

ARTICLE 19

# Myanmar: Broadcasting Law

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2015

Legal analysis

## Executive summary

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Myanmar's newly adopted Broadcasting Law retains the president's power to control the broadcasting sector. It creates a legal framework without safeguards for media independence and continues the government-run media – a type of media normally only found in authoritarian states. The law will quickly become out-dated as it fails to deal with the digitisation of broadcasting, which has happened in all of Myanmar's neighbours.

Democracy requires an independent media to enable the free flow of information and ideas to the public so that individuals can make better decisions that affect their lives, and the authorities can be held to account. Radio and television broadcasters are vital in the dissemination of reliable, pluralistic information to the whole population, including to inaccessible or marginalised communities, in a language that they understand.

In contrast to the printed media, where there is no natural limitation on the number of possible publications and therefore no democratic need to regulate, international standards require the regulation of broadcasting to ensure that the limited spectrum of available channels are democratically distributed. As such, the Broadcasting Law which was adopted in August 2015 is a welcome step as it replaces a previously arbitrary process of regulation under which only a few state-controlled or government-linked channels exist, with a proper legal system.

The Broadcasting Law includes some positive aspects, such as recognition of the basic principles of freedom of expression and media pluralism, and of the fundamental principles of fairness, transparency and participatory processes needed to develop further media policy. The Law also offers a basis for the development of independent regulation, and includes a balanced allocation between public service media, commercial broadcasters and community media.

However, the Law has several substantial areas of concern that will significantly undermine the freedom and independence of the media. In this analysis, ARTICLE 19 makes a number of recommendations, key of which are:

1. The Law should be amended to safeguard the media's independence from government control. In particular, the president should have no role in choosing or removing members of the Council.
2. Government media should be privatised or turned into public service media – it is not acceptable in a democracy to have media directly controlled by the government.
3. The Law's provisions on public service media are vague – the Law should be amended or a new law adopted as soon as possible.

# International standards

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ARTICLE 19 has reviewed the Law on the basis of international legal standards on freedom of expression, and comparative best practices in the area of media regulation. Such standards set out the minimum requirements that states should respect. They are primarily set out in the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR), as well as in regional treaties in Asia, Europe, the Americas, and Africa.

Myanmar is one of the few states worldwide that has not yet signed the major human rights treaties, but is still obligated under international customary law to follow such standards.

## Right to freedom of expression

The guarantee of freedom of expression applies with particular force to the media, and international and regional bodies have repeatedly highlighted the importance of free media in the political process.<sup>1</sup> The right to freedom of expression is not absolute; however, it may only be restricted in very limited circumstances. Any restrictions must:

- *Be prescribed by law*: a norm must be formulated with sufficient precision to enable all individuals to regulate their conduct accordingly, and must be made accessible to the public. A law cannot confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.<sup>2</sup>
- *Pursue a legitimate aim*, as explicitly enumerated in Article 19(3) ICCPR, namely: respect for the rights or reputation of others, the protection of national security, public order, public health, or public morals. Restrictions on other grounds are not permissible under international law.<sup>3</sup>
- *Be necessary and proportionate to the protected aim*. Legislators and law enforcement bodies must balance the right to freedom of expression with other rights and interests and assess whether the circumstances justify a restriction of the freedom of expression. Restrictions must not be excessive. Any restriction must be appropriate, the least intrusive option available, and proportionate to achieving the protected interest or legitimate aim.

## Media regulation and international standards

It is imperative that the media be permitted to operate independently of government control. The primary aim of media regulation should be to promote the development of an independent and pluralistic media. This is necessary for upholding the public's right to receive information from a variety of sources.

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<sup>1</sup> See, e.g. UN Human Rights Committee, General Comment 25, 12 July 1996

<sup>2</sup> General Comment No. 34, CCPR/C/GC/34, adopted on 12 September 2011.

<sup>3</sup> The UN Human Rights Committee has expressed concerns regarding laws on such matters as disrespect for authority, protection of the reputation of a monarch or head of state, and disrespect for flags and symbols on the basis that they do not pursue any of the legitimate interests set out in Article 19 (3); General Comment No. 34, op.cit. para. 38.

Regulation of the media presents particular problems. On the one hand, freedom of expression requires that the government refrain from interference. On the other, Article 2 ICCPR obliges states to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that states are required not only to refrain from interfering with rights, but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under a duty to ensure that people have access to diverse and reliable sources of information on topics of interest to them. A crucial aspect of this positive obligation is the need to promote pluralism within, and ensure equal access to, the media.

The Human Rights Committee (HR Committee) has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance ‘national unity’ violate freedom of expression.<sup>4</sup> The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression.

In order to promote pluralism and protect the right to freedom of expression, it is imperative that the media operates independently of government control. This can be ensured in various ways:

- First, government regulations – laws and bylaws – regarding the media should be adopted only when necessary. For example, most established democracies do not have specific print media laws because, in contrast to broadcast media where there are technical constraints on the number of channels, print media provides few distinctive features which demand a regulatory response.
- Second, when media regulation is necessary, laws and bylaws must include safeguards against governmental control. Any public body with regulatory powers in the media or telecommunications sectors should be fully independent of the government, and protected against interference by political or commercial interests. Without this, the system for media regulation can be easily abused for political or commercial purposes.
- ARTICLE 19 has compiled the relevant principles on broadcasting in its publication, ‘Access to Airwaves’.<sup>5</sup>
- Finally, independent media professionals should develop standards for professional journalism and a code of ethics, both of which should be voluntarily complied with. Self-regulatory media bodies and press councils are responsible for ensuring that the media, including journalists, comply with the law, and for providing remedies to victims of violations.

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<sup>4</sup> HR Committee, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

<sup>5</sup> ARTICLE 19, [Access to the Airwaves: Principles of Freedom of Expression and Broadcast Regulation](#), March 2002.

# Background to the Broadcasting Law

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The Broadcasting Law<sup>6</sup> (the Law) was adopted in August 2015 after nearly two years of drafting discussions.<sup>7</sup> The Law is the third substantive legal change in Myanmar affecting the media directly, the others being:

- Printing and Publishing Law 2014 ([see our analysis here](#))
- News Media Law 2014 ([see our analysis here](#))

The two previously adopted laws both fall far short of international standards. They create a regime of licencing that is not independent from the government, leaving the printed media wide open to abuse. A draft public service media law was also put before parliament, but was withdrawn by the government earlier in 2015 for no justifiable reason ([see our analysis here](#)).

The Broadcasting Law was however developed in a more inclusive manner than the two previous laws, with the government inviting feedback and comments from civil society. The initial drafts of the Law were far weaker than the final version,<sup>8</sup> so the inclusivity has demonstrably improved the Law, bringing it closer to international standards, and both civil society and the government should be recognised for this. Despite generally being more inclusive, it was however not an open and clear process, and civil society was often confused by the status of the draft.

The Broadcasting Law contains 15 chapters, which set out the principles, establish the regulators, provide their powers, explain their rules, lay out the licensing process and include details on sanctions. Surprisingly the Law is missing any provisions on digitalisation and convergence of media.

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<sup>6</sup> ARTICLE 19's commissioned translation of the Broadcasting Law is annexed to this analysis.

