

Superficial amendment leaves Broadcasting Law undemocratic

The newly adopted Broadcasting Law Amendment (2018) contains only superficial change, fails to protect freedom of expression, and reflects the government's lack of open consultation.

The Amendment makes just two substantive changes to the legal framework for the broadcast media. One change is positive for freedom of expression and one is negative.

- **Positive for free expression** The risk of persons and companies monopolising the media will be reduced under the amended Article 51. The broadcasting spectrum is public property and therefore licences should be distributed according to the diverse needs and opinions of the public. Concentrating ownership among just a few persons and companies undermines this diversity. The amendment's replacement of the phrase "100% ownership" with "influential authority" will ensure more flexibility in identifying and stopping those trying to monopolise the media.
- **Negative for free expression** The creation of "temporary licences" under amended Article 14(n) will increase the risk that broadcasters will self-censor and under-invest in their channels. A normal broadcasting licence of 7-10 years frees broadcasters to include content that holds the government accountable, and also enables broadcasters to invest in developing sustainable quality programming. Faced with short licences, broadcasters may cut content that could undermine their relationship with the government, as well as develop only cheap programming intended to make a quick advertising profit.

After entering government in 2016, the NLD quickly announced its intention to amend the Broadcasting Law. Since 2017, there have been rumours that the government has consulted with private companies already holding broadcast agreements, and with international sources. However, the Ministry of Information and Parliament have held no *open* consultations with Myanmar civil society.

In 2017, FEM compared the Broadcasting Law to international standards and made the following recommendations, none of which has been included in the amendment. In particular, FEM urged the government to reform the broadcasting sector in advance of the 2020 elections to ensure that information on political parties, candidates, and policies are given to the public free and fair.

In summary, this Broadcasting Law is not suitable for a democracy and needs amending to remove government-controlled channels and protect the independence of the regulator. The Broadcasting Law also needs to explain how Myanmar will move to digital broadcasting.

Articles 2(h), 4(b), 38(d), 61-62 – Government-run broadcasters

Articles 2(h), 4(b), 38(d) and 61-62 keep government broadcasters. Article 2(h) defines government broadcasters, not limited to only those run by the Ministry of Information. Article 4(b) says that government broadcasters will be kept alongside public-service, community and commercial broadcasters. Article 38(d) gives government broadcasters licences for up to 10 years. Article 61-62 say that the government broadcasters will be funded by a mixture of government budget and advertising.

International standards

The media's role in a democracy is to report and comment on what the government does in order to hold it accountable. Government broadcasters are unlikely to be fair and balanced because the government is unlikely to criticise its own performance and activities. International standards say that governments should not control any media including broadcasters.

Recommendations

- Repeal Articles 2(h), 4(b), 38(d), 61-62 and turn all government broadcasters into public service media.

Articles 5-30 – Broadcasting regulator independence

Articles 5-6 create the Broadcasting Authority which has 13 members including one minister, four deputy ministers, and four senior government officials, who advise the Broadcasting Council on broadcasting policies and spectrum management. Articles 7-30 create the Broadcasting Council which regulates the licensing and develops and implements a code of conduct for broadcasters. Article 12 says that the President appoints nine Council members from 18 shortlisted by the President and speakers of the lower and upper houses of parliament. Article 18 says that the President can dismiss Council members for wrongdoing. Article 91 says that broadcasters and individuals can appeal to the President if they are not happy with the Council's decision.

International standards

Broadcasting regulators must be independent from government control in order to protect media freedom. However, the Broadcasting Authority is mostly government officials and the Broadcasting Council members are chosen by the government, so neither is independent. Most of the Authority and Council members can be dismissed by the President for vague reasons making them easily controlled by the government. Any decision made by the Council can be reversed by appealing to the President, which makes the Council redundant. International standards also say that broadcasting regulators should be representative of society but the law does not ensure any diversity representation. Article 7(b) actually unlawfully discriminates against people whose parents were not citizens.

Recommendations

- Repeal Articles 5-6 and stop all of the Authority's decision-making powers.
- Add a new article before Article 7 saying that the Council should be independent from government and that nobody should try to influence Council members.
- Amend Article 7(b) removing the need for parents to be citizens.
- Amend Articles 9-12 so that Council members are nominated by civil society and parliament, and that members should represent Myanmar's diversity.
- Amend Article 18 so that Council members can only be dismissed by a qualified majority of the Council, and can appeal to a court.

Articles 75-91 – Code of conduct and complaints mechanism

Articles 75-91 create a complaints mechanism in the Council to hear and resolve problems. Articles 75-78(a) create a code of conduct based on ethical values that include balance and impartiality, age categorisation,

privacy, and advertising standards. Articles 78(b)-83 create a body in the Council to hear complaints about broadcasters that have broken the code of conduct. Articles 81-86 give the Council body powers to issue a warning and have it published, rectify false statements, give the right of reply. Articles 87-91 say that the Council can punish the broadcaster including with a warning, administrative fine, or by revoking the licence temporarily or permanently.

International standards

Broadcasting codes of conduct should be based on the principles of international professional ethics and freedom of expression rather than only national moral and ethical values because morality is often vague and subjective according to each individual person and can result in broadcasting councils making arbitrary decisions. International standards also say that complaints mechanisms should follow general principles of due process which should be written clearly in the law, including the right to a hearing, timescales for decisions, processes for clearly communicating the decision, and a clear appeals procedure for judicial (not president) review.

Recommendations

- Amend Article 72 to make the Council complaints mechanism responsible to hear complaints about advertising.
- Add international professional ethics and freedom of expression to Article 75(a).
- Amend Article 79 to include the right to a hearing, timescales for decisions, processes for clearly communicating the decision, and a clear appeals procedure for judicial review.

Missing articles

The Broadcasting Law is missing articles that are normally in broadcasting laws.

International standards

International standards say that broadcasting laws should include rules for elections that guarantee political parties and their candidates the right to communicate their opinions and policies, and guarantee the media's right to report freely and the voters' right to hear different opinions. These guarantees include campaign news coverage, airtime for political parties to explain their policies, and voter education. International standards also say that broadcasting laws should cover the move from analogue to digital technology and the convergence with online media so that people continue to have access to broadcasting media.

Recommendations

- Add an article that guarantees broadcasting rights during elections.
- Add an article requiring broad consultation on the move from analogue to digital broadcasting, which should follow the principles of access and diversity.