Human Rights Watch 2016). Journalists say this continues to have a widespread chilling effect and fosters self-censorship.

An increased use of the Penal Code for insulting or defaming religion or beliefs has been linked to religious extremism (Lewis 2016). After stating that the racist speech of monks ran counter to Buddhist teachings, the writer Htin Lin Oo spent more than a year in prison with hard labor, before being released in the NLD political prisoner amnesty in April 2016. The new NLD civilian government has gone some way toward calming this extremist behavior, particularly with regard to the most notorious Buddhist group, Ma Ba Tha (Aung Kyaw Min 2016). This was illustrated in April 2017 when, in an unprecedented move, the Ministry of Religious Affairs publically supported the award-winning investigative journalist Swe Win after Ma Ba Tha leader Wirathu sued him for defamation. The case has nonetheless continued (ARKAR/DVB 2017; Agence France-Presse 2017).

Yet Myanmar Journalism Institute head Thiha Saw cautions that legal reform will have little to no impact until the judiciary becomes independent.<sup>59</sup> "Until that happens, media cannot escape capture."

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## The future

Burma's journalists and editors have demonstrated a remarkable resilience, both under the military junta and during the current political transition. The opposition party they supported for decades—the NLD—is now in power, led by the iconic leader Aung San Suu Kyi. As election coverage was fiercely partisan, coverage of the new government is testing journalistic independence, skills, professionalism, and entrenched self-censorship. The military—far from gone—retains 25 percent of (unelected) parliamentary seats, as well as power over key ministries, and continues to perpetuate a climate of fear that restricts free expression and media independence.

It is clear that media are not one of the NLD's priorities.<sup>60</sup> Given the state of the country, including growing conflict, fragile ceasefires, and complex peace talks, this may, in some ways, be understandable. Yet until there is real reform, the current and expanding state of capture will continue to undermine media's efforts to build resilient and sustainable operations, and to provide independent journalism and investigations. This, in turn, will threaten efforts to nurture a free expression and free media environment that promotes and protects informed dialogue, open debate, and government transparency and accountability as a crucial foundation for Burma's democratic transition.

Media practitioners and advocates are calling on the NLD government to create a more level playing field for private media by reducing the number of state media (through privatization or closure), and by opening up the broadcast sector. They also want legal reform that protects, promotes and decriminalizes free expression and media freedom—including the abolishment of Section 66(d) of the telecommunications law—guarantees right to information, and ensures the independence of the judiciary, and for remaining pre- and post-publication censorship to be abolished. Although many countries in Southeast Asia have Ministries of Information, they say there is no place for one in a democracy. They want the current Minister of Information to be the last one.

Yet according to Thiha Saw, it is media ownership that is “the most concerning thing.”<sup>61</sup> Media need to push the government to enforce the new broadcasting law before 2020 (when the next election will be held), and to establish a professional and ethical licensing system. This would go a long way toward creating a more level playing field. Coupled with the closure of state print media, it is one of the best chances, at least for now, of chipping away at state, military and crony dominance in the media sector, and of mitigating the extent, and growth, of media capture.