<sup>7</sup> ARTICLE 19 has worked with a number of stakeholders in Myanmar to support the process of drafting the law. In particular, ARTICLE 19 wishes to thank: MJA, MJU, MJN, the Committee on Sport, Culture and Public Relations Development, and MPs Khine Maung Yi, Aung Kyaing and Phyo Min Thein.

<sup>8</sup> ARTICLE 19 had reviewed the bill prior to its adoption: "Myanmar: Broadcasting bill risks creating government-controlled media", 10 October 2013, <http://bit.ly/1QxQLC6>

# Positive aspects of the Law

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The Law has a number of positive aspects:

- It recognises fundamental principles as the basis of the development and regulation of the broadcasting sector, such as the need to promote public access to a variety of broadcast services and content, independence of the media, media pluralism, fairness, transparency and non-discrimination in the allocation of frequencies and universal service (i.e. That all areas of the country should be able to access broadcast media services)
- It provides for a balanced allocation of spectrum between public service media, commercial media, and community media
- It provides for a minimum amount of public participation
- It provides a basis for independent regulation of the broadcasting media sector. The Council, which is responsible for adopting and monitoring a broadcasting code of conduct, has a clear mandate and powers, an annual budget, and clear enforcement powers with diverse administrative sanctions
- It provides for a right of rectification and a right of reply.
- While the fundamental principles of fairness, transparency, and participatory processes regarding the development of media policy or the allocation of frequencies are recognised, their practical application, notably in terms of a right to a public hearing, the determination of procedural deadlines, or the organisation of public consultations, should be further detailed in the text of the Law.

The Law also has a number of issues that will need to be addressed in order to bring it in accordance with international standards:

## Issue 1: The Law should explicitly reference freedom of expression

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Articles 3 and 4 list the principles that guide the development and regulation of the broadcast industry. However, they do not define them in reference to international standards on freedom of expression. They also do not make clear that nothing in the Law can be interpreted to allow for a wider restriction on freedom than is provided for under international law. Even though Myanmar has not yet ratified the ICCPR, an explicit reference to Article 19 of the UDHR and the ICCPR would add clarity on the principles.

### Recommendations:

- Articles 3 and 4 should be replaced with the following wording: “The development and the regulation of broadcasting industry in Myanmar shall respect the international standards on freedom of expression as provided for in Article 19 of the UDHR and Article 19 ICCPR. Nothing in this Law shall be construed as providing for a wider restriction on freedom of expression than allowed under international law.” This should be followed with the list of objectives and principles of the Law.

## Issue 2: Government broadcasting services should cease

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In a democratic society, the media’s role is to report and comment on public affairs, and the authorities are able to inform people through such media. In contrast, government-run media is characteristic in authoritarian political regimes which are not ready to receive legitimate criticism or discussion of their activities. Unfortunately, the Law keeps the government broadcasting services (Article 2h, Article 4, Article 38, Articles 61-62) and does not transform it into public service media, as would be normal in a democracy.

### Recommendations:

- Government-owned or government-controlled media should cease to exist, either through a process of privatisation, or transformation into a public service media.
- All references to state/government media in Articles 2, 4, 38, 61 and 62 should be removed from the Law.

## Issue 3: Regulatory bodies should have their independence safeguarded

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The Law creates two bodies to regulate the developing broadcast industry: the Authority (Articles 5-6) and the Council (Articles 7 – 30).

### The Authority

The Authority is a gathering of representatives from the government, the broadcasting sector and selected stakeholders. Its status is not described in the Law, and it has no independence from the government. In its present state, this body is closer to an advisory committee that supports the work of the government on broadcasting policy, and provides a forum for the elaboration of general policy principles, or the general Broadcast Spectrum Management Plan. The Authority has to follow the principles of open, transparent and participatory processes (Article 6.g) but these are not sufficiently defined, for instance in the form of public consultations that would precede the adoption of the Broadcasting Spectrum Management Plan.

### Recommendations:

- The Authority should hold no decision-making power and the role of the government should be further circumscribed as defining general policy principles. For example, Article 106 (which provides that the Ministry can issue “by-laws, rules and regulation”, and that the Authority and Council “shall issue notifications, orders, directives and procedures”) can only be a source of confusion, and should be removed in its entirety from the Law.
- Articles 4 and 6 (b) should make clear that the Broadcast Spectrum Management Plan is “elaborated and managed in the public interest”
- There should be additional provisions inserted into Article 6, para 2, as follows: “In the preparation of the Broadcast Spectrum Management Plan, and where the Authority and the Council need to implement open, consultative processes prior to the adoption of rules or decisions, there shall be a public consultation organised according to the following principles:
  - The decision to open a public consultation shall be widely publicised, and will announce the deadline for participating, contact information and generally all necessary information, in order to allow all stakeholders and the public to take part in the consultation
  - At the opening date of the public consultation, the draft Plan, the draft decision, or the draft rules, shall be made available to the public, and they shall be easily accessible at no cost, particularly via the Internet and various forms of media
  - In a short period after the deadline of the consultation, and except when the respondents have specifically requested that determined business information remain confidential, all replies to the consultation shall be made available to the public and they shall be easily accessible at no cost, notably via the Internet and various forms of media

### The Council

The Council’s status, composition, role, powers and responsibilities are (unlike the Authority) described at length in the Law. It is noteworthy that Council members must be appointed in a transparent process, and may not hold positions in government, the administration of political parties. However, the Council’s independence is undermined as the president appoints members, rather than members being nominated by civil society or parliament, and appointed by the latter. The president is also responsible for removing members – a serious threat to the Council’s independence.

The Law also makes no attempt to ensure that the Council reflects the diversity of Myanmar society, or ensure equality in participation. Indeed, Article 7(b) is actually discriminatory by requiring both parents of members to be citizens. Although a requirement that Council



members are citizens is common and reasonable, requiring their parents to also be citizens is discriminatory and not permitted under international law.

### Recommendations:

- Council members should be nominated by civil society and parliament, with both houses of parliament responsible to appoint a specific number of members. Article 10 should be modified as follows: “Civil society organizations and members of the broadcasting sector shall nominate candidates for the Council. One member shall be chosen among a list of 3 candidates nominated by [PSM, commercial broadcasters, community broadcasters, journalists unions, universities, other relevant csos, ...]”
- Only the Council members themselves should be able with a qualified majority to remove a member, and never the president, and Article 20 should explicitly say which court such members can appeal to.
- Article 7 should include specific acknowledgement of the independence of the regulatory authority on the basis of the following model: “The Council shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies. This autonomy shall be respected at all times and no person or entity shall seek to influence the members or staff of the Council in the discharge of their duties, or to interfere with the activities of the Council, except as specifically provided for by law.”
- Article 18 should be amended as follows: “(1) The Council can only remove a member in the following cases: (a) a member becomes ineligible for appointment to the Council under the conditions set at Article 7 or Article 8; (b) a member abuses his/her position to advance his/her personal interests or the personal interests of any other party or entity; or (c) a member is absent for three consecutive months with no cause. (2) The Council shall decide by a two-third majority. (3) The procedure applicable, which shall be detailed in a regulation adopted by the Council, shall comply with all requirements of due process and notably shall provide for the grievance to be communicated to the defendant in advance, for reasonable procedural deadlines at all stages, for a hearing to be held, for the reasons for the decision to be given in writing.”
- Those nominated to the Council should be reflective of Myanmar society. Article 12 should read as follows: “The Parliament shall appoint the members in order to ensure the equal participation of women and men and to reflect the diversity of society”. Article 7 (b), which provides for a discriminatory requirement that both parents of Council members should be citizens, should be removed from the Law.
- The scope of those banned from being in the Council should include those with family members who hold interests in the media industry. Article 8c should be modified along the following lines: “(c) Holds a position, receives salary from or has, directly or indirectly, significant financial interests in mass media. The same shall apply to the spouse and children of the candidate”.
- The rules relating to payment and reimbursement for Council members should also be set out more clearly, and members should be prohibited from receiving any funds in connection to their function, other than those provided for in the Law. Article 16 should include the following: “(c) All members shall benefit from payment and reimbursement for their functions [terms to be determined]; (d) Members are prohibited from receiving any payment, fund or gift in connection with their functions as members of the Council other than those provided for by law.”

