Beginners’ guide to freedom of expression laws
ARTICLE 19 launched this beginners’ guide as part of our work on reform in Myanmar. It is part of a series of such guides which are available at www.article19.org

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ARTICLE 19 is regularly asked whether and how the print media should be regulated. This
beginners’ guide looks at regulation from a human rights viewpoint and in particular the
right to freedom of expression.

Are human rights important when regulating the print media?

Yes. The print media has been one of the
biggest sources of information and debate
for the public over centuries and as such is
one of the most important examples of the
right to freedom of expression in use.

The print media has a vital role in making
democracies work by publishing a diverse
range of voices with different opinions. It
can only fulfil this role if it is free to publish
what it thinks is important, and in order
to do so it relies on the right to freedom of
expression.

This right, which is for everyone as well
as the print media, is guaranteed in
international human rights law in the
Universal Declaration of Human Rights
and the International Covenant on Civil
and Political Rights, collectively known as
the international bill of human rights, and
which emerged from the horrors of World
War II.

International human rights law has become
so important that all governments are
required to respect, protect and fulfil the
right to freedom of expression within each
country.

Regulation of the print media can be a
problem because it interferes with the
right to freedom of expression. ARTICLE
19 exists to point out what regulation is
okay and suitable in a democracy and
what regulation is not. We do not guess -
we look at and compare with the human
rights standards that have developed
internationally over several decades.

International human rights standards say
that regulation of the print media must be:

1. Written in law (not arbitrary)
2. Have a legitimate aim (these aims are
listed in international law as the rights or
reputations of others, national security,
public order, public health and morals)
3. Absolutely necessary to achieve the
above aim (necessary in a democracy, and done in a proportionate way).

This is known as the three-part test and comes from the International Covenant on Civil and Political Rights.
Should the print media be regulated in law?

No. Even though some governments say that they are trying to protect the right to freedom of expression, any regulation of the print media is a bad idea. Regulation at best creates bureaucratic obstacles and loopholes and at worst creates a system where such obstacles and loopholes can be used to abuse and censor the media.

Most established democracies do not have specific regulations for the print media. Democracies do have laws covering the broadcast media, but they are to ensure the fair distribution of limited broadcast channels. The print media should only be treated like any other company and regulated through laws that cover all companies, such as labour or tax laws.

Should the print media be licenced?
No. Some states do require people or companies to get permission usually via a licence to open a newspaper or other printed publication. Such licencing violates international law – there is no pressing social or democratic need to require the print media to be authorised by the government or some other body, and any licencing in effect places the state in control of the media. Licensing stops the free flow of information, controls who can and who cannot publish, and limits the number of publications and therefore voices and opinions that the public can hear from.

Should the print media be registered?

The simple answer is that it depends on whether registration is a barrier to publication. Registration is only acceptable if it has narrow technical requirements where only limited information is required, where fees are small, and where registration cannot be refused.

Can the state suspend or ban a newspaper?

Temporarily or permanently banning a newspaper or other print media greatly undermines the right to freedom of expression by stopping a flow of information to the public, singlehandedly punishing
both the newspaper and their readership.

Banning a newspaper violates international law as the judging body is in effect overseeing a system of licencing. Even if that body is a court, the decision to ban is unjustifiable in international law. Even a temporary ban is a disproportionate violation of the right to freedom of expression when many other and less indiscriminate methods exist, such as fines or the seizure of a single issue of the newspaper.

Punishments that undermine the print media's ability to publish and distribute are in effect the same as a ban and similarly undermine the right to freedom of expression.

Is self-regulation suitable for the print media?

Yes. The print media's role is to inform people about what the government and the state do. As the government and state are often criticised in newspapers, it is not in the people's interest for them to regulate the print media because of the likely risk of censorship.

A more suitable solution is self-regulation – often named a 'press council' – with a mandate to raise media standards and help sort out problems such as unprofessional or inaccurate reporting. Self-regulation averts state regulation and keeps the print media
free and independent.

Can you give an example of a ‘press council’?

Press councils are different in every country because of different democratic traditions, types of administration or government, and even geography. Some countries have both regional and national press councils.

Generally, press councils consist of members who take charge of its operation and finances. They also have commissions that receive and handle complaints about the work of the print media.

Who should be a member of a press council?

Press councils should include journalists, media owners, and publishers. They can also include professional organisations, such as unions, and sometimes representatives of wider civil society. The members do not work full time and are often volunteers, but they are supported by administrative staff who are employed to keep things running smoothly.
What should a press council do?

Press councils should set standards for professionalism by creating a code of conduct (or ethics) and educating journalists, media owners, publishers and others involved in the print media. They should also tell the wider public about their standards and code, and make decisions on complaints submitted to them by the public.

What should a press council’s code of conduct say?

Every code is different depending on the situation in each place. However, they should cover:

- Respect for the people’s right to know
- Accuracy in news gathering and reporting
- Fairness in the methods used to get news, photographs and documents
- Sensitivity in reporting on vulnerable groups such as children and victims of crime
- Non-discrimination in relation to race, ethnicity, religion, sex and sexual orientation
- Respect for the presumption of innocence in reporting on criminal procedures
- Protection of confidential sources of information
- Duty to rectify published information found to be inaccurate of harmful.
Who should pay for press councils?

Press councils should be paid for in a way that keeps them independent from outside pressure. The best way to do this is for them to be paid for by journalists, owners of the print media, publishers and donors.

What should press councils do with people who break the code?

As press councils are independent from the state in order to keep them free from control, they cannot use the state's powers such as police or fines. The only thing they can do when their code is broken is to get the newspaper to print the council’s decision saying that they broke the code. Usually the print media does what the council says because they know that it would be far worse for democracy if the people became disillusioned with the press.
council and called on the state to punish them.
ARTICLE 19 is regularly asked whether the government or another organisation should regulate journalists. This beginners' guide looks at regulation from a human rights viewpoint and in particular the right to freedom of expression.

Are human rights important when regulating journalists?

Yes. Journalists are vital for democracies to work and are often called either the fourth pillar of democracy (after the executive, legislature and judiciary) or the people’s watchdog.

As such, journalists must be free to write what they think is important. They use their right to freedom of expression to make democracy work, and this right, which is for everyone, is guaranteed in international human rights law in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, collectively known as the international bill of human rights, and which emerged from the horrors of World War II.

International human rights law has become so important that all governments are required to respect, protect and fulfil the right to freedom of expression within each country.

Regulation of journalists can be a problem because it interferes with the right to freedom of expression. ARTICLE 19 exists to point out what regulation is okay and suitable in a democracy and what regulation is not. We do not guess - we look at and compare with the human rights standards that have developed internationally over several decades.

International human rights standards say that regulation of journalists must be:

1. Written in law (not arbitrary)
2. Have a legitimate aim (these aims are listed in international law as the rights or reputations of others, national security, public order, public health and morals)
3. Absolutely necessary to achieve the above aim (necessary in a democracy, and done in a proportionate way).