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## ENDNOTES

- <sup>1</sup> As Burma's constitution blocks politicians with foreign children from becoming president, Aung San Suu Kyi is State Counsellor, Foreign Minister, and Minister of the President's Office in the new NLD government led by proxy president Htin Kyaw (<https://www.theguardian.com/world/2016/mar/10/aung-san-suu-kyi-nominates-htin-kyaw-Burma-president>; <https://www.theguardian.com/world/2016/mar/10/aung-san-suu-kyi-nominates-htin-kyaw-myanmar-president>).
- <sup>2</sup> Section 66 (d) of the Burma telecommunications law prohibits the use of a telecommunications network to "extort, threaten, obstruct, defame, disturb, inappropriately influence or intimidate." It was enacted in 2013 by Burma's former quasi-civilian administration.
- <sup>3</sup> Series of Interviews with the Yangon Journalism School and Mandalay Journalism School founding director and lead trainer Ye Naing Moe (2016-2017); <http://frontierBurma.net/en/the-nlds-poor-record-media-engagement>.
- <sup>4</sup> Interview with veteran media trainer and press council member, Myint Kyaw, Yangon, June 2016.
- <sup>5</sup> Ye Htut was Minister of Information from 2014-2016, and presidential spokesman from 2013-2016; Thu Thu Aung, and Ye Mon. 2015. "Minister for Facebook gets ready to sign off." *Myanmar Times*, December 11. <http://www.mmmtimes.com/index.php/national-news/yangon/18094-minister-for-facebook-gets-ready-to-sign-off.html>.
- <sup>6</sup> Interview with Yangon Journalism School Director Ye Naing Moe, Yangon, June 6, 2016.
- <sup>7</sup> Interview with veteran journalist and press council member Thiha Saw, Yangon, June 2016.
- <sup>8</sup> "Human Rights Watch recommends criminal defamation laws should be abolished, as criminal penalties are always disproportionate punishments for reputational harm and infringe on peaceful expression. Criminal defamation laws are open to easy abuse, resulting in very harsh consequences, including imprisonment. As repeal of criminal defamation laws in an increasing number of countries shows, such laws are not necessary for the purpose of protecting reputations, particularly of government officials." (<https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma>).
- <sup>9</sup> Interview with award-winning writer and PEN Myanmar founder and former President Ma Thida, Yangon, June 2016.
- <sup>10</sup> Minister of Information Pe Myint and other MOI representatives have publically stated that the NLD needs state media in order to communicate with citizens (2<sup>nd</sup> Media Policy Dialogue, May 2016, Yangon).

- <sup>11</sup> Interview with Yangon Journalism School founding director and trainer Ye Naing Moe, Yangon, June 2016.
- <sup>12</sup> PEN Myanmar's 2017 Freedom of Expression Scorecard, published on May 2, 2017, in honor of World Press Freedom Day (<http://www.pen-international.org/centres/myanmar-centre/>; <https://www.facebook.com/pg/penmyanmar/about/>).
- <sup>13</sup> An infographic of joint ventures can be found in the "How media business problems lead to capture" section of this report.
- <sup>14</sup> Burma's six dailies (as of December 2016): *7Day*; *Daily Eleven*; *The Voice Daily*; *The Myanmar Times* (English-language); *The Standard Time Daily*; and *Democracy Today*. The Myanmar-language *Myanmar Times* daily was launched in early 2017.
- <sup>15</sup> Radio Free Asia interview with Aung San Suu Kyi: Khin Maung Soe. 2015. "Interview: Government-owned Media Are Not Good For Democracy." Radio Free Asia, December 31. <http://www.rfa.org/english/news/myanmar/interview-government-owned-media-are-not-good-for-democracy-12312015135200.html>.
- <sup>16</sup> In 2016 circulation increased from 200,000 to 300,000 copies.
- <sup>17</sup> The MOI announced it would be launching a new English-language digital news site in May 2017 (<http://www.mmtimes.com/index.php/national-news/25784-state-owned-digital-paper-to-be-published.html>).
- <sup>18</sup> Interview with Ahr Mahn, 7Day Daily Editor-in-chief, November 2016.
- <sup>19</sup> Series of interviews with Yangon Journalism School and Myanmar Journalism School founding director and lead trainer Ye Naing Moe, Yangon, 2016 and 2017.
- <sup>20</sup> Interviews with media veterans Myint Kyaw and Thiha Saw, Yangon, April 2017.
- <sup>21</sup> Interview with PEN Myanmar founder and former president, Ma Thida, Yangon, May 2016.
- <sup>22</sup> This option was proposed by private media practitioners at the 2nd Policy Dialogue on Media Development in Burma (Chatrium Hotel, Yangon, May 15, 2016), and reiterated by two veteran media actors, Thiha Saw and Kyaw Min Swe (from *The Voice*), in the lead-up to the 2017 World Press Freedom Day.
- <sup>23</sup> Interview with the Myanmar Journalism Institute Head of Training Sein Win and Executive-Director Thiha Saw; interview with Khin Maung Win and Chris Hajecki from DVB Multimedia Group; interview with Mizzima News Group founding editor-in-chief Soe Myint (Lolkaw, Kayah State, 2016).
- <sup>24</sup> While Burmese journalists want government-controlled print media to be shut down, they are more supportive of the idea of transforming MRTV into a public service broadcaster. A variety of international groups have worked with the state broadcaster, including BBC Media Action, Deutsche Welle, International Media Support/Denmark, etc.
- <sup>25</sup> Interview with writer and media development expert Mark Thompson, London, April 2016; he notes that some consider SABC and Czech TV to be partial successes.
- <sup>26</sup> From 4<sup>th</sup> Ethnic Media Conference, Mrauk Oo, Rakhine State; <http://www.irrawaddy.com/burma/closing-state-run-news-outlets-will-cause-ethnic-media-to-suffer-moi-official.html>.
- <sup>27</sup> Interview with BNI board member Nan Paw Gay, Mrauk U, February 14, 2016; [http://www.bnionline.net/images/2016/statements/4th\\_Ethnic\\_Media\\_Conference\\_Statement\\_ENG.pdf](http://www.bnionline.net/images/2016/statements/4th_Ethnic_Media_Conference_Statement_ENG.pdf). The current Minister of information, Pe Myint, has stated that the government will not be offering direct financial support.