## Issue 4: Powers and provisions of the Council should be improved

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Wherever the Council is granted power to adopt rules, such as those on the allocation of licences (Article 14b, m and n), the rules on fees (Article 14f and k), the duties and responsibilities of the members of the Council (Article 14, l), the broadcast codes of conduct (Article 15c), or where rules of procedure are needed (Article 14d and e, Article 15d, e, f), the corresponding general principles should be defined in the Law. This will help the Council fulfil its role as well as avoid risks of arbitrariness on behalf of the independent regulatory authority.

The Law provides that the members of the Council hold a five-year mandate that can be renewed once. However, to ensure a certain degree of continuity, the Law could organise a partial renewal of the Council at mid-term for the first mandate (Article 17).

ARTICLE 19 welcomes the fact that the Law provides for the Council to be held accountable: it provides for the publication of a detailed annual report (Article 30). However, the regulatory authority should be accountable to the parliament – not the president – and to the public. In addition, the Council should have a website, in order to easily communicate with the public and make all its publications, including the annual report, readily available.

### Recommendations:

- Article 17 could be modified as follows: “(d) By derogation, the first term of half of the members, president excepted, will be of 2.5 years, in order to ensure that the Council will be renewed in part every 2.5 years;”
- Article 22 should provide for the possibility of a third (or other relevant proportion) of the Council members to convene a meeting, to counterbalance the possible absence or inaction of the chairperson. This is a customary practice with regulatory and other similar bodies elsewhere
- We welcome the fact that the Council shall be assisted by a Technical Secretariat (Article 24). However, we suggest that the Law should specify the status and financial conditions for the staff (Article 25)
- The Law should provide a stronger degree of foreseeability and adequacy for the funding of the Council (Articles 27-30).
- Article 22(b) of the Law should stipulate that “Meetings can also be convened at the request of a third of the members.”
- Article 25 should describe the status and financial conditions of the staff.
- Article 27 should be modified to include the following: “The Council shall receive sufficient public funding to fulfil its essential role and duties. The minimum level of public annual funding for a 5-year period shall be agreed upon by the Government and the Council and shall be made in the form of a written Funding Agreement”;
- Article 30 should be amended to include that “(b) The Council shall formally submit its Annual Report to the Parliament, officially present it in a public event accessible to the general public, and make it available through all forms of media and on its website.”

## Issue 5: Licensing should be clear and independent

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The Law provides for licences to be allocated either through a competitive tender in heavily populated areas or for commercial media, or on an ad-hoc basis in less-populated areas or for community media (Article 34). However, more clarity is needed as to which process (a competitive tender or an ad-hoc application) will be applied. In addition, the Broadcasting Management Plan should make clear that the allocation of frequencies will make reasonable space for community media at the local, regional and national level.

The Council is responsible for adopting regulations relating to the application process. In that regard, the general principles of these regulations should be defined in the Law. These principles should cover, in particular:

- The deadlines for application
- The right for each candidate to present their case at a hearing before the Council
- The deadline for the Council to reach and publicize a decision
- The fact that the reasons for each decision should be communicated in writing, and the process for judicial review.

In any case, the power to review the decisions of the Council (as stipulated in Article 91 of the Law) cannot be held by the president, as this defeats the purpose of independent regulation.

Either at the time of the application for a licence or on a yearly basis, the Council receives information on ownership structures, financial operations and other aspects of the operation of media businesses (Article 49, 54, 59, 66). With the exception of confidential business information, the Council should make all information easily accessible to the public, for instance on its website. Indeed, the public should be able to easily see and understand the degree of pluralism and concentration, as well as the diversity of content available, in the media landscape.

### **Recommendations:**

- Chapter VII should provide for the Council to adopt detailed rules on the procedure for applying for a licence as outlined above
- Article 91 should be removed from the Law in its entirety
- Articles 49, 54, 59 and 66 should specify that all information provided by media houses shall be public, except for confidential business information.

## Issue 6: Public service broadcasting should be introduced

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ARTICLE 19 welcomes the fact that the Law provides for the existence of public service broadcasting, and that it will be “free from political interference” as well as from “pressures from commercial forces” (Article 46).

At the same time, the independence, remit, financing, governance structure, and status of the public service broadcaster need to be defined in much more detail. Indeed, the necessary transformation of state/government-owned media into public service media reinforces the need for a clear, detailed legislation on public service broadcasting. We suggest that ARTICLE 19's model law on public service broadcasting<sup>9</sup> serves as inspiration to insert a complete chapter on public service broadcasting into the Law.

### **Recommendations:**

- Dedicated Public Service Broadcasting should be adopted, based on ARTICLE 19's Model Law. Alternatively, a detailed section on public service broadcasting should be inserted into the Law.

## Issue 7: Rules on foreigners should be changed

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ARTICLE 19 welcomes that the provisions on Commercial Broadcasting Services (Articles 47 - 54) seeking to ensure pluralism in the market. There is, however, no justification for the employment of foreigners to be submitted to a prior authorisation of the Council (Article 47).

Similarly, the restriction of foreign capital to a threshold of 30% of a broadcaster's capital cannot be justified: in fact, foreign investment can contribute to the growth of the media sector in Myanmar (Article 48).

Furthermore, for the sake of effectiveness in cross-ownership rules (Article 51), the threshold of 100%, which can easily be bypassed, should be replaced with the notion of "controlling power". The Council is given the task of adopting rules and procedures on media concentration and pluralism (Article 52); we suggest that the general principles should be fully enshrined in the Law (as they already are in part).

### **Recommendations:**

- Article 47 should be removed from the Law, and that the threshold of 30 % should be modified to an appropriate level;
- Article 51 should be modified along the following lines: "Concerning cross-ownership in the print industry and the broadcast media, a private company that holds a controlling interest in a broadcaster cannot hold more than 30% of the capital of a print media business in the same broadcasting zone. A private company that holds a controlling interest in a print media cannot hold more than 30 % of the capital of a broadcaster in the same market."

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<sup>9</sup> The Model Law on Public Service Broadcasting is available at <http://bit.ly/1ogv2sl>.

