ARTICLE 19

Myanmar: Printing and Publishing Law

November 2014

Legal analysis

Executive summary

In 2014, ARTICLE 19 analysed the 2014 Printing and Publishing Law of Myanmar in the light of international standards on freedom of expression. The Ministry of Information unveiled a draft of the Law in 2013, in a move that took observers by surprise. Responsibility to develop a law to replace the 1962 Printers and Publishers Registration Law had previously been entrusted to the Interim Media Council. The Law was adopted and signed by the President in 2014.

The Printing and Publishing Law (the Law) represents a step forward compared to the draconian 1962 law. It no longer facilitates prior censorship, and the penalties imposable under it are relatively modest. Oversight over the printing and publishing sector has been partly transferred from the government to the courts.

At the same time, it is questionable whether a specific law to regulate the printing and publishing sector is needed at all. ARTICLE 19 is not convinced that the Printing and Publishing Law will contribute to its stated goals of promoting freedom of expression and supporting the development of a vibrant printing and publishing sector. Its primary effect is to create a series of bureaucratic formalities with which companies in the sector must comply, such as registering with the Ministry of Information and sending it information on imports and exports of publications. While these procedures are less problematic than those under the 1962 law, it is not clear why they are necessary.

Vague definitions of what constitutes a "printer," "publisher" or "'news agency" create confusion as to whom the Law applies to, and similarly vague restrictions on the content of publications risk having a chilling effect.

Summary of key recommendations

- The stated goal of the Law to ensure "ethical" practices and compliance with "relevant laws" should be dropped and replaced with a more substantive guarantee for freedom of the media
- The requirement to register should be abolished entirely. If the requirement to register is not abolished, the registration procedure should be amended and set out clearly within the Law itself. Those whose registration has been suspended or cancelled should have the right to appeal to a court
- The content restrictions listed should be removed and dealt with using laws of general application, such as the penal code. If they are not removed, they should be defined more clearly and narrowly in line with international standards
- The requirement to notify import and export of publications should be abolished entirely.

Introduction

On 4 March 2014, following a year of deliberations, Myanmar's Parliament approved two new bills concerning the media: the Printing and Publishing Law and the News Media Law. Two weeks later, President Thein Sein formally signed them into law.

Until the adoption of these laws, the main law regulating the press in Myanmar was the Printers and Publishers Registration Law, enacted in 1962. It provided the legal basis for a system of extensive prior censorship, enforced by the Press Scrutiny and Registration Division.

In 2012, the Government committed to ending censorship and announced the abolition of the Division. It also promised a more democratic legal framework for the media. In August 2012, the Interim Press Council was formed and tasked with helping to developing a successor to the 1962 law.

It therefore came as a surprise to many observers when, on 27 February 2013, the Ministry of Information released a Printing and Publishing Enterprise Law Bill and submitted it to the Lower House of Parliament. This resulted in criticism from various stakeholders, who claimed the Ministry was attempting to pre-empt the draft law under preparation by the Interim Press Council. The Ministry maintained that it did not intend to regulate the press but merely to establish a technical registration requirement for printers and publishers. It, however, tendered a series of amendments to the draft in response to criticisms of specific provisions.

Despite not having been developed as a coherent package, the two bills were eventually adopted together.

ARTICLE 19 published an analysis of the News Media Law in July 2014,[1] finding that – despite significant shortcomings - it represents an important first step towards guaranteeing media freedom in the country.

This analysis reviews the Printing and Publishing Law (the Law)[2] in the light of international standards on freedom of expression, in particular the International Covenant on Civil and Political Rights (ICCPR). It also offers comments on how it could be brought further in line with these standards and the practice of other emerging and well-established democracies. It is based on ARTICLE 19's extensive experience supporting progressive reforms in the area of freedom of expression and access to information.

Although Myanmar has neither signed nor ratified the ICCPR or other key human rights treaties, ARTICLE 19 suggests that the standards in these treaties are still relevant to the interpretation of Myanmar's Constitutional guarantees of freedom of expression.

Positive features of the Law

In this analysis, ARTICLE 19 questions whether the Law is capable of contributing to its stated goals of promoting freedom of expression and supporting the development of a vibrant printing and publishing sector. The Law appears largely unnecessary, and does not set forth any specific financial support measures or guarantees against undue government interference.

