

Myanmar: Note on Recent Legal Developments Impacting Freedom of Expression¹

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Overview

This Note provides a review of legal developments during 2020 in Myanmar which impact freedom of expression. It summarises these developments and offers a brief commentary on the extent to which they conform to international human rights standards, but it does not provide a comprehensive analysis of the developments. It thus provides a summary of major trends and developments while also offering a potential starting point for more in-depth analyses or advocacy.

The first part of this Note discusses recent developments related to COVID-19 which could impact the exercise of freedom of expression. These include:

- A proposed new version of the Prevention and Control of Communicable Diseases Law, which would include a provision prohibiting the sharing, receiving or publishing of news, even if accurate, about contagious diseases which could cause panic.
- The establishment of two committees responsible for the COVID-19 response, including one with a strong military contingent and a mandate to take action against those who spread misinformation for the purpose of causing panic.
- Statements at the Union and region and state levels which indicate an intention to enforce existing laws governing the dissemination of information about the pandemic.
- The use of criminal penalties against those who disobey pandemic-related orders, so far primarily for rules related to violating quarantine, curfew or restrictions on public gatherings, which could indirectly impact freedom of expression.

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The second part discusses other recent legal developments, including:

- The Union Election Commission's Notification on political parties disseminating their campaigns on State-owned broadcasters, which requires parties to submit a script of the campaigns to the Commission for approval before they may be broadcast and introduces a number of restrictions on what may be included in such campaigns, such as statements that defame the nation or disturb the rule of law.
- The National Records and Archives Law has come into effect and it tends to promote greater secrecy, rather than openness, within government.
- A directive on hate speech from the President's Office requires ministries and region and state governments to take very general measures to prevent hate speech.
- An amendment to the Law on Protecting the Privacy and Security of Citizens limits its application, including rules prohibiting interferences with privacy or causing harm to reputation, to competent authorities with official powers and duties, instead of everyone.
- In a very welcome development, By-laws under the Broadcast Law have been adopted, paving the way for appointment of the appointment of the National Broadcasting Council, the main regulatory body under the Broadcast Law.
- The Hluttaw is actively considering the Telecommunications Commission Bill, which would establish an independent telecommunications regulator, although the protections for the Commission's independence could be much stronger.

Introduction

This Note reviews legal developments in Myanmar which have been prepared or come into force in 2020 and which affect freedom of expression in one way or another. The main aim is to provide readers with an overall sense of what is happening in this area. As such, it is intended to provide a general sense of the main impact that these developments have had, or may or might have on freedom of expression rather than a detailed analysis of the precise ways in which they fail to respect international human rights standards in this area.

Legal Developments Related to COVID-19

Myanmar has put forward a new version of its Prevention and Control of Communicable Diseases Law, the law which provides the legal basis for much of Myanmar's COVID-19 response. The current version of this Law dates from 1995, but the government released a revised draft for public comment in February.² Draft legislation was then introduced in Parliament in May. No English version of the draft law is available yet but secondary reports indicate that it would introduce some important changes to Myanmar's disease control laws. Among other things, commentators have criticised a mandatory reporting requirement which

² The Burmese version is available at:

[https://pyidaungsu.hluttaw.mm/uploads/pdf/mu4lWS_CD%20Law%20%2011.12.19%20\(Annex%203\)%20PDF.pdf](https://pyidaungsu.hluttaw.mm/uploads/pdf/mu4lWS_CD%20Law%20%2011.12.19%20(Annex%203)%20PDF.pdf)

requires heads of households and employers to report instances of contagious diseases on their premises.³

From the perspective of freedom of expression, however, the most troubling part of the draft law are the prohibitions on sharing information which could create public panic. The draft law would impose a fine or, for repeat offenders, imprisonment of up to six months, on those who write, speak, receive or publish news related to contagious diseases which could cause panic.⁴

The draft version of this provision does not, based on the English commentary available, appear to specify any intent requirement (i.e. that someone would be liable under it only if he or she specifically intended to create panic). It also does not require the information to be false or incorrect, thereby penalising the sharing even of accurate information. This may be contrasted with other legal provisions, which focus on the sharing of inaccurate information. For example, section 27 of the National Disaster Management Law prohibits misinforming others about a natural disaster with the aim of creating fear (dread) among the public, punishable by up to one year's imprisonment and/or a fine.⁵ The Telecommunications Act also provides for up to one year's imprisonment and/or a fine for communicating incorrect information with dishonest intent.⁶