## Other issues

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ARTICLE 19 welcomes the fact that the Law provides for **community broadcasters** to be part of the media landscape in Myanmar. It is, however, not clear why the community media should serve the needs of geographic communities only: such media could be needed by communities defined on cultural or religious grounds (Article 55(b)). The Law provides that at least 20% of the spectrum should be available for community services, but it is not clear whether that threshold applies on a national, regional, local level (Article 56).

We also recommend that the rules on **advertisement** (Article 72) should include a complaint mechanism that would allow the public to complain about the content of advertising. In addition, the Council should be given the mandate to monitor advertisement.

Under the Law, the **Code of Conduct** shall be, according to Article 75, based on “moral and ethical values” and “widely accepted national standards. In order to avoid the possible arbitrariness inherent to vague, broad moral concepts, we suggest that the Code of Conduct is also based on international professional ethics and good practices, as well as on international standards on freedom of expression. The elaboration process should, as provided, be participatory and open to public consultation as defined above with all stakeholders and the public.

The general principles applicable to procedural rules of the **complaint mechanism** should be specified in the Law (Article 79). They should generally comply with the requirements of due process and notably cover: form and deadline to fill a complaint, the right to a hearing, the deadline for the Council to reach a decision, the fact that the reasons for the decision should be communicated in writing, and the authority competent for judicial review. As has been highlighted above, the President should not be the authority in charge of reviewing the decisions of the Council.

ARTICLE 19 also reiterates that the Law includes no provision on **elections**. We note that in democracies, broadcasters are among the main sources of information about competing political parties and their different policies. The Law should guarantee the right of parties and candidates to communicate their views during elections, the right of the media to report on elections freely, and the right of the electors to access all the information that they need to participate in elections and make an informed choice. In particular, this guarantee should apply to news coverage of political parties’ campaigns, allocation of airtime to political parties, voters’ education, and broadcasting of debates between the candidates.

Similarly, we observe that the Law does not cover **digitalisation and convergence**. We note that all over the world, broadcasting is moving from analogue to digital technology and “converging” with other types of Internet-based media. The Law should take into account digitalization and convergence. In particular, it should ensure that people are well informed about the process, have continuous access to diverse programmes and services, and are able to benefit from any interactive services that develop in the media landscape of Myanmar.

### Recommendations:

- Article 55 (b) should be modified to allow for community media to serve the needs of cultural or religious communities.

- Article 56 should specify whether the allocation of at least 20 percent of spectrum to community media should be measured on a national, regional or local basis.
- Article 72 should be modified to make the Council responsible for monitoring advertising and include a complaint mechanism allowing the public to complain about the content of advertising.
- Article 75 should be modified as follows: “1. The Broadcast code shall be developed through a transparent and participative process open to all broadcasters and stakeholders and will include a public consultation. 2. The Code shall be based on international professional ethics and good practices, as well as on international standards on freedom of expression.”
- Article 79 should be modified as follows: “The Council shall establish procedural rules for accepting, investigating and deciding on the outcome of complaints. The procedures shall comply with the requirements of due process and notably cover: form and deadline to fill a complaint, the right to a hearing, the deadline for the Council to reach a decision, the fact that the reasons for the decision should be communicated in writing, and the authority competent for judicial review.”
- The Law should include provisions on elections as described above.
- The Law should take into account digitalization and convergence as described above. In particular, it should ensure that people are well informed about the process, have continuous access to diverse programmes and services, and are able to benefit from any interactive services that develop in the media landscape of Myanmar.

## About ARTICLE 19

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ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal>.

ARTICLE 19 established an office in Yangon in 2013 and has since been working with a range of stakeholders to reform the laws in the country. A list of our most recent outputs can be found here: <https://www.article19.org/resources.php?tagid=217&lang=en>

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of ARTICLE 19, please contact ARTICLE 19's Yangon office at [Myanmar@article19.org](mailto:Myanmar@article19.org)

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# Annex: The Broadcasting Law (unofficial translation checked by ARTICLE 19)

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**Broadcasting Law**  
**(2015, Pyidaungsu Hluttaw Law Number 53)**  
**13/First of Wa Gaung/1377**  
**(28/August/2015)**

The Pyidaungsu Hluttaw hereby enacts the following law.

**Chapter I**  
**Titles and Definitions**

1. This Law shall be called the Broadcasting Law.
2. The following terms contained in this Law shall have the meanings given hereunder:
  - (a) **Broadcasting** means transmission of radio and/or television programmes in encoded and uncoded form by means of terrestrial transmitters, cables and satellites intended the direct reception by the general public. In this definition, internet based broadcasting shall not be included.
  - (b) **Advertising** means paid-for spots broadcast and/ or sponsored programs which aim to persuade the broadcast audience to promote or patronize/favor a specific idea, individual, product, service and company.
  - (c) **Public service announcement** means a non-profit broadcast which aims to introduce or provide knowledge people to follow or to obey or to introduce thoughts, ideas, intentions and suggestions or other reports which are influence on the people, accordance with the sent reports.
  - (d) **Broadcasting services** mean the public service broadcasting, commercial sroadcasting services, community broadcasting services, government broadcasting services and broadcast distributing services.
  - (e) **Public Service Broadcasting** means the Public Service Radio and Television Broadcasting abiding by and implementing the basic principles of the public service media; such as, universalities, diversities and independence.
  - (f) **Commercial broadcasting services** are commercial organizations, run by Myanmar citizens, or foreigners or foreign organizations with the investment granted by the current laws, which conduct radio or television broadcasting and related activities for profit.
  - (g) **Community broadcasting services** mean radio and television broadcasting which is not intended for the profit, and administered by the civil societies, nongovernmental organizations, public based organizations, acadameic societies and other organization to distribute the necessary information for relevant organization or civil society.
  - (h) **Government broadcasting services** mean radio and television services which is owned and administered by union level government organization, state, region and self-administerative regional governments in order to broadcast public information accurately.
  - (i) **Broadcast Distribution Services** are organizations licensed to provide pay broadcasting services. They distribute radio, television, multimedia programs



- produced by themselves or by other broadcast institutions to their subscribers. Distribution system can be through satellite, cable and terrestrial system.
- (j) **Broadcast Spectrum management** means managing radio and television frequencies designated by the Ministry of Telecommunication and Information Technology only for broadcasting. Authority will manage the broadcast spectrum.
  - (k) **Broadcast license** means the right to operate television and radio stations.
  - (l) **Broadcast zone** means a specific geographic area reached by a broadcast signal.
  - (m) **Code of Conduct** means the Code promulgated and adopted by the Council after due consultation with broadcast industry stakeholders. It includes provisions on ethical practices, content standards and other areas the Council may deem necessary.
  - (n) **Independent producer** is an individual or company who produces programmes for radio or television and who is independent of any particular broadcast institution.
  - (o) **Primary broadcaster** shall refer to public service, commercial, government and community broadcast institutions engaged in production of original programmes.
  - (p) **Authority** means the National Broadcasting Development Authority.
  - (q) **Council** means National Broadcasting Council which is created by virtue of this law. The Council shall be autonomous and independent from government authorities, juridical and natural persons involved in the planning, production, and broadcasting of radio and television programmes.
  - (r) **Ministry** is the Ministry of Information of the Union Cabinet.

