

Myanmar: Note on Amendments to the Printing and Publishing Enterprises Law

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On 6 March 2023, the military council ruling Myanmar issued the Law Amending the Printing and Publishing Law, SAC Law No. 17/2023,¹ which amended sections 6, 9, 10 and 11(b) of the country's Printing and Publishing Enterprises Law (PPEL), the original version of which dates from 2014. These amendments to the law weaken the already inadequate safeguards contained in the PPEL to protect the printing, publishing and news industries from abuses of power. The Centre for Law and Democracy (CLD) has prepared this Note² to evaluate these amendments from the standpoint of international standards on freedom of expression.

1. Overview of Amendments

Myanmar's PPEL requires printers and publishers, as well as news agencies, to register with the Ministry of Information. These entities are defined broadly. For example, a "news agency" is defined in section 2(f) of the PPEL as an enterprise, a corporation, a company or an organisation which gathers "local and foreign news items" and distributes them to the media, whether or not for a fee. This definition could potentially encompass various actors beyond news agencies *per se*, such as thinktanks or other civil society groups. The definition of "printer", in section 2(d), is even broader, covering an owner of a publishing house or printing-press, the latter of which is then defined in section 2(a) as including any device used for printing, including machinery using electronic or laser technology, so that "printers" could be understood as encompassing any office containing a computer printer.

Section 4 of the PPEL provides that applications for "recognition" of such businesses must be accompanied by "correct and complete documents", while section 5 provides that the

¹ Published in English in The Global New Light of Myanmar, 7 March 2023, p. 2,

https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2023/03/7_March_23_gnlm.pdf.

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Ministry of Information must issue a certificate of recognition after a “specified fee” is paid. The Ministry of Information may revoke or suspend certificates (section 6) and there is a limited right of appeal to the Minister of Information if this occurs (section 7). The PPEL prohibits anyone from engaging in printing, publishing or news agency activities without a certificate of recognition (section 15) or where a certificate of recognition has been revoked (section 16).

Prior to the 2023 amendments, section 6 of the PPEL listed only one circumstance which would lead to the revocation or suspension of a certificate of recognition, namely where it had been applied for in a dishonest or deceitful manner. A new ground for revocation or suspension of a certificate of recognition has been added to section 6, namely for breach of section 8, which prohibits the dissemination by a printer or a publisher of several types of content, following an investigation (presumably undertaken by the Ministry of Information). This is in addition to potential individual liability for breaching section 8, as the amendments have not altered sections 17 and 20 of the PPEL, which provide that individuals who are responsible for breaching section 8 may be sanctioned with fines ranging from MMK one to three million (approximately USD 475-1,425).

The amendments have also altered the procedures for declaring a publication to be invalid (i.e. declared illegal or effectively cancelled) for breaches of section 8. Prior to its amendment, section 9 of the PPEL provided that where a publication is suspected to have breached section 8, the government or an aggrieved party could apply to the relevant district court or to a self-administered division or zone to have it declared invalid, while section 10 allowed courts to issue an injunction to ban temporarily the distribution of a publication pending the outcome of the application. The 2023 amendment to section 9 instead authorises the Ministry of Information to publish a notification in the State Gazette that a publication is invalid due to breach of section 8, while section 10 has been amended to provide that, as soon as the Ministry of Information has published such a notification, police officers may confiscate the publication under the Law of Criminal Procedure. There is no mention of any right to appeal against such notifications in the amendments.

Previously, section 11(b) of the PPEL required printers to deposit copies of publications with the Ministry of Information for “registration and copyright” purposes. This subsection has been amended to require the publisher, instead of the printer, to send copies to the Ministry. Under section 2(e) of the PPEL, a “publisher” is anyone who publishes a publication, and “publication” is defined broadly in section 2(c) to include manuscripts, printed material, electronic material and other material having a similar visible form. Under the PPEL, anyone held liable for breach of section 11 is subject to court-imposed fines of MMK 100,000 to 300,000 (approximately USD 48-143).³

³ Sections 18 and 21.