At the same time, it should be acknowledged that the Law represents a meaningful step forward compared to its 1962 predecessor. Moreover, in between its publication in 2013 and its enactment in 2014, the Law underwent significant amendment in response to feedback and criticism from various stakeholders. As a result, several provisions that were problematic from the standpoint of international standards have been deleted.

Much work remains to be done; but the Law as adopted does not facilitate prior censorship, and the penalties imposable under it are relatively modest and do not include imprisonment. Oversight over the printing and publishing sector has been partly transferred from the government to the courts, and the scope of restrictions on the content of what may be published has been narrowed to some extent. These are all developments which ARTICLE 19 welcomes.

Issue 1: Lack of clear legitimate objective

Most democracies do not have a specific law on printing and publishing. These are viewed as ordinary commercial activities that should not be regulated separately; the procedure to establish them is the same as for any comparable business. This does not mean that there are no restrictions at all on what the press can publish. For example, prohibitions on content that incites to violence or discrimination, sexually exploits minors or infringes a trademark can be found in virtually every country. But in democracies these rules are usually found in laws of general application, rather than in specific press legislation.

The adoption of the Law is not inherently problematic. However, legislation of this kind does raise the question whether its purpose and effect is to strengthen freedom of expression - such as defining rights of journalists or promoting diversity and pluralism of the media – or rather to create additional mechanisms to control the press, over and above the general laws applicable to any individual or business.

The justification for the Law is explained in Article 3 (Purposes), which describes three main objectives: a) development of a thriving, modern printing and publishing business; b) enabling freedom of expression; and c) ensuring that this right is exercised "systematically according to the relevant laws" and in an ethical manner.

The first and second goals are indeed legitimate. However, it is not obvious that any of the Law's provisions in fact contributes in a meaningful way to either of these goals. Countries that wish to promote a free, diverse and thriving printing and publishing sector typically take measures such as:

- Guaranteeing publishers preferential postal rates
- Abolishing import tariffs and taxes on printing equipment, ink and newsprint
- Preventing harmful monopolies by imposing limits on concentration of ownership in the sector
- Protecting publishers from unjustified searches of their offices by police
- Laying down clear and objective criteria for the allocation of government advertising funds, to ensure advertising is not withdrawn or withheld from publishers because they are critical of the government.

The Law does not contain any provisions along these lines.

The Law's main focus seems instead to be on the third goal, which is a problematic one:

- It is not clear why a new law is needed to promote compliance with unspecified existing "relevant laws", which presumably can already be enforced
- Furthermore, the desire to ensure "ethical" conduct, while easy to understand, should be resisted. In a democracy, the authorities should stay in the background as much as possible and only intervene against media content when the law has been broken and only to the extent necessary to protect a legitimate interest. When governments are given more extensive powers to take action against 'unethical' media content, they often end up using these to suppress embarrassing truths and legitimate criticism of their own functioning.

Instead, the media should be allowed and encouraged to regulate themselves, by agreeing on codes of ethics and establishing mechanisms to enforce these, free from government interference. This model is not without shortcomings either; in some countries, self-regulation has been unable to prevent instances of unethical behaviour by media outlets. In any country where there is freedom of expression there will probably be some examples of abuse of this freedom, but that is still to be preferred over a situation with little or no freedom of expression at all.

Recommendations:

- Ensuring "ethical" practices and compliance with 'relevant laws" should not be objectives of the Law under Article 3;
- Consideration should be given to incorporating more substantive guarantees of press freedom into the Law.

Issue 2: Registration requirement with unclear scope and purpose

Article 4 of the Law states that printers and publishers who wish to operate in the industry must apply for an "acknowledgement" from the Ministry of Information. The same applies to organisations or companies that wish to establish a news agency.

The applicant must submit the "required data completely and correctly", and Article 5 mentions that a fee is payable. The level of the fee and the nature of the required data are not specified; presumably, the intention is that these matters will be further defined in a future implementing regulation. The Ministry of Information is empowered to adopt further procedures and regulations (Article 25).