If enacted as written, the new law would therefore expand legal restrictions on the sharing of public health information, including information which is accurate. This is highly problematic because the circulation of correct information should be protected, especially during a public health crisis. Indeed, sharing even incorrect information should only attract liability when this is done with malicious intent. The criminal law is a disproportionate tool to address situations where someone shares incorrect information unknowingly or without malicious intent, even in a health emergency. There are better ways to address this problem, such as through education, fact checking on social media accounts and the active dissemination by official actors of correct information about the health situation.

Another key development during the pandemic is the new institutional structures which were created to respond to the crisis. On 13 March 2020, the government, through a Presidential Announcement, created the National Central Committee on Prevention, Control and Treatment of the 2019 Novel Coronavirus, a more empowered version of another committee which had been formed in January.⁷ Then, on 30 March 2020, the COVID-19 Control and Emergency

³ The Ananda, Bill Analysis: Prevention and Control of Communicable disease Bill, 8 April 2020, available at: https://theananda.org/en/blog/view/-Bill-Analysis_PCCD-Bill; and Myat Thura, New Bill Aims to Update Myanmar's Communicable Diseases Law, Myanmar Times, 19 May 2020, available at: <https://www.mmtimes.com/news/new-bill-aims-update-myanmars-communicable-diseases-law.html>.

⁴ As described in English in ARTICLE 19, Myanmar: Restriction on Expression in Communicable Diseases Bill Would Undermine COVID-19 Response, 12 May 2020. Available at: <https://www.article19.org/resources/myanmar-restriction-on-expression-in-communicable-diseases-bill-would-undermine-covid-19-response>.

⁵ Natural Disaster Management Law, 31 July 2013, section 27. Available in English at: http://www.myanmar-law-library.org/spip.php?page=pdfjs&id_document=624.

⁶ Telecommunications Law, 8 October 2013, section 68(a). Available in English at: <http://www.asianlii.org/mm/legis/laws/tlhn312013511>.

⁷ Union of Myanmar President's Office, Announcement No. 1/2020, 13 March 2020. English translation available at: http://themimu.info/sites/themimu.info/files/documents/President_Office_Statement_13Mar2020_ENG.pdf.

Response Committee was created, which appears to run in parallel to the 13 March Committee.⁸ Unlike the 13 March Committee, which is overseen by State Counsellor Aung San Suu Kyi, the 30 March Committee is overseen by the Vice President and includes a number of military-appointed members, thereby giving the military a significant role in responding to COVID-19.⁹ The 30 March Order grants the Committee a number of powers related to COVID-19 management at the federal level, including:

To take action in accordance with the existing law to the people who spread misinformation on social media and elsewhere for the purpose of causing panic among the people immediately.¹⁰

This does not grant the Committee the power to make rules but, rather, only to enforce existing laws. However, this particular Committee, with its strong military influence, could significantly influence the manner in which existing rules, including those related to information, are enforced. Other authorities – including the Union Ministry of Health and several region and state governments – have also made statements or issued orders indicating that those who share fake news or rumours related to COVID-19 will face legal action.¹¹ Once again, these would appear to be statements of a willingness to enforce existing rules rather than of an intention to introduce new rules.

The prohibitions on sharing information about COVID-19, described above, including in some cases even accurate information, are the most serious issue from the perspective of freedom of expression. However, way in which these rules are enforced is also relevant. The presence of heavy penalties for non-compliance, along with significant discretion in how the rules are enforced, create a risk that the crisis may be used as a justification for limiting freedom of expression. Put differently, criminal penalties for violations of these rules will often be disproportionate and, if these rules are not applied very carefully, they could be abused to target individuals for actions such as criticising government responses to the crisis or even political statements. The military leaning of the 30 March Committee also raises concerns about an overly militarised response.

Myanmar law currently provides for criminal penalties for violating a number of rules that are particularly relevant during the COVID-19 pandemic:

⁸ See Notification No. 53/2020.

⁹ Bertil Lintner, Covid-19 restores Myanmar military's lost powers, Asia Times, 2 April 2020. Available at: <https://asiatimes.com/2020/04/covid-19-restores-myanmar-militarys-lost-powers/>.

