



Freedom of Expression, International Law and the Practice in Myanmar

Week 7: The Legal Framework for Media and Freedom of Expression in Myanmar Pre-Coup

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Content

Criminal

Civil

Administrative

Online
Content

Media
Regulation

Independence of Regulatory Bodies

Journalists

Print
Media

Broadcasting

Digital Space

Public Service
Broadcasters

Content

**Always subject to three part test*

Criminal:

- Hate Speech
- Security/Public Order
- Obscenity
- Judiciary

Others never legitimate,
like fake news

Online Content:

- No special online content restrictions
- Only if specific to online harms
- Filtering/Blocking
- No strict liability for intermediaries

Civil/Administrative:

- Defamation
- Privacy

- Right to information law

Media Regulation

*Media Freedom, Independence, Diversity

Journalists:

- No licensing / registration
- Protection of sources
- Accreditation
- Protection from attacks

Print Media

- No licensing; technical registration
- Complaints (press council)
- Right of reply

Private Broadcasters:

- Licensing
- Code of conduct

Other issues:
competition
rules; media
sustainability

Public Service Broadcasters:

- Independence
- Mandate
- Funding

Digital Space

Content Issues:

- Content filtering
- Blocking orders
- No strict liability for intermediaries

Online Media:

- No special licensing

Internet access:

- Promoting access
- No Internet shutdowns
- Net neutrality

Privacy Protections:

- Data protection
- Limits on surveillance

Discussion

- Thinking about Myanmar before the coup, what part of this was in place and what part was missing?

Some Key Developments

- Prior censorship lifted in August 2012
- Daily newspapers authorized in early 2013
- News Media Law and Printing and Publishing Enterprises Law adopted in March 2014
- Broadcasting Law and Public Service Media Law both tabled but latter withdrawn
- Broadcasting Law adopted in August 2015, regulations in Oct. 2020
- Archives Law adopted Dec. 2019

News Media Law

- Adopted March 2014
- Initially drafted by the Interim Press Council
- Created the Myanmar Press Council as an independent body
 - But protections for independence were ultimately weak so although the first two Councils were independent, that failed following the coup
 - Broad mandate of Council to monitor media freedom, build capacity, and carry out projects
 - Importantly, the Council is also empowered to hear complaints regarding breach of the code of ethics set out in section 9 and conduct settlement procedures, failing which the matter may go to court, leading to fines

News Media Law, cont'd

- Creates a number of rights for the media
 - To investigate and criticize government
 - To have access to information, except if confidential, and government offices
 - To be exempted from scrutiny (prior scrutiny?)
 - To have access to places of war, riots or public demonstrations
 - The name of the journalist shall usually accompany a story unless there are legitimate reasons to withhold it and the editor has authorized this
 - Not to have journalistic equipment seized or destroyed

News Media Law, cont'd

- Section 9 sets out a number of ethical duties
 - For content to be accurate and complete and for mistakes to be corrected as soon as possible
 - To respect the presumption of innocence when reporting on ongoing legal cases
 - Not engaging in improper manipulation of digital information (pictures, videos)
 - Respecting intellectual property rules
 - Not undermining reputation
 - Not promoting conflicts based on birthplace, nationality or religion
 - Respecting any other ethical rules set by the Council

News Media Law, cont'd

- Those wishing to establish a media outlet are required to do so via a business registered in accordance with the law
- Orders and directives under the 1962 Printers and Publishers Registration Law which restricted media freedom were deemed to be void but the News Media Law did not itself repeal the 1962 Law

Printing and Publishing Enterprises Law (PPEL)

- Adopted on same day as News Media Law
- Was developed by government without consultation or input from civil society or the media
- Puts in place a system of “recognition” of print media by the Ministry of Information
 - Seems to be a technical registration approach but has been abused by the military regime to cancel right to publish
 - Provides for revocation if recognition applied for in a “dishonest or deceitful manner”, with appeals going to the Minister

PPEL, cont'd

- Includes a number of prohibitions:
 - Harming ethnic groups, national security, rule of law, community peace and rights of others
 - Obscenity
 - Inciting crimes, gambling and use of drugs
- Breach can lead to a court banning the publication and temporary injunctions may also be used
- Also fines for breach of these rules as well as others (e.g. publishing without an authorization)

PPEL, cont'd

- Repeals the 1962 Printers and Publishers Registration Law entirely



Discussion

- To what extent do these two laws support media freedom and to what extent do they undermine it?