## Chapter II Objectives and Principles

3. The overriding objectives of this law are:
  - (a) to promote the use of broadcast spectrum, designated by the Ministry of Telecommunication and Information Technology, as a common development resource,
  - (b) to promote access by the public to a wide variety of broadcast services as well as broadcasting content,
  - (c) to ensure that broadcast services meet minimum standards, and to provide the public with a system for participating in pursuing quality broadcasting which meets the information, education and entertainment needs of the people of Myanmar.
4. The development and regulation of broadcast industry in Myanmar shall be based on the following principles:
  - (a) freedom of expression, professionalism and independence of the broadcast media
  - (b) balanced development of public service broadcasting, commercial, community and government broadcasting services
  - (c) rational and efficient use of the broadcasting spectrum designated by the Ministry of Telecommunication and Information Technology.
  - (d) promotion of fair competition and media pluralism in the field of broadcasting
  - (e) fairness, objectivity, non-discrimination, efficiency and transparency in the procedure for granting frequencies and licenses for broadcast media ensuring that all areas of the country receive broadcast service.

### **Chapter III**

#### **Establishment of National Broadcasting Development Authority, Duties & Responsibilities**

5. The Authority shall be a multi-sectoral and inter-agency body composed of the following:
- Union Minister of the Ministry of Information – Chairman
  - Union Minister of the Ministry of Telecommunications and Information Technology – Vice Chairman
  - Deputy minister of the Ministry of Information – Member
  - Deputy minister of the Ministry of Home Affairs – Member
  - Deputy minister of the Ministry of Science and Technology – Member
  - Chairman, National Broadcasting Council – Member
  - A Representative from Public Service Broadcasters - Member
  - Director, Directorate of Public Relation and Psychological Warfare, Ministry of Defence -Member
  - Representative from the association of commercial broadcasting companies - Member
  - Representative from the computer academic association – Member
  - Director General, Information and Public Relation Department – Secretary
6. The Authority shall assume the following duties and responsibilities:
- (a) Develop in consultation with the Council a long-term strategic national broadcasting development plan.
  - (b) Develop, in consultation with the Ministry of Telecommunication and Information Technology, the Broadcast Spectrum Management Plan;
  - (c) Allocate broadcasting services in designated broadcasting zones and publicize such allocation plan;
  - (d) Draft and adopt policies that will stimulate the growth and development of the broadcasting sector while creating a healthy competitive and free market environment.
  - (e) Approve the technical standards for broadcasting technology, equipment and apparatus related to production, import and distribution.
  - (f) Supervise the broadcast related activities such as manufacturing, importing and exporting of TVRO and satellite receivers and related equipments.
  - (g) In the performance of its duties and responsibilities the Authority shall adhere to open, transparent and participatory process.
  - (h) Facilitate the emergence and enforcement of a seamless and coordinated telecommunications regulatory framework inclusive of the broadcasting industry;

### **Chapter IV**

#### **Creation of National Broadcasting Council, Power, Duties and Responsibilities**

7. Persons who possess the following qualifications shall be entitled to be selected as member of the Council:
- (a) person who has attained the age between 35 and 70;
  - (b) citizen who was born of both parents who are citizens;
  - (c) Those who shall have the expertises by virtue of their education or experience, in the fields of:

- (i) broadcasting,
  - (ii) telecommunications,
  - (iii) law,
  - (iv) business management and finance
  - (v) consumers' protection and citizens' rights education, culture and social development.
8. No one shall be appointed to the Council if he or she:
- (a) Holds an elective or paid position in a political party;
  - (b) Holds a position in a government formed committee or commission;
  - (c) Holds a position, receives salary from or has directly or indirectly, significant financial interests in mass media;
  - (d) Has been convicted, after due process in accordance with legal principles, of a crime of dishonesty or theft;
  - (e) is legally decided as a mentally disabled person;
  - (f) civil service personnel;
9. The process of nominating and appointing council members shall be open and transparent; professional and civil society organizations shall be encouraged to participate in the nomination process.
10. To organize the council, the President, speaker of Pyithu Hluttaw and speaker of Amyotha Hluttaw shall nominate six candidates each, total 18 candidates.
11. The names of nominees shall be published by the authority in advance and the public shall be invited to give feedback on the competence, moral character, and professional standards of these nominees.
12. The President shall appoint the nine Council members out of the nominated members with the regard from public feedback.
13. The Council members shall elect among themselves their own chairperson, vice-chairperson and secretary via secret voting.
14. The Council shall exercise the following powers:
- (a) preparing the necessary policies rules and regulations of this law, for the development of broadcast industry, after the conduct of series of consultation;
  - (b) allowing licenses to the appropriate ones among the applicants after scrutinizing their license proposals;
  - (c) publishing and adopting the broadcasting codes of conduct and rules and procedures;
  - (d) imposing administrative sanctions against a broadcast institution, which after due process, has been found guilty of violating the broadcasting law including rules and procedures adopted by the Council;
  - (e) suspending and revoking after due process the license of a broadcast company for violation of its license subject to appeal to an appropriate court;
  - (f) imposing such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of the operations of broadcast institutions;
  - (g) recognizing broadcast institutions and programmes which have earned public appreciation for quality services;
  - (h) coordinating with the Authority, relevant government departments, civil service organizations and academic societies to create an environment for a free and fair competition in the broadcast industry;
  - (i) assisting for the human resource development of professionalism in the broadcast industry;

- (j) ensuring development of the broadcast industry and protect rights and opportunities of the license holders;
  - (k) establishing fees and tariffs which are fair and reasonable and which provide for the economic viability of broadcast institutions and a fair return on their investments.
  - (l) defining duties and responsibility of council members.
  - (m) defining the numbers of licenses and allocating broadcasting services in designated broadcasting zones of the country.
  - (n) issuing, renewing and revoking broadcast licenses.
15. To exercise the powers vested therein, the Council shall perform the following duties and responsibilities:
- (a) coordinate with the Authority in spectrum management particularly in the area of broadcast frequencies;
  - (b) develop licensing programmes and procedures for broadcast institutions engaged in production and distribution of programmes;
  - (c) adopt broadcasting codes of conduct in consultation with broadcast institutions and civil society organizations;
  - (d) monitor compliance by license holders with the broadcasting law including the code of conduct as well as their original broadcast proposals and terms of licenses;
  - (e) deal with complaints from natural or juridical persons regarding the breach of the codes of conduct or from persons with a direct legal interest regarding the non-compliance by a broadcast institution with its license, provisions of the broadcasting law and any rules and regulations adopted by the Council;
  - (f) conduct investigation including compelling witnesses to appear before it and requiring broadcast institutions to provide it with relevant documents and information;
  - (g) publish regularly bulletins on its activities in mass media;
  - (h) coordinate with the Authority, government agencies, broadcast institutions, professional broadcast associations, and civil society organizations in pursuing programmes and activities for the development of the broadcast industry.
16. All Council members shall :
- (a) be independent and impartial in the exercise of their functions;
  - (b) act at all times in the overall public interest and shall not use their appointment to advance their personal interests, or the personal interests of any other party or entity.