- <sup>28</sup> Interview with BNI board member from Rakhine State and press council member Khaing Mrat Kyaw, August 26, 2016.
- <sup>29</sup> UNESCO. 2016. “Launch of Report on Media Development in Myanmar.” <http://en.unesco.org/news/launch-report-media-development-Burma>; three national government dailies include *Myanma Alinn*, *Kyaymon (The Mirror) Daily*, and *The Global New Light of Myanmar*.
- <sup>30</sup> According to DVB Multimedia Group Country Bureau Chief Toe Zaw Latt, advertising expenditures in Burma grew from US \$38.6 million in 2009 to US \$151.7 million in 2013, and to US \$200 million in 2015. <http://www.mizzima.com/news-features/moving-Myanmar%E2%80%99s-media-industry-forward>.
- <sup>31</sup> Given their often close association with authoritarian regimes, the term crony has often been used to refer to business elites in Southeast Asian countries. This is the case in Myanmar where a class of business owners were from the military or had close ties with top generals and had access to capital and ownership. The term tycoon is often used to refer to business people associated with Aung San Suu Kyi and her party, the NLD.
- <sup>32</sup> While the broadcast law will reportedly be presented to parliament in the near future, it is as of yet unclear when it will become operational and when licences will be made available.
- <sup>33</sup> Interviews with Thiha Saw and Myint Kyaw, Yangon, April 28, 2017.
- <sup>34</sup> The Ministry of information and MRTV cite 5 million, but private media say the number is closer to 2 million to 3 million.
- <sup>35</sup> Burma has eight analogue channels run by MRTV, Myawaddy (military), Forever Group, and Shwe Than Lwin Co.
- <sup>36</sup> 20 million is the common number cited in media circles and reports in Burma, yet according to DVB Deputy-Director Khin Maung Win, surveys by the BBC and Media Marketing Research and Development (MMRD) indicate the number is closer to 40 million.
- <sup>37</sup> Interview with Thiha Saw, Yangon, April 28, 2017.
- <sup>38</sup> Interview with Myint Kyaw, Yangon, April 28, 2017.
- <sup>39</sup> Interviews with Thiha Saw and Myint Kyaw, Yangon, April 28, 2017.
- <sup>40</sup> All of the FM and AM stations in Burma are owned by the government, military, and crony businesses and partners (Myanmar Information Management Unit–Coverage of Myanmar Local Radio Media–February 2013).
- <sup>41</sup> Series of interviews with Michelle Foster in 2016; [www.internews.org/business-media-and-information-environment-new-Burma-fresh-perspectives](http://www.internews.org/business-media-and-information-environment-new-Burma-fresh-perspectives); Foster, Michelle. 2013. “The Business of Media in Myanmar, 2013.” Internews. [https://internews.org/sites/default/files/resources/Internews\\_Burma\\_Business\\_Report2014.pdf](https://internews.org/sites/default/files/resources/Internews_Burma_Business_Report2014.pdf).
- <sup>42</sup> Series of interviews with MDIF Asia Director Tessa Piper in 2016 and 2017.
- <sup>43</sup> There is only one private local news media operating in Kayah State and one in Tanintharyi Region, two in Kayin State and three in Kachin State. In Mon, Rakhine and Shan States the numbers are higher, with five to seven media in each state. In Chin State, considered the most remote and poorest state in the country, there are an estimated 20 to 30 private media; the explosion of Chin media is widely attributed to the state’s linguistic and ethnic diversity. They include a handful of formerly exiled ethnic media that have opened offices inside and are now publishing in a mixture of Burmese and ethnic languages, as well as a growing number of media launched inside.