Once the applicant has completed these formalities, the Ministry of Information "shall give out the business certificate" for a specified time (Article 5). The certificate may subsequently be withdrawn or temporarily suspended if the Ministry determines that false information was provided at the time of the application (Article 6). The person concerned may then request reconsideration of that decision by the Minister of Information (Article 7).

Printing, publishing or operating a news agency without a certificate from the Ministry, or while the certificate is suspended, is an offence (Articles 15 and 16) that is punishable by a fine of up to five million Kyats.

These rules are less draconian than those under the 1962 law, which allowed the Press Scrutiny and Registration Division to refuse a registration request if it was not considered "satisfactory" (giving the Division so much discretion that it amounted to a licensing system), which moreover was enforceable by prison sentences of up to three years.

Nevertheless, ARTICLE 19 remains concerned about the registration requirement under the Law. It gives no indication of the purpose for which it is being imposed. This suggests it may be an unnecessary formality or, worse, a means for the Ministry to continue to exert a certain degree of control over the printing and publishing sector. As special mandates on freedom of expression stated in 2003,

> Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.[3]

These concerns are further amplified by the fact that the Law gives barely any indication what the registration procedure will look like in practice. As a result, the Ministry is left with a wide degree of discretion to decide which information an applicant must supply; to set the level of the registration fee; to decide how long to wait before issuing the certificate; and to choose the length of its validity. It might even be able to attach conditions to the issuance of a certificate, which would be wholly inappropriate.

A further problem is that the Law fails to define clearly exactly who is subject to the registration requirement:

- A "printer" is defined as, among others, the owner of a printing machine, but it is not clear whether this refers exclusively to large-scale printing presses or also includes the type of smaller printer that is used in homes and offices.
- A "news agency" is described as an entity which "collects local and international information and distributes it to media" – a definition which could cover many organisations that do not regard themselves as news agencies, such as a publisher of telephone directories or a postal service.

Article 23 does partly correct this problem by expressly exempting a range of institutions that might otherwise be covered from the registration requirement. This includes national, foreign and international public bodies, educational institutions, civil society organisations and banks. Yet it seems likely that many other organisations that are not news agencies will face uncertainty whether or not the Law applies to them.

Finally, as underlined by the special mandates on freedom of expression, if a registration system is imposed on the print media, it should be overseen by a body that is independent of government.[4] This helps ensure that the system is not used as a way to cause inconvenience to publishers who are critical of the government. The Ministry clearly does not meet this requirement. At the very least, the Law should make it possible to appeal a decision by the Ministry to suspend a certificate to a court, rather than to the Minister of Information, who is unlikely to take a very different position than his own civil servants.

Recommendations:

- Ideally, the registration requirement should be abolished entirely;

- Alternatively, the registration procedure should be set out clearly in the Law itself, rather than in implementing legislation, and it should be straightforward, fast and cheap. An applicant who has complied with the requirement should be guaranteed the issuance of a business certificate with no conditions attached to it. In addition, it should be easy to understand from the Law to whom the registration requirement applies.
- Persons whose certificate has been suspended or cancelled by the Ministry of Information should have the right to appeal to a court.

Issue 3: Overbroad and vague content restrictions

Article 8 imposes a number of restrictions on the content of publications. These restrictions are also applicable to websites run by publishers and news agencies (Article 14). Moreover, it is prohibited to import or distribute any foreign publication that contains content prohibited by Article 8 (see Article 17). A person who breaches these provisions risks a fine of between 1 and 3 million Kyats (Article 20).

According to Article 8, content is forbidden which:

- May cause harm to an ethnic group or among ethnic groups
- Endangers national security, the rule of law, public order or the rights of citizens, such as equality and freedom
- Is obscene
- Incites to the commission of a crime, cruelty, terrorism, gambling or drug abuse.

Compared to the original draft published in 2013, a problematic content restriction which would have applied to expressions and texts 'against the Constitution and other legislation' has disappeared from the final version of the Law.

This is positive, but ARTICLE 19 questions whether it necessary to include any content restrictions in the Law at all. Statements which incite to ethnic violence or the commission of a crime are no less problematic if they are made at a public rally or broadcast on TV than if they appear in print; it would seem more appropriate to prohibit this type of speech through the penal code or another law of general application. An outcome that should be avoided is that printers, publishers and news agencies become subject to overlapping and potentially contradictory content restrictions spread across different laws. To an extent, this is now happening; Articles 292 and 293 of the Penal Code of 1861 already banned the distribution of obscene materials and Article 505(c) prohibits incitement to offences between classes and ethnic groups. These provisions are outdated, but they remain in force alongside the new prohibitions on the same subject in the Law.