#### **Chapter V** **Tenure of Council Members**

17. (a) The term of the Council is five years.  
(b) The term of the Council members is the same as the term of the Council.  
(c) Members shall serve for five years and may be re-appointed to serve a maximum of two terms. However, the ongoing Council, on expiry of its term, shall continue its functions till the President forms a new Council under this Law.
18. The President may remove chairman and member from the Council only after due process:
- (a) where the individual becomes ineligible, by virtue of section 7 and 8, for appointment to the Council;

- (b) if he or she becomes misuse his/her appointment to advance his/her personal interest or the personal interest of any other party or entity;
  - (c) if he or she becomes mentally incapable of efficiently performing his or her duties as a Council member;
  - (d) if he or she is absent for three consecutive months with cause.
19. Any council member may resign from office on his or her own volition before expiry of the term of office, after submitting his/her written resignation to the President.
20. When a Council member has been removed pursuant to section 18, he or she shall have the right to appeal such removal.
21. When a member of the Council has been removed from office or has resigned, or has passed away, a replacement shall be made following the procedures set in this law. The term of the new council member shall be equivalent to the unexpired term of the removed or resigned or dead member. Replacement shall be made only if there are at least six months remaining of the unexpired term.

## **Chapter VI**

### **Rules of Procedure, Technical Secretariat and Funds**

22. (a) The Council shall meet at least once a month, or more frequently as necessary to discharge its duties. Meetings shall be convened by the chairperson.
- (b) Meetings shall be convened upon the request of chairperson or in his or her absence the vice-chairperson or at least three members.
- (c) The chairperson shall preside at all meetings of the Board and in his or her absence the vice-chairperson. In the absence of both, council members present shall appoint one of its members to preside.
- (d) Five members, including the presiding officer, shall form a quorum.
23. The Council shall take decisions on the basis of a majority vote of those members present, provided that in case of an equal vote, the Chairperson shall have a deciding vote.
24. The Council shall be assisted by a Technical Secretariat organized in accord with the regulation adopted by the Council.
25. The Council shall set out the rules and regulations for compensation and benefits of the technical secretariat.
26. The technical secretariat members, in the performance of their duties and responsibilities, shall receive instructions only from the council, head of the secretariat.
27. The funds for the operations of the Council shall be sourced from the following:
- (a) Union budget;
  - (b) Donation;
  - (c) Other service fees.
28. The Annual Budget of the Council shall be included in the annual budget of the MOI.
29. The annual budget submitted by the Council to be submitted by MOI to the Union Cabinet. The annual budget shall be included in the Budget approved by the Hluttaw and it has to be used in accord with the relevant budgetary laws, regulations and procedures.
30. (a) The Council shall publish and distribute widely an Annual Report, along with the accounts audited by the Auditor General Office. Each Annual Report shall include the following information:
- (i) objectives of Council set for the previous year, the extent to which they have been met and its objectives for the upcoming year;
  - (ii) strong and weak points in implementing the objectives of aboved mentioned subsection (i);

- (iii) information relating to finance and administration inclusive of summary of the audited accounts prepared by Union Auditor General;
  - (iv) the budget for the following year;
  - (v) information on public recommendations or complaints received the previous years and how these were addressed in the case of the latter;
- (b) The Council shall formally submit its Annual Report to the Office of the President.

## **Chapter VII Broadcast Licenses**

31. (a) Those who want to run the broadcast institution:
- (1) shall apply for license prior to starting the broadcast business to council.
  - (2) or a representative of its organization shall apply license.
- (b) The applicant must submit the following documentation:
- (i) the name and registration certificate of the company as a legal entity;
  - (ii) business plan in detail;
  - (iii) technical requirements;
  - (iv) overall programme plan including programme schedule;
  - (v) other requirements that may be set by the Council to be contained in its subsequent issuances.
32. After receiving the broadcast license, a license holder is given no more than one year from the date of issuance of license to start broadcasting.
33. Transfer of a broadcast license to another person or institution is allowed provided such transfer has prior approval by the Council.
34. (a) Based on broadcasting policy, interest of potential broadcasters and market capacity and the public interest, the process for applying for a licence shall be in accordance with the following policies:
- (i) The Council shall, in the higher population density areas or in relation with commercial broadcasting services, issue a competitive tender;
  - (ii) The Council may also, in lower population density areas or in relation to community broadcasting, receive ad hoc licence applications and allow them to provide a broadcasting service;
  - (iii) The Council shall publish regulations and process of applying for a licence.
35. (a) The Council shall adopt the following criteria in reviewing the merit of a broadcast license application:
- (i) financial feasibility and economic viability as evidence;
  - (ii) technical feasibility;
  - (iii) experience of the applicant in broadcasting and related fields;
  - (iv) indications of potential contributions to the growth and development of the broadcasting industry in Myanmar;
  - (v) indications of potential contributions to higher programme quality and content diversity;
  - (vi) the extent to which granting the license would increase concentration of ownership over the media;
  - (vii) strengthen or reinforce efforts towards media pluralism and diversity in media ownership;
  - (viii) other criteria the Council may adopt upon issuance of proper order.

- (b) The proposals in the licence application, including technical proposals and programming proposals, shall not be changed.
36. The council, after receiving the licence application as indicated in the section 31, can accept or reject to issue the licence after due process of scrutinizing in accord with the rules of section 35.
37. The Council shall deposit the license fees collected from the broadcasting institutions into the account of the Ministry for eventually turn over to the Union Budget.
38. The validity of the broadcasting licenses shall be as follows:
- (a) **Public Service Broadcasting**
    - (i) radio broadcasting license is valid for 7 years;
    - (ii) television broadcasting license is valid for 10 years;
  - (b) **Commercial Broadcasting Services**
    - (i) radio broadcasting license is valid for 7 years;
    - (ii) television broadcasting license is valid for 10 years;
  - (c) **Community Broadcasting Services**
    - (i) radio broadcasting license is valid for 7 years;
    - (ii) television broadcasting license is valid for 10 years;
  - (d) **Government Broadcasting Services**
    - (i) radio broadcasting license is valid for 7 years;
    - (ii) television broadcasting license is valid for 10 years;
  - (e) **Broadcast Distribution Services** license is valid for 15 years.
39. Licence holders shall apply, in line with the designated procedures, the renewal of the licence to the council within 45 days after the expiry date.
40. After receiving the application of a renewal of licence, the Council may reject it if it finds that:
- (a) the broadcast institution has during the preceding license term, committed serious violations of the broadcasting law the Council's policies and regulations or its licence conditions;
  - (b) there have been other violations, during the preceding license term, which, taken together, would constitute a pattern of abuse; or
  - (c) it is necessary to reallocate the license to give effect to the public interest.
41. The Council shall:
- (a) allow the renewal of license if it finds no violation of license term in section 40 by a license holder;
  - (b) The Council may also consider the following areas prior to deciding on the renewal of the license in accord with the sub section (a):
    - (i) contributions to higher programme quality and content pluralism and diversity;
    - (ii) practices corporate citizenship;
    - (iii) impact on media ownership, pluralism and diversity.
42. The Council can revoke the licenses under following conditions:
- (a) normal transmission cannot be started after passing the test transmission period of one year;
  - (b) suspension of the broadcasting service or going off-air for more than three months without notifying and seeking prior approval of the Council;
  - (c) transferring the license to another institution or a person without prior approval of the Council;
  - (d) serious violations of the broadcasting law and Council rules and regulations including those related to allocated spectrums and the areas to be covered, basic mechanical requirement for the broadcasting technology and

broadcasting equipment, programme standards and other matters specified in Chapter IX.