This is known as the three-part test and comes from the International Covenant on Civil and Political Rights.
သတင်းများကို စည်မြုံဖြင့် ထိန်းချုပ်ရာတွင် လူဦးရေအခြေအရာအေရးသလား။ အေရးသလားပါသည်။ ဒီမိုကရိတ်ဗုဒ္ဓရာဇ်ကို ထိန်းချုပ်သည်။ သတင်းများကို အေရးသလားပါသည်။ သူတို့ကို ဒီမိုကရိတ်ဗုဒ္ဓရာဇ်အတွင်း လူထုအက်ိဳးစီးပြားကာကြယ္ရန် စာကြောင်းသုံးစွဲလည်း အသိအမှတ်းပြီး ထုံးလွန်လိုက်ပါက မေကာင်းပါ။ ဒီမိုကရိတ်ဗုဒ္ဓရာဇ်အတွင်း မည်သို့ အဆုံးသဖွယ်ရာ သင့်တော်စွာ၊ မည်ကဲ့သို့ အခြေအရာသည် မသင့်ဦးလျက် အာတီကရေား၁၉၂၃ခုနှစ် ဦးပြပါသည်။ ခန်းမွန်း၍ ဦးပြားမဟုတ်ပါ။ စိတ်ကို တိုးတက်လာသော လူဦးရေရေးစံညီလားမှုကို အကောင်းဆွဲထားျခင်း ျဖစ္သည်။ ဦးဆောင်ရွေးချယ်မှုကို သတင်းများဖော်ပြရာ စာကြည်သည် သတင်းများသည် စားသုံးခြင်း၀င်သည်။ (၁) ဥပေဒတွင် ဦးပြားထားရမည်။ (အေနာက်မျိူး မတရားလုပ်ျခင်းမျဖစ်လျင်) (၂) တရားကို ဦးတည်ခဲ့ရမည် (ထုံးတည်ခဲ့ရာများကို အခြေအရာတွင် ဂုဏ္ျပဳ၊ အမုံလျောက်ရေး၊ လူထုလျောက်ရေး၊ လူထုကြည်မာရေး အပြည့်အစုံရရာ များအဖြစ်) (၃) ဦးတည်ခဲ့ရာကို ရရှိရန် လောက်လျင် (နေ့စဉ်အတွက် လောက်လျင် သင့်တော်စွာ) ျဖစ္ရမည်။ ဦးဆောင်ရွေးချယ်မှုများ ကိုတင်းရှုးထားပါက အဆင့်မြင့်ရှိချေ။
What type of regulation of journalists is appropriate?

In our experience there are three models that have been used to regulate journalists:

1. Statutory regulation: a government makes laws to regulate journalism and creates a statutory body with the power to implement the laws and rule on when those laws are broken.

2. Self-regulation: a group of journalists or their representatives (such as unions) make rules and ask others to voluntarily accept them, which can sometimes also include a body to oversee rule breaking.

3. Co-regulation: a combination of the two above.

In 25 years of working on this question, ARTICLE 19 has found statutory regulation to be the worst, as governments do not understand the work of journalists and will always try to censor and restrict them.

If journalists are to be regulated, it is always better for them to decide and do it themselves, even if they decide that they need help from the state to protect and enforce their rights.

International courts and other organisations agree – they recognise that as well as being better for democracy, such self-regulation helps to create strong systems of values and principles among journalists, and contributes to public order overall. They do however point out that even self-regulation bodies need to respect, protect and fulfil the right to freedom of expression.

အေရးႀကီးပါသည္။ ဒီမိုကေရစီဖြံ႕ၿဖိဳးရွင္သန္ဖို႔သတင္းေထာ္ေတြဟာအေရးႀကီးပါသည္။

• ဒီမိုကေရစီ၏ စတုတၴမႏွင့္လူထုအက်ိဳးစီးပြားကာကြယ္ရန္ျပီး၊ ၎ဥပေဒကိုအေကာင္ထည္ေဖာ္ျပဳထားၾကသည္။

• သတင္းေထာင္အဖြဲ႕သို႔မဟုတ္ သူတို႔၏ကိုယ္စားလွယ္မ်ား (ဥပမာ သမဂၢမ်ား) စည္းမ်ဥ္းခ်မွတ္ျခင္း၊ တစ္ခါတစ္ရံစည္းမ်ဥ္းကို ခ်ိဳးေဖာက္ပါက ၾကည့္ၾကပ္ရန္ အဖြဲ႕တစ္ဖြဲ႕လည္းပါ၀င္တတ္သည္။

• ပူးတြဲစည္းမ်ဥ္းခ်မွတ္ျခင္း

• ၎ဥပေဒအရျပ႒ာန္းထားေသာ စည္းမ်ဥ္းသည္ အဆိုးဆံုးျဖစ္သည္။

• ဤေမးခြန္းႏွင့္ပတ္သက္၍ ၂၅ႏွစ္တာလုပ္ငန္းအေတြ႕အရ၊ အစိုးရဥပေဒျပဳ၍ ျပ႒ာန္းေသာစည္းမ်ဥ္းသည္ အဆိုးဆံုးျဖစ္သည္။
Does the state have any role in the regulation of journalists?

Many professions such as doctors or engineers are regulated by the state, and those professionals have rights and duties written in law. However, most professions are not regulated by the state – a baker or bus driver for example can work as long as they have the skills to do so.

Journalists are regulated in some countries due to that country’s particular history. In ARTICLE 19’s experience however, the less democratic a country, the more likely it is to have a system of statutory regulation so that the government can control what people see and read.

Regulation is however acceptable to a certain extent. For example, most people would agree that a legal right for journalists to protect their sources helps such sources come forward with information in the public interest that they would not disclose if they knew they could be named. On the other hand, laws that require journalists to get permission or a licence in order to work cannot be justified in a democracy. The right to freedom of expression – including via the media – is for everyone, not just those who the government permits to do so.

The golden rule is that too much regulation of journalists is always bad, whether made by democratic governments or by dictators. Journalists can only be the people’s watchdog if they can work with as little state control as possible.
Regulation must be strictly necessary, should aim to protect journalists, and should help them do their job, which in our experience only includes:

1. The guarantee for free access to government-held information
2. Protection of journalists' sources, including protection against searches and seizures of documents and premises
3. Protection of the rights and obligations of journalists, including the freedom of association
4. Laws enabling them to perform their profession.

Self-regulation can set professional and ethical standards, and help to ensure they are used.
Who should be regarded as a journalist?

In international law, everyone has the right to freedom of expression, and therefore each person can easily be regarded as a journalist once they regularly collect and share information, ideas or opinions.

Debating whether someone is or is not a journalist only happens when laws refer to journalists in particular. As journalists should not be regulated, any law that only applies to them is usually a problem for the right to freedom of expression and is best avoided. The only times that journalists should have laws specific to them is to protect their sources and give them the right to collect information about someone without their consent.
Should journalists be licenced or need permission to work?

No. Some countries require people to get permission – for example a licence, permit or registration - to work as a journalist. However, licencing violates the three-part test in international law because it does not have a legitimate aim and is not strictly necessary.

Some states try to justify licencing as necessary to ensure public order. In practice, however, licencing is usually used to stop journalists with dissenting views from working. It undermines public order because people will not have access to a full range of different views and opinions. As such, licencing is almost unheard of in established democracies.

Other states justify licencing by arguing that doctors and lawyers are licenced too. But journalism is protected in international law as a human right that can be used by everyone – not just those people that the state has licenced – which does not apply to doctors or lawyers.
Are there other requirements for journalists that are inappropriate?

Some states require journalists to be above a certain age, to have a degree, or a clean criminal record. These requirements also violate international law as they restrict those people that can use their right to freedom of expression via the media – a right that belongs to all.

The practicalities of using entry requirements to ensure quality journalism is questionable as they prevent, for example, young people from developing their research and writing skills, or drive out competent journalists with no degree in favour of unskilled academics.

Can journalists be barred from practicing?

No. Some states have laws that can permanently or temporarily ban journalists from working, but this is in effect a form of licencing and therefore violates international law.
What rights are important for journalists?

