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Fourth draft Sagaing Constitution lacks fundamental rights

The fourth version of the draft Sagaing Constitution continues to mark a shift toward public participation and transparency in law-making and includes positive changes.

However, significant human rights issues remain. Many essential civil and political rights are still missing, and new vague language has been introduced that could enable future violations.



The Sagaing Constitution could shape governance for years and lay the foundation for a future national constitution. It is essential that its protections meet international human rights standards.

Missing civil and political rights

In February 2025, the second version of the draft Sagaing Constitution was published with missing fundamental rights and problematic provisions. HRM proposed specific legal language to fill each gap, based on international law and best practices from other countries.

These gaps still remain in the fourth version. For example, the draft still does not include a death penalty ban, the right to vote, comprehensive fair trial rights, a right to access the internet, a definition of emergency powers, or judicial review.

Vague rights

Many of the rights that are included are expressed in vague and general terms. Rights are never truly protected unless a constitution sets enforceable standards.

A central flaw of the military's 2008 Constitution was its intentional use of vague rights language. It often referred broadly to freedoms such as expression, association, or due process, but failed to define them clearly or prohibit their abuse. For example, the 2008 Constitution stated that freedom of expression was protected, but it included vague restrictions and failed to prohibit censorship. Similarly, it made vague commitments to the rule of law, but did not guarantee the basic right that individuals are presumed innocent until proven guilty.

These issues were not accidental. They allowed the military to restrict rights while maintaining the appearance of constitutional legitimacy.

Unfortunately, the fourth version of the Sagaing Constitution risks repeating these mistakes. Article 16 outlines a list of rights but does not define or guarantee them

in a way that meets international standards. The wording remains broad and lacks legal specificity. Vague commitments to dignity, justice, or safety are not a substitute for clear legal guarantees.

Removal of political loyalty as a requirement for judges

HRM welcomes the deletion of the provision requiring that judges must have served the revolution. Judicial appointments must be based on legal competence and impartiality, not political alignment. The drafter's deletion of the clause is a necessary correction that strengthens the independence of the judiciary and helps ensure public trust, particularly in politically sensitive or rights-related cases.

New vague and overly broad restrictions added

A new restriction has been added to the list of fundamental rights in Article 16. Sub-clause K states that the exercise of any fundamental right shall not compromise public safety, incite hatred and conflict between different races, religions, and communities, or unjustly diminish the dignity of individuals and organisations.

HRM's earlier analysis recommended that each right listed in Article 16 be rewritten using the full text found in international law. For example, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) defines both the scope of the right to freedom of expression and the specific conditions under which it may be restricted. These standards are necessary to ensure that rights are meaningful and not subject to arbitrary limitation.

Sub-clause K does not follow international law. It uses vague, subjective terms such as “public safety,” “hatred,” and “dignity” — concepts that have often been misused in Myanmar to justify restrictions on peaceful speech, criticism of

government, or activism. For example, the military routinely claims that it is preventing “hatred” or protecting “dignity” when it represses dissent.

Risk of violating international law

Previous drafts of the Sagaing Constitution lacked key human rights protections. However, the fourth draft introduces language that risks violating international law.

Under international human rights law, some rights are absolute and may never be restricted under any circumstances. These include the right to freedom of opinion, the prohibition of torture and cruel treatment, and the prohibition of slavery. Yet Sub-clause K appears to allow all rights, without exception, to be limited in the name of “public safety”, preventing “incitement”, or to protect the “dignity” of individuals or organisations. This creates legal uncertainty and could be interpreted in ways that undermine absolute rights. For example, a future government could claim torture is lawful if it is done to protect somebody’s dignity.

Recommendations

The fourth version of the Sagaing Constitution and the public consultation process reflect the Sagaing Parliament’s willingness to engage with democratic norms, setting a new positive precedent in Myanmar’s legal history.

The drafters must now build upon this progress by strengthening the content of the Sagaing Constitution’s human rights protections. A constitution that enshrines clear, enforceable, and modern rights, in language that meets international standards, will not only support democratic governance in Sagaing but also serve as a model for a future federal Myanmar.

HRM remains ready to offer legal support and analysis to assist in this process.