43. If the license is not renewed after expiration, the council can terminate the license of respective broadcasting services.
44. If a broadcast institution fails to transmit broadcast signals for any consecutive 12-month period, the station license expires automatically.
45. The Council shall:
  - (a) define the specific license fees on Public Service Broadcaster, Community Broadcasting Services and Government Broadcasting Services.
  - (b) with the consent of the Authority, define specific rates of the license fees on Commercial Broadcasting Services and Broadcast Distribution Services.

## **Chapter VIII Broadcasting Services**

### **Public Service Broadcasting**

46. A public broadcasting service is made for the public and financed and controlled by the public. It is free from political interference and pressure from commercial forces. Through a public broadcasting service, citizens are informed, enlightened and entertained.

### **Commercial Broadcasting Services**

47. In Commercial broadcasting services, for the positions of professional needs and management posts, Foreign citizens are allowed to assume only with the approval of the Council.
48. Commercial broadcasting services can be owned and capitalized by citizens of and/or legal entities registered in Myanmar and foreign individuals or organizations provided that the foreign capital shall not exceed 30 percent of the total capitalization.
49. When applying for a license, applicants have to disclose their ownership structure to the Council and to the public through mass media. Any materials change in ownership, i.e. of five percent or more, after the granting of the license has to be submitted to the Council for its approval.
50. No one individual or corporation shall be allowed to own and operate two or more companies offering the same broadcasting service in a single broadcasting zone. However, this provision does not prohibit any broadcasting company from offering broadcast distribution services in the same broadcasting zone.
51. Concerning with cross-ownership in a private newspaper and broadcast media in a single broadcasting zone or market by a private broadcasting institution and private newspaper media institution, if a company owned an institution 100%, it is not allowed to have shares not more than 30% of the other institution, vice versa.
52. The Council is mandated to come up with detailed rules and procedures to effect provisions on media concentration and cross ownership limitations as referred to in sections 50 to 51.
53. Commercial broadcasting institutions are funded by:
  - (a) Commercials broadcast;
  - (b) Sponsorship;
  - (c) Other related broadcasting activities.
54. Every commercial broadcasting institution shall be required to submit an annual report and financial report to the Council. The annual report shall be categorized as confidential. The annual report shall contain information on the following:



- (a) operational and financial information including market information, shareholders, dividend information, financial conditions, results of operation;
- (b) control and compensation information for board of directors and executive officials;
- (c) corporate governance;
- (d) exhibits and schedules or annexes;
- (e) other information which may be required by the Council as contained in pertinent orders.

### **Community Broadcasting Services**

55. A community broadcasting institution shall operate based on the following criteria:
- (a) the organization is neither for profit nor part of an organization which is working for profit;
  - (b) the overall objective is to provide the distinct information, education and entertainment needs of a specific geographic community;
  - (c) the organization can demonstrate a sufficient link to the community to satisfy the Council that warrants receiving a community broadcasting licence.
56. The Council is mandated to allot at least 20 percent of frequency/spectrum available for community broadcast service.
57. The Council shall come up with distinct simple licensing policies and procedures applicable only to community broadcast service to encourage the setting up of such services and to support their development.
58. Community broadcasting institutions are funded by:
- (a) voluntary contributions by community members;
  - (b) donations by local and foreign partners provided that such support are provided without political and economic conditions;
  - (c) revenues from local advertisements ;
  - (d) proceeds from local merchandising,
  - (e) other revenues which are consistent with their status as community broadcasters.
59. At the end of each fiscal year, community broadcasting institutions shall submit to the Council a financial report.
60. Community broadcasting institutions shall convene a meeting at least annually for members of the community, where the broadcaster presents activity and financial reports, and where members of the community can discuss how the policies and programmes of the station can better serve the community, along with any other issues and concerns and how these can be addressed.

### **Government Broadcasting Services**

61. Government broadcasting institutions are funded by:
- (a) Union budget or state/Division budget;
  - (b) revenue from advertisements;
  - (c) proceeds from product merchandising;
62. All government broadcasting institutions shall submit an annual report and financial report to the Council. The annual report shall contain information on areas identified in section 54.

### **Broadcast Distribution Services**

63. (a) Compliance with program standards set by the Council for contents produced by primary broadcasters and distributed by broadcast distribution services shall

- be the responsibility of the primary broadcasters. For services that are not licensed in Myanmar, distributors shall assume responsibility in ensuring that the content meets standards set.
- (b) Broadcast equipment including satellite receivers, TVRO, set top boxes and related apparatus used by the broadcasters and the broadcast distribution services shall be abide by the technical standards set up by the authority.
64. In operating their program, Broadcast Distribution institutions shall:
- (a) Provide at least 20 percent of all distributed channels are domestic production program channel;
- (b) Provide at least 20 percent of subscribed channel are free to air channels.
65. Broadcast Distribution institutions can earn income from the following means:
- (a) Subscription fee;
- (b) rental from channel capacity;
- (c) revenues from advertising;
- (d) proceeds from product merchandising;
- (e) Incomes from other official businesses related to broadcasting.
66. All broadcast yie6distribution institutions shall submit an annual report to the Council. The annual report shall contain information on areas identified in section 54.

### **Chapter IX Programme Standard**

67. To promote the development of the broadcasting industry in Myanmar, broadcasting institutions shall prioritize the production and airing of locally-produced programs.
- (a) Radio broadcast institutions which reaches the entire country shall allot at least 70 percent of its programs to local programs.
- (b) Commercial TV institutions with national coverage shall allot at least 30 percent of its programs to locally-produced programs.
- (c) Commercial TV institutions with national coverage shall also carry at least 20 percent of programs from the local independent producers, of which 10 percent shall be broadcast at prime time.
68. The Council is authorized to review and adjust these content allocations as set out in section 67 either for a broadcasting sector as a whole or for a particular broadcaster as part of its licence conditions, and may adopt necessary policies and rules after due consultation with broadcast stakeholders.
69. (a) Broadcast programs for special audiences such as children and youth, women, senior citizens, and differently-abled individuals shall promote and protect their rights. Programs for children and youth shall be aired at designated time. Such special programs should state the type of the audience when broadcast.
- (b) Sign language can be used for some programs for hearing-impaired persons.
70. Broadcast institutions shall preserve the pictures, sounds, photographs, and recordings for at least 28 days after broadcasting.
71. A copy of broadcast contents which are of high historical value shall be shared with national archive, national library and the national museum. The copyright for such broadcast material or content shall remain with the licensed copyright owner.
72. (a) Commercial broadcasting institutions can broadcast commercial advertisements for a maximum 12 minutes for every one hour of daily broadcasting.
- (b) Commercial broadcasting institutions shall allot at least 5 percent of their airtime to public service advertisements for free as part of their corporate

social responsibility. The Council may recommend public service advertisement which commercial broadcasting may air.