Right to freedom of association: Journalists are often barred from working unless they join a professional organisation. Some states argue that this is to protect journalistic quality and general welfare, but these could be protected without the need for in effect licencing, which violates international law. Similarly, laws that bar journalists from creating or joining professional organisations also violate international law. Such organisations help to improve the conditions for journalists and raise professional and ethical standards.

Right to accreditation: Journalists need to be able to gather and report news and sometimes need greater access to government buildings or attend public meetings. Accreditation schemes such as press cards can be necessary to ensure access, but can also be abused by governments trying to bar dissenting journalists by refusing them accreditation. In international law, accreditation must be:

1. administered by a body which is independent from the government and follows a transparent procedure;
2. based on specific, non-discriminatory, and reasonable criteria published in advance;
3. only applied to the extent justifiable by genuine space constraints; and
4. not withdrawn based on the work of the journalist or media outlet concerned.

Right to protection for sources of information: People – particularly whistleblowers – often only share information with journalists if they can do so anonymously. The public would be deprived of information in the public interest without protection for such anonymity. Protection in law of the right of journalists to protect their sources is therefore vital, and should follow international standards:

• Journalists should only be ordered to identify a source if there is an overriding requirement in the public interest, and the circumstances make it vital
• Disclosure should be balance against the harm caused to the right to freedom of expression
• Disclosure should only be ordered at the request of an individual or body with a direct, legitimate interest, who has demonstrably exhausted all reasonable alternative measures to protect that interest
• The power to order disclosure of a source’s identity should be exercised exclusively by courts of law.

Right to protection with respect to search and seizure of journalistic materials: To make sure that sources are fully protected, journalists need stronger immunity against police carrying out searches or seizure in an attempt to circumvent laws that protect sources. International law says that:

• Search warrants should only be issued
by a judge, who must balance the importance of the search against the importance of preventing harm to the right to gather news

• No warrants should be issued if the same goal can be achieved in a way less detrimental to freedom of expression

• No warrants should be issued for the seizure of material covered by the protection of sources, except in very exceptional circumstances

• The police must be accompanied on their search by a judge or prosecutor.

The right of protection against violence: Journalists are often victim to violence from threats to attacks aimed at silencing them. States must investigate carefully so as not to tacitly approve of the violation of journalists’ rights. They should also investigate the possibility that the violence was the result of something the journalist reported. International standards require investigations to be started and concluded in a reasonable time, estimated by: a) the complexity of the matter; b) the judicial activity of the interested party; and c) the behaviour of the judicial authorities.
၁။ ပြင်လင်းမင်သောအစိုးရ၏ စိုးမိုးမင်သောအဖွဲ့အစည်းမှ စီမံကြပါကြောင်း
၂။ တိက်သော၊ ခြဲ့ခွာမင်မရှိသော၊ ႀကိဳ့လေကာင်းဆော်မှုရှိသော လိုအပ်ချက်တွင်
အေချခြင်း စေကင်း ျဖန္႔ေ၀ထာျခင်း
၃။ တစ်ခါလိုအပ်သော ကန့်သတ်ချက်ကိုသာ အတိုင်းအတာတစေခါးထိ ျခင်းခ်က်အျဖစ္ ထာျခင်း
၄။ မီဒီယာအရင်းအေရးမဟုတ်သော သတင်းရရှိရောက်သောအရင်းအေရးကို ရုပ္သိမ္းမင်းမျပြဲလုပ္ျခင်း
သတင်းရရှိရာ အရင်းအေရးကို ကာကြယ်ခြင်း။
။ျပည္သူ (အထူးသောလွ်ိဳ႕ြွွက္စြာသတင်းပြားမ်ား)
သည် သူတို႔၏အမည်ကိုဖာျပသောအခါျဖင့္
သတင်းပြားမ်ားအား သတင်းခ်က်မှားကို ျပာျပၾကသည်။
ထိုကဲ့သို႔ အမည်မဖာျပါြွွက္မျိုးကို အကာအကြယ် ျဖင့္မရွိပါက လူထုသည်
သူတို႔၏အက်းကိုထိခိုက္ျစသည့္
သတင်းခ်က်မှားမှားသိရွိႏိုင်မည်
မဟုတ်ပါ။ ထို႔ျပာျပာ်တ္ျခင်း
သတင်းရရှိရာ အရင်းအေရးကို
ဥပေဒျဖင့္ အကာအကြယ် ျဖင့္များသည္
အေရးႀကီးသော ျဖင့္မွ်တစြာေဆာင်သင့္သည္။
• အေျခအေနအရ
အလျန္အေရးႀကီးသောအခါျဖင့္
လူထုအက်းစီးပြားကို ကာကြယ္ရန္ ပို၍
အေရးႀကီးျခင်းမ်ားတွင်သာ
သတင်းပြားမ်ားအား သူတို႔၏
သတင်းရင်းမောစ္ကို ထုတ္ျဖားသင့္သည္။
• သတင်းအရင်းအေရး
ထုတ္ျဖားျပဆိုျခင်းသည္ လြတ္လပ္စြာ
ထုတ္ျဖားျပဆို ခြင့္ကို မထိခိုက္ျစရန္
မွ်တစြာေဆာင်ရြက္သင့္သည္။
• ထုတ္ျဖားျပဆိုမႈအတြက္ အက်းစီးပြားကို
ကာကြယ္ရန္ အျခားျခားေသာ နည္းလမ္း
ျဖင့္အႀကိဳးသင့္အျဖစ္သင့္ လုပ္ျဆား၍
မျဖစ္ႏိုင်သည့္ အခါျဖင့္မွသာ သတင်း
ရင်းမောစ္ကို ထုတ္ျဖားရန္ သတင်းျခင့္
တိုက္ရိုက္ဆိုင်ရာျဖစ္စီးျခင်းသည္။
• သတင်းရင်းမောစ္ ထုတ္ျဖားဖို႔ ခ်မွတ္ႏိုင်သည့္
အမိန္႔အာဏာသည္ တရားရံုးတွင္သာ အလံုးစံု
ရွိသင့္သည္။
စာနယ္ဇင္းဆိုင္ရာ ပစၥည္းကရိယာမ်ားကို
ရွာျဖြာ သိမ္းဆည္းျခင်းမွွ ကာကြယ်ခြင့္
--သတင်းရင်းမောစ္ကို ကာကြယ္သည့္
ဥပေဒကို ပါးနပ္စြာ ေရွာင္ရွားႏိုင်းမွွ
ကင္းလြတ္ခြင့္ကိုျဖင့္ သတင်းရင်းမောစ္
အျပည့္အ၀ အကာအကြယ္ ျဖိဳးလုပ္ျဖားႏိုင်း
• စစ္ျဖားရွာျဖြာသည္ သတင်းစံုစမ္းခြင့္ကို
တားဆီးျခင်းမျဖစ္ျဖတ္ရမည့္ တရားသူႀကီးမွ်
စစ္ျဖားရွာျဖြာခြင့္၀ရမ္းစာကို ထုတ္ျပာ
သင့္သည္။
• လြတ္လပ္စြာထုတ္ျဖားျပာခြင့္ကို
What are the common problems with laws relating to journalists?

1. It violates international law and standards: Lawmakers often fail to check and implement international law into national law regulating journalists. States have obligations under international law to protect the right to freedom of expression.

2. It is too restrictive in scope: Laws regulating journalists can be both too narrow and too broad. If they are too narrow, they do not include all people involved in journalism, such as media workers. If they are too broad, they can apply unintentionally to for example bloggers or internet users.

3. It gives unnecessary privileges to journalists: Laws regulating journalists often give special status or certain privileges to journalists. For example, the state may be responsible for caring for the families of killed journalists, likening them to civil servants. Although this appears to be good, in international law everyone has the same rights and the state has a duty to protect everyone’s rights, not just a few.