Broadcasting Law

- Adopted in August 2015 but not brought into force until the end of 2020
 - No broadcaster ever licensed under it
- Number of very progressive rules and overall approach
 - Recognises three-tier system of broadcasting (public, commercial and community) but also a fourth, government
 - Establishes an independent Broadcasting Council along with a government-controlled Broadcasting Authority, focusing more on policy issues but also some technical issues

Broadcasting Council

- Number of means to protect independence
 - Requirements of expertise and prohibitions
 - Appointment process “open and transparent; professional” and civil society encouraged to participate
 - President and each house of parliament nominate 6 candidates, names published and procedure for public input, and President appoints 9
 - Members appoint own chair, vicechair and secretary
 - Requirement for members to be independent and to act in public interest
 - Protection of tenure and limited grounds for removal
 - Publication of detailed annual report
 - Budget process not great, though

Broadcasting Council, cont'd

- Council has broad powers
 - Adopt rules
 - Undertake licensing
 - Develop and apply code of conduct, including in response to complaints
 - Imposing sanctions
- But never actually established!

Licensing

- Clear and fair rules with decisions based on clear criteria, including diversity
- Limited grounds for revoking or not renewing licences
- Rules on concentration of ownership and cross-ownership
- Positive content obligations (local and independent programmes)

Community Broadcasters

- Special rules and licensing process for them
 - Non-profit, services community information needs, strong links to community (need to have annual community meeting)
 - Clear rules on funding (only local ads)
- 20% of spectrum reserved for them
- Required to publish more limited annual report

Code of Conduct

- Developed by Council in consultative manner
- List of issues it should cover
 - Fairly standard: accuracy, privacy, balance, protection of children, interviews, covert recording, sex, crime and anti-social behaviour
- Procedures for complaints to be developed by Council
- Limited sanctions (warnings, replies, statements)
- Rules on corrections and right of reply

Other

- Number of prohibitions relating to licences
- System of administrative sanctions, including licence suspension and revocation, albeit applied by Council
- Appeals from Council go to President
- Also fines, e.g. for breach of rules on licences

Discussion

- What do you think about this assessment of the Broadcasting Law? Do you agree or do you feel it is too positive or too negative?

Public Service Media Law

- Placed before Parliament at same time as Broadcasting Law
- Controversial because of public service newspapers
- Withdrawn before passed
- Otherwise, had pretty progressive provisions, including as to independence of oversight boards, financial rules, accountability to public

Content Restrictions

- Basically no reforms in that area (defamation, etc.)
- Large number of problematical provisions (overbroad, not sufficient defences, criminal when should be civil)
- Penal Code but also other laws, such as Official Secrets Act

Digital Restrictions

- Especially problematical content restrictions
 - Found in different laws: Telecommunications Act, Electronic Transactions Act, Penal Code
- Broad, vague and often parallel and harsher than Penal Code
- 66(d) campaign – partially successful but not broad enough (including other rules in Telecommunications Act)

Digital Restrictions, cont'd

- Number of shutdowns, particularly Rakhine State
 - Not clear whether legal authorization for this was established
- Some measures to promote access, largely via mobile phones
 - 2010: 1% of population
 - 2020: 40% (22 million)
 - Jan. 2023: 44% (24 million)
 - Still increasing but has slowed down

RTI

- Longstanding campaign from around 2013
- Ministry released draft law in Feb. 2016
- NLD government never took it forward although there were some signs it would
- Not entirely clear why (Military? Lack of enthusiasm of NLD?)

Exercise

- Assessing pre-coup laws
- Go into breakout groups
- Appoint one person as rapporteur to be ready to report back to the group



Thank you

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