

Criminal media laws return, internet threatened

A new legal amendment returns media “crimes” and imprisonment to Myanmar and seeks to further control internet media.

The Second Broadcast Law “Amendment” was “adopted” by the military’s State Administration Council on 1 November 2021 without any advance notice or consultation. The original Broadcast Law was adopted in 2015 but never implemented by the NLD government which amended the law but refused to give up control over television and radio. As a result, when the military grabbed control on 1 February, Myanmar had no fully licenced independent television or radio channels, commonly found in democratic countries, and the military was quickly able to censor all broadcasters.

The military’s Amendment includes eight new articles, most of which add criminal offences to Myanmar’s law books. The Amendment rolls back a decade of legal progress by reestablishing criminal laws targeted solely at the media. Criminal media laws were last seen under the quasi-civilian Thein Sein government. The new Amendment follows a similar pattern of the recent criminalisation of free speech in the military’s amendments to the Electronic Transactions Law and the Penal Code.

Regulating internet media

Article 2 of the Amendment removes the limitation on scope that previously restricted the law to radio and television broadcasters only. In effect, the Broadcasting Law now applies to the internet too, including YouTube, Facebook, TikTok, media websites, and other platforms used to publish videos, podcasts, and similar digital versions of traditional television and radio.

Furthermore, the removal of the scope and the lack of any definition of “media” effectively mean that the law may apply to anyone online regardless of whether they are media or not. Anyone wishing to publish a video etc. would theoretically need to get a broadcast licence from the military-controlled Ministry of Information first. Anyone publishing online would also be subject to the Amendment’s new criminal offences.

According to international law, States should avoid interfering with media freedom except in the most exceptional cases. Under international standards, one allowable exception is broadcasting. As only a few channels can fit on the radio wave spectrum, States are required to use a licencing system that ensures the public has access to independent and pluralistic media. However, the internet, like paper for printed media, is unlimited, and consequently, there is no legitimate reason for licencing media online. The Amendment’s effective inclusion of internet-based media is, therefore, a violation of the right to freedom of expression and media freedom as protected under international law in Article 19 of the International Covenant on Civil and Political Rights.

Criminal offences

Articles 3 to 7 of the Amendment add four new criminal offences to the Broadcasting Law. Article 8 makes each of these new criminal offences “non-cognizable” meaning that the police may arrest without the legal safeguard of a court warrant.

Article 3 makes broadcasting without a licence punishable by up to five years imprisonment. This could be used against people involved in unlicensed (“pirate”) radio stations established after the coup. As Article 3 applies to

anybody “broadcasting” over the internet regardless of location, it could also be used against media outside the country such as BBC Burmese or KIC.

Articles 4 and 6 make broadcasting when a licence has ended or been terminated punishable by up to five years imprisonment. This offence may be intended to apply to previous broadcasters such as DVB or Mizzima. Article 5 makes lying on a broadcast licence application or trying to get multiple licences, punishable by up to three years imprisonment.

According to international law, any criminalisation of expression must be necessary to address a pressing social need and be proportionate. In Myanmar, there is a pressing social need for *more* broadcasters, not less. Furthermore, there is a pressing social need for *independent* broadcasters, which, given that licences are awarded by the military-controlled Ministry of Information, is unlikely. Any criminalisation and imprisonment for broadcasting without a licence is also deeply disproportionate and can only be misused to censor. The Amendment is therefore a violation of the right to freedom of expression and media freedom as protected under international law.

Recommendations

The only institution in Myanmar with the constitutional mandate to adopt laws and amendments is the Union Parliament. Therefore, the Amendment is unlawful in its entirety. Nevertheless, FEM calls on all national and international stakeholders to remind the State Administration Council of their obligations under international law and Myanmar’s Constitution and to significantly revise any such “law” or “amendment” to reflect those obligations.

An unofficial translation of the Amendment follows.

Republic of the Union of Myanmar
The State Administration Council

Second Amendment of the Broadcasting Law

The State Administration Council Law Number 63/2021
(1 November 2021)

The State Administration Council hereby enacts this following law in accordance with Article 419 of the Constitution.

1. This law shall be called the Second Amendment law of the Broadcasting Law.
2. Article 2(a) shall be substituted as followed:
 - a. Broadcasting means the transmission of radio and/or television programmes in encoded and uncoded form by means of terrestrial transmitters, cables, satellites or any other technique intended for direct reception by the general public.
3. The words, “from minimum thirty million kyats to maximum fifty million kyats” in Article 96 of the Broadcasting Law shall be substituted by: “from minimum 3 years imprisonment to maximum 5 years imprisonment, or from minimum thirty million kyats to maximum fifty million kyats, or both imprisonment and fine.”
4. The words, “from minimum five million kyats to maximum ten million kyats” in Article 97 of the Broadcasting Law shall be substituted by: “from minimum 6 months imprisonment to maximum 1-year imprisonment, or from minimum five million kyats to maximum ten million kyats, or both imprisonment and fine.”
5. The words, “from minimum ten million kyats to maximum thirty million kyats” in Article 98 of the Broadcasting Law shall be substituted with: “from minimum 1-year imprisonment to maximum 3 years imprisonment, or from minimum ten million kyats to maximum thirty million kyats, or both imprisonment and fine.”
6. The words, “from minimum thirty million kyats to maximum fifty million kyats” in Article 99 of the Broadcasting Law shall be substituted with: “from minimum 3 years imprisonment to maximum 5 years imprisonment, or from minimum thirty million kyats to maximum fifty million kyats, or both imprisonment and fine.”
7. Article 99 of the Broadcasting Law shall be followed by Article 99(a) as below:
 - a. Anyone who fails to obey or is found guilty to violation of any bylaw, regulation, notification, order, directive or procedure issued in accordance with article 106 shall be punished from minimum 1-year imprisonment to 5 years imprisonment, or from a minimum of ten million kyats to maximum fifty million kyats, and confiscated relevant properties as public funds.
8. Article 105 of the Broadcasting Law shall be followed by Article 105(a) as below:
 - a. The offences contained in this law shall be regarded as non-cognisable offences.

I hereby sign this according to Article 419 of the Constitution. Min Aung Hlaing