4. It creates obligations for journalists: Some states have laws containing obligations and duties for journalists with disciplinary or administrative punishments if they fail to fulfil them. Such laws only prevent journalists from working independently from government and should be replaced by self-regulation.

5. It prohibits reporting on specific topics: Sometimes laws regulating journalists
ban their work on specific topics such as criticising a monarch or a senior official, or questioning historical facts or people. Such bans are clearly censorship and violate international law.

ဥပေဒက သတင္းေထာက္မ်ားအား မလိုအပ္ေသာ အခြင့္ထူးေပးျခင္း - သတင္းေထာက္မ်ားဆိုင္ရာ ဥပေဒသည္ ၎တို႔အား အခြင့္အေရး အတူတူပင္ရွိသင့္သည္။ ႏိုင္ငံေတာ္အေနျဖင့္ လူတစ္စုကိုသာ မဟုတ္ပဲ လူတိုင္းကို အကာအကြယ္ေပးရန္ တာ၀န္ရွိသည္။

• အေၾကာင္းအရာအခ်ိဳ႕ကို တင္ျပရန္ ထားျမစ္ျခင္း - ျပည္သူႏွင့္ သမိုင္းဆိုင္ရာ အျဖစ္မွန္ကို ေမးခြန္းထုတ္ျခင္း သို႔မဟုတ္ ဘုရင္ သို႔မဟုတ္ ရာထူးျမင့္ အစိုးရအရာရွိမ်ားကို မေ၀ဖန္ရန္ သတင္းေထာက္မ်ားအား ဥပေဒျဖင့္ တာျမစ္ထားသည္။

• အံ့သူ့ကြီးရင္းပါ အတားတားေပးျခင္း - အစိုးရအခ်ိဳ႕သည္ သတင္းေထာက္မ်ား လိုက္နာရန္ပ်က္ကြက္ပါက  စည္းကမ္း အရ သို႔မဟုတ္ အုပ္ခ်ဴပ္ပိုင္းဆိုင္ရာအရ ျပစ္ဒဏ္မ်ားပါ၀င္သည့္ လုိက္နာရ သည့္ ၀တၲရားမ်ား ဥပေဒ ျပ႒ာန္းထားၾကသည္။ ထိုသို႔ေသာ ဥပေဒမ်ားသည္ သတင္းေထာက္မ်ား အစိုးရမွ လြတ္လပ္စြာ လုပ္ေဆာင္ႏိုင္မႈကို ဟန္႔တား ေစၿပီး၊ ကိုယ္ကုိယ္တိုင္ ခ်မွတ္ေသာ စည္းမ်ဥ္းျဖင့္ အစားထိုးသင့္သည္။
Regulating the internet

ARTICLE 19 is regularly asked whether the government or another organisation should regulate the internet. This beginners’ guide looks at regulation from a human rights viewpoint and in particular the right to freedom of expression.

Are human rights important when regulating the internet?

Yes. The internet is quickly becoming one of the largest sources of information and spaces for debate and as such is an example of the right to freedom of expression in practice.

Even though the internet is just a few years old, every day it becomes more and more vital for democracies to work by publishing a diverse range of voices with different opinions. The internet is also changing the way we think of and use the right to freedom of expression.

This right, which is for everyone, is guaranteed in international human rights law in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, collectively known as the international bill of human rights, and which emerged from the horrors of World War II.

International human rights law has become so important that all governments are required to respect, protect and fulfil the right to freedom of expression within each country.

Regulation of the internet can be a problem because it interferes with the right to freedom of expression. ARTICLE 19 exists to point out what regulation is okay and suitable in a democracy and what regulation is not. We do not guess - we look at and compare with the human rights standards that have developed internationally over several decades.

International human rights standards say that regulation of the internet must be:

1. Written in law (not arbitrary)
2. Have a legitimate aim (these aims are listed in international law as the rights or reputations of others, national security, public order, public health and morals)
3. Absolutely necessary to achieve the
above aim (necessary in a democracy, and done in a proportionate way).

This is known as the three-part test and comes from the International Covenant on Civil and Political Rights.
Should the internet be regulated?

No. Some governments argue that the internet needs regulating because it has become home to pirated films and extreme sexual imagery for example, or helps terrorists communicate with one another. But this argument ignores that each of these is already regulated by laws in most countries, regardless of whether they take place on the internet or elsewhere.

So the question becomes how current laws should be changed in order to cover new technologies that are changing the way people find and share information. It is also important not to use laws on internet users that were originally meant for broadcasters or the print media – an internet user for example should not be expected to use the code of standards developed for broadcasting.

It is also important to understand that the internet is everywhere, so the old idea of sovereignty where states control everything inside their borders no longer makes much sense.

Instead, new solutions are needed to stop governments from making laws that could intentionally or unintentionally threaten the right to freedom of expression. One solution could be to encourage self-regulation where groups come together and draw up codes of conduct, similar to how the print media should be self-regulated. Another solution is to control what appears on your own screen through 'self-regulation at home' software that filters out unsuitable content.

What other laws would undermine freedom of expression?

A number of things would violate international law on the right to freedom of expression, including:

- Wholesale bans of modems and other equipment that helps users access the internet
- Stopping or slowing access to all or part of the internet for everyone or for specific groups of people
- Forcing internet users - bloggers for example – to register with the state or get a licence
- Requiring internet service providers (ISPs) to get licences
- Indiscriminate monitoring or surveillance of internet users
- Banning anonymous communication over the internet, such as by forcing users to register their real names.
ထိန္းခ်ဳပ္သင့္ပါသလား။

မထိန္းခ်ဳပ္သင့္ပါ။ အင္တာနက္တြင္ မႈပိုင္ခြင့္မရွိပဲ ရုပ္ရွင္ဇာတ္လမ္းမ်ားျဖန္႔ခ်ိျခင္း၊ အစြန္ေရာက္ လိင္ပိုင္းဆိုင္ရာရုပ္ပံုမ်ားျဖန္႔ခ်ီျခင္းႏွင့္ အၾကမ္းဖက္သမားမ်ားအခ်င္းခ်င္းၾကား ဆက္သြယ္ႏိုင္ရန္အေထာက္အကူျဖစ္ေစျခင္းတို႔ေၾကာင့္ အင္တာနက္ကို စည္းမ်ဥ္းျဖင့္ထိန္းခ်ဴပ္သင့္ေၾကာင္းအစိုးရ တစ္ခ်ိဳ႕ကဆိုသည္။ သို႔ေသာ္ သူတို႔၏အဆိုသည္ မခိုင္လံုပါ။

အင္တာနက္ သို႔မဟုတ္ အျခား တစ္ေနရာရာတြင္ ထိုသို႔ေသာအျဖစ္မ်ား ရွိေနေသာ္လည္း ႏိုင္ငံအမ်ားစုတြင္ ထိုကိစၥမ်ားအတြက္ ဥပေဒျဖင့္ထိန္းခ်ဳပ္ထားျဖစ္သည္။

ထို႔ေၾကာင့္ လူေတြ သတင္းအခ်က္အလက္မ်ားကို ရွာေဖြျခင္းႏွင့္ ျဖန္႔ခ်ီသည့္ပံုစံကို ေျပာင္းလဲေစတဲ့နည္းပညာသစ္အေပၚ စိုးမိုးသက္ေရာက္ႏိုင္ရန္လက္ရွိဥပေဒမ်ားကို မည္သိန ေျပာင္းလဲသင့္သလဲဆိုတာေမးစရာေမးခြန္း ျဖစ္လာပါတယ္။

