



RESOLUTION ON MYANMAR TO REPEAL OR AMEND LAWS THAT RESTRICT FREEDOM OF EXPRESSION

Repressive laws in Myanmar continue to restrict the rights to freedom of opinion and expression, as well as freedom of assembly, and should be amended or repealed.

On 31 March 2016, the upper house of the Myanmar parliament amended the 2014 Right to Peaceful Assembly and Peaceful Procession;¹ it is now being considered in the lower house. Freedom of expression advocates welcome the reduction in penalties for infractions, yet organisers of public events – including literary, cultural and artistic gatherings – are still obliged to notify authorities 48 hours before their events take place.² Authorities thus have the power to delay or ban public events³ that include prominent writers with critical opinions. In June 2016, for example, PEN Myanmar’s literary discussion in Min Done Township with prominent writers Ma Thida and Saw Wai was delayed until 21:00 when permission was finally granted. That the audience remained until midnight demonstrates a widespread dedication to literature and freedom of expression.

Falling short of international standards, the 2014 News Media Law provides only partial protection for freedom of expression. It includes vague provisions which restrict free expression, defines ‘media workers’ in a vague way that does not adequately protect their rights, includes responsibilities and offences which are covered by general legislation, enables the creation of a Media Council which is not independent of the executive branch and, although it does not adequately protect free expression, references Myanmar’s 2008 constitution. The News Media Law should therefore be amended or repealed.

The 2014 Printing and Publishing law requires publishers to submit electronic copies of their work to the Ministry of Information for storage in an e-library with free access. This represents a violation of writers’ and publishers’ intellectual property rights.

Section 505(b) of the Penal Code on ‘offences against public tranquility’⁴ has been used to detain and imprison outspoken writers, poets, journalists and activists. The Section’s vague and overly broad wording has been arbitrarily used to arrest perceived critics of local authorities.⁵ Section 505 has also been used in conjunction with charges related to other laws. Protestors charged under Articles 18 & 19 of the peaceful assembly law therefore risk additional charges under Section 505 (b) of the Penal Code. PEN Myanmar member Maung Saung Kha, for example, was charged under Section 66(d) of the 2013 Telecommunications Law

¹ <http://globalnewlightofmyanmar.com/bill-to-amend-peaceful-assembly-and-procession-law-needs-further-amendments-say-mps/>

² ‘Myanmar: Peaceful Assembly and Peaceful Procession Bill’ legal analysis by Article 19; published in 16 May 2016. https://www.hrw.org/sites/default/files/report_pdf/burma0616web.pdf

³ Ex-political prisoner Phoe Sanay and supporter Kyaw Zin started walking in protest of Lapadaung mining from yangon to Lapadaung. They asked permission for three times and was denied. They were arrested in Sagaing and charged under Article 18. (7Day daily newspaper 24 May 2016 publication)

⁴ Whoever makes, publishes or circulates any statement, rumour or report [...] (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility.’

⁵ <http://elevenmyanmar.com/local/rule-law-unravelling-say-lawyers>

and Section 505(b) of the Penal Code for posting a poem on Facebook (although the latter charge was subsequently dropped).⁶

Section 66 (d) of the 2013 Telecommunications Law has also been widely used to restrict the right of free expression of internet users in Myanmar and as a means of silencing critical voices. The law's vague definitions are also open to arbitrary interpretation. Currently the law is seen being used widely to restrain the opposition voices and opinion expressed online.

The Ministry of Information is currently working towards the adoption of an Access to Information Bill that was drafted by the previous quasi-civilian administration. Although to date the Ministry has convened a closed-door meeting with some NGOs and CSOs, the draft law needs to be circulated more widely among civil society and the general public. In its current form, the bill contains a number of positive provisions but also includes several provisions that could significantly undermine its effectiveness.⁷ Among other concerns, the bill fails to provide exemptions that are sufficiently clear and narrow. For example, it fails to adequately define such terms as 'national security' and 'prominent persons,' leaving them open to a broad interpretation.

Although pre-publication censorship was abolished in 2012, criminal defamation is now wielded as a form of post-publication censorship in Myanmar.⁸

The Assembly of Delegates of PEN International, meeting at its 82nd World Congress in Ourense, Galicia (Spain), 26th September to 2nd October 2016, requests that the government of Myanmar to:

- Amend or repeal legislation that unduly restricts the right to freedom of expression, criminal defamation provisions in the Penal codes, particularly Section 505(b), the News Media Law and the 2014 Printing and Publishing law, and ensure that all legislation, including any laws regulating the internet and access to information, comply with international human rights norms that protect freedom of expression;
- Abolish the requirement for publications to apply for a license from the Ministry of Information in order to respect publishers' intellectual property rights;
- Amend or repeal regulations relating to the right to peaceful assembly and peaceful procession, and abolish the requirement of advance notification for public events including literary and cultural gatherings;
- Reform the Press Council so that it represents all media, and establish a conflict resolution mechanism that protects journalists and writers, and defends the right to freedom of opinion and expression, and freedom of assembly;
- Pass a Right to Information Act and a Freedom of Expression Act, after consulting widely with all relevant stakeholders, including civil society;
- Decriminalise defamation so that it is a civil offence, in line with the recommendations of international human rights mechanisms.

⁶ <http://elevenmyanmar.com/local/%E2%80%98penis-poem%E2%80%99-author-brought-trial>

⁷ <https://www.article19.org/resources.php/resource/38300/en/myanmar:-draft-right-to-information-law-needs-adequate-public-consultation>

⁸ 'They can arrest you at any time', the criminalization of peaceful expression in Burma by Human Right Watch; published in June 2016. https://www.hrw.org/sites/default/files/report_pdf/burma0616web.pdf