73. No broadcasting institutions shall sell airtime except for advertisement.

74. The production of the broadcast advertisements using local resources shall be encouraged.

### **Code of Conduct**

75. (a) The broadcast code shall be developed based on the following:

- (i) moral and ethical values;
- (ii) widely accepted [national] standards for the media.

(b) The process of crafting the Code shall be transparent and participative.

76. Upon adoption of the Code, the Council shall initiate an information and education campaign to make broadcasting institutions and the public aware of its existence and provisions.

77. The Code of Conduct shall define content and production standards in the following areas:

- (a) balance and impartiality in news and current affairs programming and the duty to strive for accuracy in these programmes;
- (b) protection of children;
- (c) classification of programmes, including films, according to the recommended age of viewers;
- (d) the terms, conduct and editing of interviews;
- (e) the use of covert recording and subterfuge;
- (f) keeping within accepted boundaries of taste, decency and ethical values, including in relation to the portrayal of sexual conduct, violence and anti-social behavior, the use of strong or abusive language, and the broadcasting of text message sent in by viewers or listeners;
- (g) the coverage of crime and anti-social behavior;
- (h) distinguishing between factual material and comment;
- (i) the treatment of religion, ethnic minorities, women and men, minors and disadvantaged groups;
- (j) human right issues;
- (k) respect for privacy;
- (l) the use of subliminal images or sounds; and
- (m) appropriate advertising, including truth.

78. (a) The Council will be solely responsible in monitoring full compliance to the Code by all broadcast institutions as set out in section 77.

(b) The Council is duty-bound to accept and take action on all complaints about violation of any provision of the Code from any individual or organization. Such complaint shall be dealt with by the Council in a fair and balanced manner.

79. To give effect to section 78(b), the Council shall establish internal procedures for investigating and processing complaints. Such procedures shall include ensuring that the broadcast institution is given an opportunity to be heard and defend itself from the complaints or accusations.

80. After due investigation and evaluation, the Council shall decide on the merit of the complaint and prepare a report based on the findings and send it to both the complainant and the broadcast institution concerned.

81. If the complaint is found to be of merit or valid as described in section 78(b), the Council shall apply one or more of the following sanctions:

- (a) a warning;

- (b) rectification of any false statements of fact;
- (c) a right of reply;
- (d) requiring the broadcaster to make the proper announcement on the decision through print and broadcast;

82. All broadcast institutions shall adhere to the decisions made by the Council on matters related to the Code.

83. Lodging complaint with the Council shall not preclude an individual from pursuing any other remedy such as the filing of case in court.

#### **Broadcast Rectification**

84. (a) Broadcast institution is responsible to rectify any factual mistakes determined to be harmful upon the broadcast institution just being made aware of such mistakes.
- (b) Rectification must be done within 24 hours notice of the incorrect broadcast or, if that is not possible, at the earliest possible time.
- (c) Rectification does not free the broadcast institution from any legal action the aggrieved party may file before appropriate court in redress of grievances.

#### **The Right to Reply**

85. (a) The broadcasting services shall be obliged to broadcast a reply by a person or organisation whose legal rights are breached by a false assertion of fact published by the institution in question;
- (b) an obligation to broadcast a reply exists only in regard to facts and not opinions and only if the reply does not exceed the volume of the text to which objection has been raised;
- (c) Reply must be done within 24 hours or if this is not possible, at the earliest time.
86. If the broadcast institution refuses to broadcast the reply, the aggrieved person or organisation may appeal to the Council.

### **Chapter X Administrative Sanctions**

87. The Council shall impose administrative sanctions on any broadcast institution found violating license agreement, and other pertinent provisions of this law or rules or regulations adopted by the Council.

88. The type of administrative sanction or sanctions shall depend on the gravity and frequency of the offense or violation. Sanctions available at the disposal of the council include the following:

- (a) Warning;
  - (b) Temporary suspension for the broadcast program found violating the law;
  - (c) Limiting the air time in broadcasting;
  - (d) Imposing cash penalty;
  - (e) Suspension of certain amount of time to the broadcasting institution;
  - (f) Non-extension of the broadcast license;
  - (g) Revocation of the broadcast license.
89. (a) The Council, shall revoke or suspend the licenses if it is found out that the license holders violate the provisions of this law or deliberate use of wrong information in license application.
- (b) The Council, shall revoke the licenses only under following conditions:

- (i) normal transmission cannot be started after passing the test transmission period as provided for in section 32;
- (ii) suspension of the broadcasting service or going off-air for more than three months without notifying and seeking prior approval of the council;
- (iii) transferring the license to another institution or a person without prior approval of the Council;
- (iv) serious violations of the broadcasting law, Council's rules and regulations, programme standards or the code of conduct, including those related to allocated spectrum and the areas to be covered, and basic mechanical requirement for the broadcasting technology and broadcasting equipment.

90. Proceeds of cash penalties shall be returned by the Council to the Union Budget through distinct bank account of the Ministry.

### **Chapter (XI)**

#### **Appealing**

91. The broadcast institutions or individuals who is not satisfied with the decisions of the Council set as of sections 36, 40, 42, 88 and 89 can appeal to the President within 30 days.

### **Chapter XII**

#### **Prohibitions**

92. No one is allowed to operate a broadcasting service without license issued by the Authority.

93. No one is allowed to continue its broadcasting service after termination of its license until such license is renewed by the Authority.

94. Violation of sections 50 and 51 and deliberate use of wrong information in license application are prohibited.

95. No one is allowed to continue its broadcasting service upon revocation and suspension of its license.

### **Chapter XIII**

#### **Offences and Penalties**

96. Any one who violates the prohibition as provided in section 92 shall be charged from minimum thirty million kyats [approx. 25,000 USD] to maximum fifty million kyats and confiscated properties.

97. Any one who violates the prohibition as provided in section 93 shall be charged from minimum five million kyats to maximum ten million kyats.

98. Any one who violates the prohibition as provided in section 94 shall be charged from minimum ten million kyats to maximum thirty million kyats and confiscated properties.

99. Any one who violates the prohibition as provided in sections 95 shall be charged from minimum thirty million kyats to maximum fifty million kyats and confiscated properties.

### **Chapter XIV**

#### **Transitory Provisions**

100. The existing Broadcasting institutions before the enactment of this law shall apply for license within one year from the effect of this law.

101. All existing agreements which are substantially at odds with the provisions of this law shall review, within the period set as of the section 100, for the purpose of making necessary amendments to make them consistent with the provisions of this law and in the overall public interest.

102. The existing rules, regulations, by-laws, notifications, orders and directives shall remain in operation in so far as they are not contrary to this law.

103. The Authority and the Council shall be established within six months after the promulgation of this law.

#### **Chapter XV Miscellaneous**

104. The Council members, within the period of assigning their duties in accord with this law, shall be assumed as the public servant defined as of section 21 of the penal code.

105. The Council can sue and can be sued.

106. (a) The Ministry shall issue by-laws, rules and regulations with the consent of cabinet to enforce this law.

(b) The Authority and Council shall issue notifications, orders, directives and procedures.

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(By) Thein Sein  
President of State  
The Republic of the Union of Myanmar