အသံလြင့္သူမ်ားႏွင့္ ပံုႏွိပ္မီဒီယာအတြက္ရည္ရြယ္၍ ျပ႒ာန္းထားေသာ ဥပေဒကို အင္တာနက္အသံုးျပဳသူမ်ားအေပၚမသက္ေရာက္မိရန္လည္း အေရးႀကီးသည့္အခ်က္တစ္ခ်က္ျဖစ္ပါသည္။

ရုပ္သံလြင္မႈဆိုင္ရာအတြက္ ေရးဆြဲထားေသာ လုိက္နာရမည့္စည္းမ်ဥ္းႏႈန္းသည္ အင္တာနက္အသံုးျပဳသူမ်ားႏွင့္လည္းသက္ဆိုင္သည္ဟု ေမွ်ာ္လင့္၍မရပါ။

အင္တာနက္သည္ ေနရာတကာတြင္ရွိေနၿပီးျဖစ္ေၾကာင္းကိုလည္း နားလည္ထားရန္အေရးႀကီးသည္။

ထိန္းခ်ဳပ္သည့္ အခ်ဳပ္အျခာအာဏာသည္၎၏နယ္နမိတ္စည္းမ်ဥ္းအတြင္းရွိအရာအားလံုးကို ထိန္းခ်ဳပ္သည္ဆိုသည့္အေတြးအေခၚေဟာင္းသည္ေရွ႕ဆက္၍အဓိပၸါယ္မရွိႏိုင္ေတာ့ပါ။
What should the state do to protect freedom of expression?

There are a number of things that states should do protect the right to freedom of expression on the internet. They should:

• Help everyone access the internet everywhere, for example by creating community-based internet services and public access computer centres, or by subsidising access to the internet for disadvantaged communities

• Tell people – particularly those in disadvantaged communities - what the internet is, how it can be used, and what benefits it will bring to people’s lives

• Encourage ‘universal service’ by promoting people’s access to quality technology at affordable prices everywhere, particularly in rural or remote communities

• Encourage ‘network neutrality’ by stopping telecommunications networks from slowing and interfering with certain types of internet traffic

• Help people with disabilities and disadvantaged communities to access the internet

• Investigate and prosecute crimes over the internet, such as child pornography.
Should content on the internet be regulated?

Yes. Just as some expression can be regulated in the street – such as defamation or incitement to violence – the same expression should be regulated on the internet.

Any law that bans expression on the internet must follow the three-part in international law: the law must be unambiguously written, have a legitimate aim (the rights or reputations of others, national security, public order, public health and morals), and be absolutely necessary and proportionate to achieve the aim.

Vague laws always undermine the right to freedom of expression. A law would also always violate international law if it uses words like the following:

- Incitement to religious unrest
- Promoting division between religious believers or non-believers
- Defamation of religion
- Inciting violation
- Inciting subversion of state power
- Offences that damage public tranquillity
Should internet service providers (ISPs) be responsible for their users’ content?

No. Internet service providers (ISPs), social media networks and website hosts should not be responsible for the content that their users make or send.

Some argue that ISPs, social media networks and website hosts are publishers and therefore should be responsible for what they publish. But nobody would hold a phone company responsible for what one of its customers said in a call. ISPs, social media networks and website hosts are more like phone companies than newspapers or television stations. As such, as long as they do not change a user’s content, they should not be held responsible for it – the user should.
Should internet service providers (ISPs) take down content if a court orders it?

Yes. But in many countries, the police or public officials try to order internet service providers (ISPs), social media networks, and website hosts to take down content without going to court.

This is a violation of the three-part test in international law which requires that any restriction of the right to freedom of expression be written in law and decided by a court. The police would be violating international law if they confiscated a newspaper from a shop without a court being involved, and taking down content from the internet is exactly the same.
Should users be responsible for their content?

Yes, but only in the same way that they would be responsible if they said it in the street.

Bloggers and other ‘citizen journalists’ should not be treated like traditional journalists working for newspapers or television stations. Although they do similar work in many ways, they do not have the same money or technology available to them. As such, laws with the responsibilities and duties meant for the print or broadcast media should not cover them.

Should anonymous users be responsible for their content?

Yes. Users that hide their identity are just as responsible for their content as users that do not. Anonymity is not a defence against prosecution for crimes or defamation on the internet.

Is surveillance of the internet
okay?

Any surveillance over the internet needs to pass the three-part test in international law to make sure that it does not damage the right to freedom of expression, and also the right to privacy.

Although surveillance on the internet is okay when a crime is taking place for example, states often use surveillance to watch dissenters or collect information about people. Such surveillance not only invades people’s right to privacy, but also deters people from expressing themselves freely on the internet.

Surveillance should only be used in circumstances that are specifically defined in law, and when a relevant court orders it. Courts should only order surveillance on a case-by-case basis, and any surveillance that is not written in law, is illegal.
ARTICLE 19 is regularly asked whether the government or another organisation should regulate the broadcast media, which includes television and radio. This beginners’ guide looks at regulation from a human rights viewpoint and in particular the right to freedom of expression.

Are human rights important when regulating the broadcast media?

Yes. Television and radio are the largest sources of information and debate for the majority of people worldwide and as such can be seen as the most important examples of the right to freedom of expression today.

Together television and radio are called the broadcast media and they are vital for democracies to work because they publish a diverse range of voices with different opinions. They rely on the right to freedom of expression to do so.

This right, which is for everyone as well as the broadcast media, is guaranteed in international human rights law in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, collectively known as the international bill of human rights, and which emerged from the horrors of World War II.

International human rights law has become so important that all governments are required to respect, protect and fulfil the right to freedom of expression within each country.

Regulation of the broadcast media can be a problem because it interferes with the right to freedom of expression. ARTICLE 19 exists to point out what regulation is okay and suitable in a democracy and what regulation is not. We do not guess - we look at and compare with the human rights standards that have developed internationally over several decades.

International human rights standards say that regulation of broadcasting must be:

1. Written in law (not arbitrary)
2. Have a legitimate aim (these aims are listed in international law as the rights or
reputations of others, national security, public order, public health and morals)

3. Absolutely necessary to achieve the above aim (necessary in a democracy, and done in a proportionate way).

This is known as the three-part test and comes from the International Covenant on Civil and Political Rights.
Should the broadcast media be regulated in law?

Yes. Unlike the print media where regulation always undermines the right to freedom of expression, regulation of the broadcast media is necessary to protect it. This is because while the print media uses a technology that is almost unlimited – paper and ink – the broadcast media uses one that is very limited – radio waves.

The spectrum of radio waves is broken down into frequencies which are limited in number. Because there is high demand and only some frequencies are usable, states need to regulate how they give them out to broadcasters – for example, BBC World Service has been given FM frequency 100.5 in Nigeria. If states do not regulate, several broadcasters may choose the same frequency, spoiling the signal.

In international law, states have to protect everyone’s right to freedom of expression across all technologies. As such, they need to make sure that when they give out frequencies, they do so in a way that ensures as many groups as possible can freely express themselves. Broadcasters should be both diverse and plural.
What are plurality and diversity?

Plurality covers the types of broadcasters and their owners. A state that promotes plurality gives frequencies to a variety of commercial broadcasters, public service broadcasters and community broadcasters. States that undermine plurality give frequencies to only one or two.

Diversity covers the variety of voices and opinions given frequencies. A state that encourages diversity gives frequencies in a way that ensures that different groups and communities can broadcast. States that undermine diversity give frequencies to certain groups and ignore others.

What should broadcast media regulation aim to do?