2. Analysis of Amendments

Prior to the 2023 amendments, CLD had already expressed concerns with several aspects of the PPEL.⁴ Although it representing in many areas an improvement over the 1962 Printers and Publishers Registration Law which it replaced, the 2014 PPEL nonetheless failed to meet international standards in various respects. These include its unnecessary registration system for news agencies, printers and publishers, which international human rights bodies and experts view with scepticism due to the risk they could be abused and the lack of any real need for them. As noted by the special international mandates for freedom of expression in their 2003 Joint Declaration:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.⁵

The potential for abuse is particularly pronounced in the PPEL due to the fact that it lacks details on procedures and requirements for issuing a certificate of recognition and leaves much up to the Minister of Information. Prior to the amendments, CLD recommended abolishing the recognition procedure or, failing that, specifying that applications for registration could not be denied or registrations suspended or revoked for reasons other than the submission of fraudulent documents, as well as establishing clear timeframes for the issuance of certificates, providing for an appeal to the courts and ideally having the process overseen by an independent body.⁶

Instead of abolishing the system of recognition, the 2023 amendments significantly expand the powers of the Minister to revoke or suspend certificates of recognition by adding in breach of section 8 as grounds for this. These additional powers allocated to the Minister are exacerbated by the 2023 amendments to sections 9 and 10 of the PPEL, which have eliminated the role of the judiciary (and self-administered division or zones) in determining whether a publication should be declared invalid for breach of section 8 and instead vesting this power in the Ministry of Information. Thus, the Minister now has both the power to suspend/revoke the certificate of recognition of and to authorise the police to seize a publication for breach of section 8. These are all extreme measures which should be imposed only in highly exceptional circumstances, if at all, following a court order which is subject to full appeal rights. Among other things, all of these powers offend the fundamental international law principle that any regulation of the media should be undertaken only by bodies which are independent of the government.

⁴ See Centre for Law and Democracy and International Media Support, *Reforming Myanmar's News Media Law and Printing and Publishing Enterprises Law*, January 2019, <https://www.law-democracy.org/live/wp-content/uploads/2019/01/Media-Law-and-PPEL-Note.Jan19.final.pdf>.

⁵ Adopted 18 December 2003, <https://www.osce.org/files/f/documents/4/0/28235.pdf>.

⁶ Centre for Law and Democracy and International Media Support, "Reforming Myanmar's News Media Law and Printing and Publishing Enterprises Law", January 2019, p. 10, <https://www.law-democracy.org/live/wp-content/uploads/2019/01/Media-Law-and-PPEL-Note.Jan19.final.pdf>.

These problems are exacerbated by the fact that there is no requirement that the violations of section 8 be either severe or recent. As such, the Ministry of Information could act against a publication if it concluded that some previously disseminated content breached section 8 or that current content represented only a minor breach of its rules. International law requires sanctions for breach of restrictions on freedom of expression to be proportionate in the sense that their severity is tailored to the gravity of the breach of the rules, which these measures clearly are not.

And these problems are further exacerbated by the problematical wording of the content restrictions in section 8. While these restrictions generally respond to interests which may justify restrictions on freedom of expression – such as protecting equality, national security, the reputations and rights of others, and public order – the wording of many provisions is overbroad. For example, section 8(a) prohibits expressions which “can harm the ethnic groups or the citizens racially, religiously or culturally”, which is much broader than the international human rights recognition of prohibitions on incitement to discrimination, hostility or violence. Similarly, section 8(b) prohibits expressions which “can harm national security, the rule of law, community peace and tranquility”, which sets out far too low a standard (i.e. “can harm”) and fails to require a sufficiently close nexus between the expression and the risk of harm to a legitimate national security interest.⁷

Conclusion

The March 2023 amendments to the PPEL represent a step backwards as far as freedom of expression and the rule of law are concerned. By further concentrating control over regulatory processes for news agencies, printers and publishers in the Ministry of Information, the amendments have eliminated the already inadequate protections against abuses of these processes and left decisions with potentially significant ramifications from the standpoint of freedom of expression to the discretion of the executive. CLD recommends that the amendments be withdrawn until such a time as democracy returns to Myanmar and the PPEL can be revised in a democratic manner following adequate consultations with all interested stakeholders and with a view to addressing the shortcomings of the PPEL from the standpoint of international standards on freedom of expression.

⁷ See, for example, *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, prepared by a group of experts convened by the London-based NGO ARTICLE 19 and adopted on 1 October 1995, Principle 6, <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.