Apart from the question whether the Law is the right place to incorporate them, all of the content restrictions of Article 8 are too broadly and vaguely worded. It is impossible to foresee to a reasonable degree what is prohibited and what is not. This is likely to have a "chilling effect" – publishers, printers and news agencies will be discouraged from publishing materials that are actually legitimate, out of uncertainty whether or not one of the content restrictions of Article 8 applies.

A good example is the ban on materials that endanger "public order". While protection of public order is recognised as a legitimate objective that can justify restrictions on freedom of

expression, the law should be far more specific about which types of statements are actually prohibited.

The mechanism by which the content restrictions are enforced is set out in Articles 9 and 10. A person, organisation or public body which considers itself affected (under Article 8) can complain to a court, which will pass judgment urgently and may ban the specific publication containing the offending materials. It may also impose an interim injunction.

These rules are an improvement over the original draft of the Law, which enabled the Ministry to withdraw the business certificate of a printer, publisher or news agency in response to a breach of Article 8. We do recommend that the imposition of an injunction should be defined as an exceptional measure. Under international law, blocking the distribution of a publication before its unlawfulness has been formally determined by a court is considered a serious matter. This is because information is a perishable commodity that may lose its usefulness if delayed. An injunction should be considered only if continued distribution of the publication would threaten serious and irreversible harm.

Finally, we question whether content restrictions should apply in the same way to printers as to publishers. A printer may not even be aware of the entire content of materials it is producing. The Law in effect requires printers to carefully scrutinise any material brought to them for production. For printers producing a large volume of materials, such as a daily newspaper, this represents a substantial and unjustified burden.

Recommendations

- Consideration should be given to removing the content restrictions (Article 8) and dealing with the relevant issues through laws of general application, such as the penal code.
- Alternatively, the content restrictions (Article) 8 should be defined more clearly and narrowly in line with international standards. Publishers, printers and news agencies should able to foresee to a reasonable degree what is permitted and what is not.
- Article 10 should make it clear that the power of a court to block the distribution of a publication pending a case should only be exercised in exceptional cases, where there is a risk of serious and irreversible harm.
- The responsibility to ensure compliance with content restrictions should lie primarily with publishers rather than printers. The latter should not be required systematically to scrutinise the content of all the materials they produce for clients to ensure its compliance with the Law.

Issue 4: Unnecessary formalities for the import and export of publications

Article 11(a) of the Law states that persons who import or export publications must submit a form to the Ministry listing the names and quantities of the items concerned. Article 11(b) adds that printers must send a copy of any publication they produce to the Ministry for "registration and copyright procedures."

These requirements raise some of the same issues discussed above with regard to the registration requirement for printers, publishers and news agencies. It is not obvious what

purpose these formalities serve, and they create an opportunity for the Ministry to closely monitor the flow of information, suggesting a possible desire to retain an unjustified degree of control over it.

It is also entirely unclear what the scope of the notification requirement is. The term 'publication' is defined as including, among others, 'handwritten scripts', 'printed paper', 'paper published by an electronic system or another technique' and so on (Article 1(c)). If Article 11(a) is taken literally, it would appear that a person who sends or receives a handwritten letter or an email to or from a foreign country is required to notify the Ministry of this action. The Law might not be interpreted in this way in practice, but it is likely to create legal uncertainty, and to impose a lot of unnecessary paperwork.

Recommendations

- The notification requirements under Article 11 of the Law should be abolished entirely.

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[1] The analysis of the News Media Law is available in English and Burmese at ARTICLE 19's website; see http://www.article19.org/resources.php/resource/37623/en/myanmar:-news-media-law

[2] The analysis is based on unofficial translation of the law from Burmese to English. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation.

[3] Joint Declaration on regulation of the media, restrictions on journalists and investigating corruption, adopted 18 April 2003, available at http://tinyurl.com/l3a8wuz.

[4] *Ibid.*