Broadcast media regulation should aim to:

• Ensure pluralism and diversity
• Ensure frequencies are given out in a fair and impartial way
• Help the media move from analogue to digital frequencies as digital technology can carry many more broadcasters and therefore more plurality and diversity
• Help the broadcast media and telecommunications industry work together so that more broadcasters can use digital telecommunications technology to make a more diverse and plural range of content.

What should broadcast media regulation include?

Broadcast media regulation should include:
• The name of the regulatory body, and a description of what it is responsible for and what it can do
• An overall policy statement explaining what the regulation aims to do
• A procedure that makes the regulatory body accountable to the public
• A clear statement that the regulatory body is independent from government, and a list of safeguards that stop government from interfering or pressuring it to make certain decisions.
What should the safeguards be to ensure independence?

The regulatory body that oversees the broadcasting media should be independent from the government, from political parties, and from other interest groups. It should:

• Involve the public as much as possible in choosing the best members for the regulatory body
• Only have members that are independent and honest experts in the media
• Have the powers it needs to work effectively
• Have control over enough secure funding to make it independent and sustainable.

What should a broadcast media regulatory body do?

A broadcast media regulator should do two things:

• Give frequencies to broadcasters
• Make a code of conduct for broadcasters dealing with a range of content and practical issues.
What should be in a state’s broadcasting policy?

A government is responsible for creating a broadcast policy, but it should include commercial, public and community broadcasters as well as representatives from their audiences in the process. A policy made in this way would be the most democratic and best serve the public interest.

A broadcasting policy should clearly say how frequencies are given out. It should be clear enough so that everyone can see how, when and why frequencies are given out.

The policy should explain that frequencies are not just given to broadcasters who offer the most money, but also to broadcasters who would make the media more diverse and plural. It should describe the criteria under which the regulatory body decides how to maximise diversity and plurality. For example, the people in a country may speak several languages and the policy should make sure that the broadcast media has multi-lingual content.

Most broadcasting policies decide how to give out frequencies by:

1. First, splitting frequencies between national, regional and local levels
2. Second, dividing frequencies in each level into radio and television
3. Third, sharing radio and television frequencies at each level into some for public broadcasters, some for commercial broadcasters, and some for community broadcasters.
How should frequencies be given out?

The broadcast policy should clearly say how the regulator decides who to give frequencies to. It should not ban groups of applicants. It is important to have this decision-making process written in law before the process begins so everyone can understand it. It should have:

• Criteria for how applications are judged
• Time limits for the decision-making process
• Opportunities for applicants to say what they want to do with the frequency
• Opportunities for the general public to say their opinions
• Opportunity for the applicant to appeal to a judge.

The broadcast regulator should write to each failed applicant explaining why they were unsuccessful and give the successful applicant a licence to use a frequency.
What rules should licence holders follow?

A broadcast regulator makes rules when they give a broadcaster a licence to use a frequency. The rules make sure that the broadcaster does what they said they would do in their application. There are usually two groups of rules: the first is written in law and apply to all broadcasters with a licence, and the second is like a contract and only for the individual broadcaster.

There is always a risk that the rules for an individual broadcaster are abused for political reasons, so all rules should follow the aims of the broadcasting policy. The rules should not make a licence difficult or expensive, by for example making it so short-term that it does not help broadcasters get back their investment. When the licence ends, the regulator should normally renew it, unless renewal would undermine public interest.
How much should a licence cost?

If the broadcast regulator decides to sell licences for a fee, the cost should not be expensive or unrealistic. The fee should be published before the application process starts, and should not change depending on whether for example the broadcaster has news shows.

How should the broadcast regulator regulate content?

Aside from giving out frequencies, the broadcast regulator’s second job is to create a code of conduct and oversee it, but only if broadcasters do not already have a system of self-regulation.

The code of conduct should:

- Be made with the help of the broadcast media and their audiences
- Not include criminal or civil liability
- Require balance and impartiality in news and current affairs, particularly around election time
- Deal with issues such as accuracy, privacy, and how to deal with sensitive things like death, sex or violence
- Cover professional ethics such as when doing interviews or paying for information
- Explain issues related to advertising.
How should broadcast regulators enforce their decisions?

Broadcast regulators should always aim to help the broadcast media live up to the code of conduct, rather than aiming at punishing them when they do not. Broadcasters that violate the code in small ways should at most broadcast a message that admits the violation. Fines or suspension of a licence should be very rare and only happen after serious repeated violations and after warnings and smaller punishments have not worked.
What should be regulated in the film industry?

The production of films: For example, no children should participate in adult films.

The content of the film: For example, films should not incite violence or hatred or encourage the commissioning of crimes.

How to regulate film industry?

There are two models of film industry regulation:

1. Statutory regulation: A statute adopted by Parliament or a regulation by the Government set out the production and content rules for films industry. A state body is in charge of monitoring film content and ensuring that it complies with the rules.

2. Self-regulation: Under this model the film industry develops its own rules taking into account the national laws regarding content (public moral laws or law prohibiting incitement to violence or hatred, for example) and sets up a body to enforce the rules. This body is funded by the film industry.

In some countries films can be released in cinemas or made available for rental only after authorisation (certificate) by the film review body.

In other countries (the US and UK) the film review bodies only classify films based on the content criteria whereas local authorities decide whether or not to allow a cinema to show the film. Classification ratings are normally expressed in terms of the appropriate minimum viewer age, for example U suitable for all ages, PG parental guidance suitable for all ages but you may wish to exercise parental guidance, “12” (only suitable for those aged 12 and over) and so on. Showing the “R” rated films and display of “R” rated videos may be restricted to protect children. Normally local authorities accept the rating of the film review bodies.
Which model is more appropriate from the freedom of expression point of view?

From freedom of expression viewpoint it is better to avoid state involvement in the film regulation to prevent any risk for censorship or unnecessary restrictions. The film review body should be autonomous and develop its classification criteria in consultation with the public and in view of the laws regulating content. Only moral reasons – such as obscenity – should be justified for film rating. Restrictions that are designed to promote or support a particular political viewpoint or ideology can never be justified. Local authorities should decide whether or not to allow a cinema to show the film.
အမ်ားျပည္သူႏွင့္ ရုပ္ရွင္အေၾကာင္းအရာကိုထိန္းခ်ဳပ္ေသာဥပေဒအျမင္မ်ားတို႕နွင့္ညွိႏႈင္းျပီး ခ်မွတ္ရမည္။ တစ္စံုတစ္ခုေသာနိင္ငံေရးအျမင္သို႕မဟုတ္ သေဘာတရားတစ္ရပ္ကို ကိုတိုးျမွင့္ေစေသာ ေထာက္ခံတင္ျပေသာ ကန္႕သတ္မႈမ်ိဳးမ်ားသည္မည့္အခါမွ်မွန္ကန္မႈမရႏိုင္ေပ။ ေဒသဆိုင္ရာအာဏာပိုင္မ်ားသည္ ျပသရန္ခြင့္မျပဳဆိုသည္ကိုဆံုျဖတ္ရမည္။
Is there a human right to protest?

Yes. International human rights law protects the right to freedom of peaceful assembly. Article 21 of the ICCPR provides:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

The right to freedom of peaceful assembly is fundamental in a democratic society. It is one of the principle vehicles of participating in public life, and a legitimate way to influence government decision-making.

What does the right to peaceful assembly cover?

This right covers any intentional presence of a number of individuals in a public place to exercise their right to freedom of expression collectively, where their intentions are not violent.