- <sup>44</sup> Newspapers are often sold for 400-500 MMK a copy, or approximately \$0.33-\$0.41; the advertising market is not developed in the majority of the regions and ethnic states, and most media get few, if any, ads.
- <sup>45</sup> Although donor funding has not been large enough to distort or capture the national media market, it does have that capacity in the regions, including in the ethnic states (research carried out by report author Jane Madlyn McElhone for the Open Society Foundations, November 2015- March 2016).
- <sup>46</sup> The Media Development Investment Fund is currently operating a three-year business coaching program with Burmese media, with funding from SIDA. According to the aforementioned OSF 2016 ethnic media mapping (see note 63), business development is one of the most important issues for ethnic media.
- <sup>47</sup> Shan Herald Agency for News and Karen Information Center are online radio pioneers in the ethnic states.
- <sup>48</sup> Interview with the Media Development Investment Fund's Asia Director Tessa Piper.
- <sup>49</sup> Author's research in Burma's ethnic states, including an interview with Gary Rozema from Burma Relief Centre, and with ethnic media from Mon and Kayin States.
- <sup>50</sup> Interview with Myanmar Now founder and journalist, Thin Lei Win, Yangon, June 2016.
- <sup>51</sup> Burma's constitution guarantees 25 percent of the seats in parliament are reserved for the unelected military. The military controls three ministries, including Home Affairs, Border Affairs, and Defense. It also has its own print and broadcast media. The placement of permanent secretaries in all of the ministries in the lead-up to the 2015 elections was viewed as an effort to militarize them.
- <sup>52</sup> Interview with press council member Myint Kyaw, Yangon, April 2016.
- <sup>53</sup> Interview with Human Rights, Human Dignity International Film Festival Executive-Director and journalist Mon Mon Myat, Yangon, June 2016.
- <sup>54</sup> Interview with Mon Mon Myat, Yangon, August 22, 2016.
- <sup>55</sup> Naw Noreen. 2017. "Military files complaint over satirical article published by local daily." DVB, April 28. <http://www.dvb.no/news/military-files-complaint-satirical-article-published-local-daily/75297>; interview with press council member Thiha Saw, Yangon, April 2017; <http://www.rfa.org/english/news/myanmar/editor-detained-06022017154730.html>.
- <sup>56</sup> Several provisions recognizing free expression, including freedom of assembly and association, contain limitations. Article 365: "*Every citizen shall, in accord with the law, have the right to freely develop literature, culture, arts, customs and traditions they cherish. In the process, they shall avoid any act detrimental to national solidarity. Moreover, any particular action which might adversely affect the interests of one or several other national races shall be taken only after coordinating with and obtaining the settlement of those affected.*"; see (PEN America 2015).
- <sup>57</sup> In August 2015 the UN Special Rapporteur on Human Rights in Myanmar, Yanghee Lee, voiced concern about the rising number of arrests and intimidation in Burma, stating that "civil society actors, journalists and ordinary citizens exercising their rights to freedom of expression, assembly and association are not threats." See <http://www.un.org/apps/news/story.asp?NewsID=51612> of human rights.
- <sup>58</sup> Interview with Myint Kyaw, Yangon, 25 August 2016.



- <sup>59</sup> Veteran journalist, press council member and Myanmar Journalism Institute Executive-Director Thiha Saw made this recommendation during the 1<sup>st</sup> Policy Dialogue on Media Development in Burma, Yangon, February 21, 2016.
- <sup>60</sup> PEN Myanmar May 2017 Scorecard Assessing Free Expression in Myanmar ([https://web.facebook.com/penmyanmar/?\\_rdc=1&\\_rdr](https://web.facebook.com/penmyanmar/?_rdc=1&_rdr)); in 2017 the NLD shut down the Ministry of Information's Media Development Thematic Working Group.
- <sup>61</sup> Reporters Without Borders (RSF) 2017 World Press Freedom Index. (<https://rsf.org>) Interview with veteran journalist Thiha Saw, Yangon, April 28, 2017.

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