A peaceful assembly can take many different forms. For example, it could include a static demonstration or a moving parade. The size and duration can also vary; an assembly may involve thousands of people and last less than an hour, or it may involve fewer people but last for weeks or months. The purposes of assemblies too are as diverse as the opinions and ideas that any person can express – it may be a rally in support or opposition to a political party; a civil society meeting to discuss reform to government laws or policies; a gathering in support of a strike; or a large celebration of a sporting
victory or a religious occasion.

It is important that domestic laws, including Constitutions, adopt a broad definition of the right to freedom of peaceful assembly.

Should States regulate peaceful assemblies?

As a starting point, States should presume that the right to freedom of peaceful assembly should be exercised without regulation. To support the exercise of the right, as free of State interference as possible, the following basic principles should be enshrined in domestic law:

- States should presume that any assembly is peaceful and a legitimate use of public space, not requiring government notice or authorisation;
- States should facilitate and protect peaceful assemblies in the time, place and manner desired by the organisers, and not to restrict or impede this;
- Any regulation that limits the freedom of peaceful assembly must meet a three part test and be:
  (i) Set out in a law that is clear and accessible;
  (ii) For a legitimate purpose, i.e. to protect the rights or freedoms of others, to protect public order or safety, national security, or public health or morals;
  (iii) Necessary and proportionate in a democratic society.
• There should be no discrimination in the treatment of assemblies. Even assemblies with purposes, messages or claims that others disagree with, contest the truth of, or find deeply offensive, should be protected.

Are unplanned peaceful assemblies protected?

Yes. Unplanned or “spontaneous” assemblies are a part of life in a democratic society. Sometimes, individuals or groups of people will respond to an event or happening by gathering together in a peaceful assembly to express themselves. Often, these assemblies happen organically, and might not have an organisational structure. Spontaneous assemblies can be as diverse and varied as planned ones, and are just as legitimate.

Where a State requires the organiser of a peaceful assembly to notify authorities in advance, there must be an exemption for unplanned or spontaneous assemblies. This should reflect that under many circumstances, it is not practical to provide advance notice of an assembly. Nevertheless, such assemblies should be permitted to take place, and people should not be punished for participating in an assembly that is spontaneous.
How many assemblies can take place at once?

It is important in a democracy that different views and opinions can be expressed. Sometimes, different groups may want access to the same public spaces to hold an assembly at the same time. Often, a demonstration in support of one issue will attract counter-demonstrators who want to express an alternative view. The authorities should allow assemblies to take place simultaneously, and facilitate each of them.

What about assemblies that are not peaceful?

The right to freedom of peaceful assembly applies only to assemblies that are intended to be non-violent. An assembly is still peaceful even if it causes temporary inconvenience to others that wish to use the same public spaces, or if it promotes ideas or viewpoints that others disagree with or find offensive.

Where there are isolated or sporadic incidences of violence in an otherwise peaceful assembly, the non-peaceful participants should be differentiated and held individually responsible for their conduct. In particular, agents provocateurs, who deliberately seek to sabotage a peaceful assembly through non-peaceful conduct,
should be removed and held to account for any unlawful conduct. Peaceful participants should not lose their right to freedom of peaceful assembly because of the conduct of non-peaceful individuals.

While cooperation between organisers of assemblies and law enforcement should be encouraged, organisers should not be held responsible for the acts of others not under their control. Nor should they be liable for costs associated with policing or cleaning up after an assembly. Any alternative approach would have a chilling effect on the organisation of assemblies.

The management of a peaceful assembly should avoid confrontation or surprises that are likely to escalate tensions and the chances of violence occurring. Police should be trained in methods of crowd control that seek to prevent violence, including through mediation and de-escalation strategies. Any crowd-control methods should only be used where they are necessary and proportionate.

A peaceful assembly should never be dispersed by officials exercising law enforcement duties. Dispersal should be considered a last-resort option, only where other methods to minimize harm or avoid an imminent threat of violence have been exhausted. Dispersal should also be voluntary.

It is important that the use of force by authorities exercising law enforcement duties must be set out in law, and complies with the requirements of non-arbitrariness, necessity and proportionality. Force should never be used against a peaceful assembly. Authorities exercising law enforcement duties should also have access to self-defence equipment and less-lethal weapons, to minimize the circumstances under which force will be resorted to. Firearms should not be used when there is an imminent threat of death or serious injury, and firearms should never be fired into a crowd indiscriminately or used as a method of dispersal.
What is the role of the media during assemblies?

Journalists and the media play an important role in informing the public about assemblies. In addition, a media presence – akin to the presence of people monitoring the assembly - acts as a safeguard for the rights of the participants to freedom of assembly and expression.

International law requires that states protect, promote, and respect the right to freedom of expression and media freedom at all times, including during assemblies. It is recommended that authorities exercising law enforcement duties be obliged to give to journalists and assembly-monitors from domestic and international organisations as much access as possible to public assemblies. Media workers should also be distinguished from participants in assemblies during policing operations as far as is possible.

Participants in assemblies should also be free to use camera equipment, including mobile phones, to record and share information about an assembly and the policing operations.
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မီဒီယာသည် စုံရမွေးမှုနှင့်ပတ်သက်၍
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ပြောစွဲစုံရောဆေးထုတ်ခင်းတွင်ပါဝင်သူများ၏
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ညီများကိုလျားလျားအသံုးပြုရမည်။
Is there a right to public information?

Yes. In 1946 the United Nations General Assembly passed one of its very earliest resolutions. It stated this:

Freedom of information is a fundamental human right and ... the touchstone of all freedoms to which the United Nations is consecrated.

Article 19 of the ICCPR guarantees the right to seek information and as such the right to obtain public information. The recognition that states hold information not for themselves but, rather, on behalf of the public and that, as a result, public bodies should provide access to that information is reflected in the explosive growth in the number of access to information laws that have been adopted around the world, as well as the numerous authoritative international statements on the issue.

Why does freedom of information matter?

How does the right to freedom of information make life better?

• It will help you to live in a less corrupt society
• It will help you to live in a society that is free from hunger
• It will help you to live in a healthier society
• It will help you to live in a society where the environment is respected
• It will help to make sure that your fundamental human rights are respected
• It will help to make sure that your privacy is respected
• It will help to make your country more
secure
• It will help to make the political system in your country more democratic
• It will help to make government more efficient
• It will lead to better decision-making
• It will help the economy to be more efficient
• It will lead to individuals receiving better treatment from institutions

Which are the basic principles on freedom of information?

In recent years many more countries have adopted freedom of information laws. In the process of doing this, some basic principles have emerged that underlie good freedom of information legislation. ARTICLE 19’s Principles on Freedom of Information Legislation include the following principles.

1. Freedom of information legislation should be guided by the principle of maximum disclosure
2. Public bodies should be under an obligation to publish key information
3. Public bodies must actively promote open government
4. Exceptions should be clearly and narrowly drawn
5. Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available
6. Individuals should not be deterred from making requests for information by excessive costs
7. Meetings of public bodies should be open to the public

8. Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed

9. Individuals who release information on wrongdoing – whistleblowers – must be protected

Why is it necessary to adopt an access to information law?

For freedom of information to work in practice various rules and procedures have to be established. Human rights treaties lay out the general principles, but they cannot be a detailed guide to making sure that citizens enjoy the right in practice. This is the most important reason why a freedom of information law is essential.
What should access to information laws include?

Normally access to information laws include definitions, provisions on the scope of the right of access to information, the right holders and information holders, the duties of information holders to promote openness, the procedures for requesting and granting information, and the cases when the information holders may refuse to provide information. To be efficient the access to information system should be supervised and controlled by an independent body, which should have powers to impose sanction for violations of the law.

When can information holders deny access to information?

The principle of maximum disclosure establishes the presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances. The ARTICLE 19 Principles on Freedom of Information Legislation set out a three-part test for exceptions as follows:

1. the information must relate to a legitimate aim listed in the law;
2. disclosure must threaten to cause substantial harm to that aim; and
3. the harm to the aim must be greater than the public interest in having the information.

Normally access to information may be denied if it can cause substantial harm to:

- national security, defence and international relations;
- public safety;
- the prevention, investigation and prosecution of criminal activities;
- privacy and other legitimate private interests;
• commercial and other economic interests, be they private or public;
• the equality of parties concerning court proceedings;
• nature;
• inspection, control and supervision by public authorities;
• the economic, monetary and exchange rate policies of the state;
• the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

However the information holder may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.

To make it clearer we will use a hypothetical example. Let us suppose that you are an information officer in the Ministry of Defence. You receive a request for information about the policy and practice of the Ministry on the procurement of rifles for the army. The requester also asks about the quality of boots procured because you have information that the rifles are defective.

1. Does this request relate to a legitimate aim?

The national access to information law should contain a list of legitimate aims under which it may be justified to withhold information. “Defence and security” is a legitimate grounds for an exception under this law. This request does relate to national security.

2. Would the disclosure of this information do substantial harm to that aim?

It can be argued that procurement of rifles may harm defence and security. It is still arguable if the harm would be substantial. Let’s accept that the harm is substantial. Then we have to consider the third question:

3. Is there anyway a public interest in disclosing the information?

It is still possible to overriding the conclusion that the information should not be released if it would be maintained that this was still in the public interest. In this example, it could be argued that, even though an enemy would benefit from learning about the malfunctioning rifles (a “substantial harm” to national security), there are various other reasons why it would be in the public interest for the information to be disclosed.

These reasons could include:

• Generating public pressure to have the rifles replaced.
• Exposing weaknesses in the procurement system that led to the army buying defective weapons.
• Holding incompetent or corrupt officials to account.
အျမင့္မားဆံုး၊အမ်ားဆံုးေဖၚျပေပးရမည္ ဟူေသာ စည္းမ်ဥးကယူဆခ်က္တစ္ခုကိုခ်မွတ္ေပးလိုက္ သည္။ထိုယူဆခ်က္အလိုအရ ျပည္သူ႕၀န္ထမ္ေအဖြဲ႕အစည္းမ်ားကကိ္ျင္ေဆာင္ထားေသာသတင္းမ်ားသည္ထုတ္ေဖၚျပသေပးရမည့္သတင္းမ်ားသာ ခ်ည္ျဖစ္သည္။အာတီကယ္ ၁၉၆ သတင္းအ ခ်က္အလက္လြတ္လပ္ခြင့္ကသံုးစစ္ေဆးနည္းကိုထုတ္ေဖၚျပဆိုေပးခဲ့သည္။

၁. သတင္းအခ်က္အလက္သည္ ဥပေဒတြင္ေဖၚျပထားေသာ တရား၀င္ရည္မွန္းခ်က္ႏွင့္ ဆက္စပ္မႈရွိရမည္။

၂.  သတင္းထုတ္ေဖၚျခငး္သည္ အေျခခံအႏၱရာယ္ကိုျဖစ္ေစမည္ဟုျခိမ္ေျခာက္ျခင္း ႏွင့္

၃.  သတင္းရယူထားျခင္းတြင္ရည္မွန္းခ်က္ကိုအႏၱရာယ္ျဖစ္ေစခဲ့သည္ အမ်ားျပည္သူ အက်ိုဳး စီးပြားထက္ပိုၾကီးမားျခင္းအကယ္၍ ေအာက္ပါတို႕ကိုအခိုင္အမာအႏၱရာယ္ဖစ္ေစလွ်င္ ပံုမွန္အားျဖင့္ သတင္းအခ်က္ အလက္ရယူျခင္းကို ျငင္းပယ္ႏိုင္သည္၊

• အမ်ိဳးသားလံုျခံဳေရး၊ ကာကြယ္ေရးႏွင့္ႏိုင္ငံတကာဆက္ဆံေရးမ်ား၊
• အမ်ားျပည္သူလံုျခံဳစိတ္ခ်ေစေရး
• ရာဇ၀တ္မႈမ်ားအား ကာကြယ္တားဆီးျခင္းႏွင့္ျပစ္ဒဏ္ခ်မွတ္ျခင္း
• ကူးသန္းေရာင္း၀ယ္မႈႏွင့္အျခားေသာစီးပြားေရးအက်ိဳးစီးပြားမ်ား(အမ်ားပိုင္ျဖစ္ေစ၊ကိုယ္ပိုင္ျဖစ္ေစ)
• တရားရံုးလုပ္ငန္းစဥ္မ်ားတြင္ႏွစ္ဘက္သာတူညီမွ်ရွိေရး
• သဘာ၀ပတ္၀န္းက်င္
• ျပည္သူ႕၀န္ထမ္းမ်ား၏စံုစမ္းေရး၊ထိန္းခ်ုဳပ္ေရးႏွင့္ကြပ္ကဲေရး
• စီးပြားေရး၊ေငြေရးေၾကးေရးႏွင့္ႏိုင္ငံေတာ္၏ေငြလဲလွယ္ႏႈန္းမူ၀ါဒ
• ျပည္သူ႕ေရးရာအာဏာပိုင္မ်ားအၾကားဌာနတြင္းလုပ္ငန္းျပင္ဆင္ေရးတြင္ယံုၾကည္စိတ္ခ်ရမႈသို႕ေသာ္လည္း၊ သတင္းအခ်က္အလက္ကိုင္ေဆာင္သူသည္ သတင္းထုတ္ေဖၚျခင္း တြင္ အမ်ားျပည္သူအက်ိုဳးစီးပြားႏွင့္ ကာကြယ္မႈျပဳထားေသာအရာမ်ားကိုထိခိုက္ေစျခင္းႏွစ္ခုအားခ်ိ္န္ဆျခင္းမျပဳဘဲ သတင္းကိုင္ေဆာင္ထားျခင္းကိုျငင္ပယ္ျခင္းတို႕ကိုမျပဳရေပ။
What should be the cost of obtaining public information?

The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants, given that the whole rationale behind freedom of information laws is to promote open access to information. Normally the information is provided free of charge. Information requesters may be expected to cover only the actual cost of photocopies of documents.
ARTICLE 19 envisages a world where people are free to speak their opinions, to participate in decision-making and to make informed choices about their lives.

For this to be possible, people everywhere must be able to exercise their rights to freedom of expression and freedom of information. Without these rights, democracy, good governance and development cannot happen.

We take our name from Article 19 of the Universal Declaration of Human Rights:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”

ARTICLE 19 works so that people everywhere can express themselves freely, access information and enjoy freedom of the press. We understand freedom of expression as three things:

**Freedom of expression is freedom to speak**

- It is the right to voice political, cultural, social and economic opinions
- It is the right to dissent
- It makes electoral democracy meaningful and builds public trust in administration

**Freedom of expression is freedom of the press**

- It is the right of a free and independent media to report without fear, interference, persecution or discrimination
- It is the right to provide knowledge, give voice to the marginalised and to highlight corruption
- It creates an environment where people feel safe to question government action and to hold power accountable.

**Freedom of expression is the right to know**

- It is the right to access all media, internet, art, academic writings, and information held by government
- It is the right to use when demanding rights to health, to a clean environment, to truth and to justice
- It holds governments accountable for their promises, obligations and actions, preventing corruption which thrives on secrecy.

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DEFENDING FREEDOM
OF EXPRESSION AND INFORMATION

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