¹⁰ Union of Myanmar President's Office, Notification No. 53/2020, 30 March 2020. English translation available at: <https://eurocham-myanmar.org/uploads/5d142-notification-%2853-2020%29-formation-of-covid-19-control-emergency-response-committee---eng.pdf>.

¹¹ Global New Light of Myanmar, Spreading Rumours, Fake News on Social Media Punishable Under Law, 14 March 2020, available at: <https://www.gnlm.com.mm/spreading-rumours-fake-news-on-social-media-punishable-under-law/> (referencing the Ministry of Health); and Myanmar Information Management Unit, Reference Document for Union, States and Local Authority Announcement for COVID-19 Outbreak, available at: https://themimu.info/sites/themimu.info/files/documents/Ref_Doc_Union_States_Local_Authority_Announcement_for_COVID-19_Outbreak_07May2020_JPF.pdf.

- Section 188 of the Penal Code creates the offence of disobeying a public order which causes a danger to human health, which may be punished by up to six months' imprisonment and/or a fine.¹²
- Violating any prohibition in a rule, order or notification issued under the Natural Disaster Management Law may be punished by up to one year's imprisonment, a fine, or both, pursuant to section 29 of that Law.¹³
- Under the Prevention and Control of Communicable Diseases Law, violating quarantine orders can result in up to six months' imprisonment or a MMK 50,000 fine or both.¹⁴

In practice, all three of these provisions have been relied upon to charge individuals for violating orders related to public gatherings and events, or curfews and quarantining.¹⁵ So far, COVID-19 orders appear mostly to have focused on movement and assembly, rather than freedom of expression. However, freedom of movement and assembly are also human rights and, even if they are legitimately restricted for health reasons, it is important to monitor closely the application of these restrictions. Monitoring any measures which justify restrictions on freedom of expression based on COVID-19 is also crucial.

Other Recent Developments

Union Election Commission Notification on Broadcast Campaigning by Political Parties

On 23 July 2020, the Union Election Commission (UEC) issued Notification 138/2020, which governs the ability of political parties to broadcast their political campaigns through State-owned radio and television networks. According to the Notification, political parties must obtain permission to broadcast their campaigns, which involves submitting their campaign manuscript to the UEC, which may return it to the party with instructions to edit it.¹⁶

The Notification also bars broadcast messages by parties from containing any speech which:

- Undermines the unity of the Union, national solidarity or sovereignty.
- Disturbs security, the rule of law or peace and stability.

¹² The Penal Code is available in English at: <http://hrlibrary.umn.edu/research/myanmar/Annex%20K%20-%20Myanmar%20Penal%20Code.pdf>.

¹³ Note 5.

¹⁴ Sections 14 and 18. Available in English at: <https://data.opendevelopmentmekong.net/dataset/ddf84f97-5760-48bb-95ed-077ccb52ed81/resource/35e949ed-fb8f-438c-989f-2ba0171665b9/download/23.-cd-law-1995-eng.pdf>.

The law introducing amendments to this, The Law Amending the Prevention and Control of Communicable Diseases Law, 27 January 2011, is available in English at:

https://data.opendevelopmentcambodia.net/laws_record/the-law-amending-prevention-and-control-of-communicable-diseases-law.

¹⁵ See Zarni Mann, Different Laws Applied to Myanmar COVID-19 Restrictions Lead to Inconsistent Punishments for Violators, Irrawaddy, 13 May 2020, available at: <https://www.irrawaddy.com/specials/myanmar-covid-19/different-laws-applied-myanmar-covid-19-restrictions-lead-inconsistent-punishments-violators.html>; and Human Rights Watch, Myanmar: Hundreds Jailed for COVID-19 Violations, 28 May 2020, available at: <https://www.hrw.org/news/2020/05/28/myanmar-hundreds-jailed-covid-19-violations>.

¹⁶ Union Election Commission, Notification 138/2020, 23 July 2020, Permission for Broadcast Campaigns of Political Parties, paras. 3, 5. Available at: <https://www.gnlm.com.mm/permission-for-broadcast-campaigns-of-political-parties>.

- Disrespects existing laws or the Constitution.
- Defames or tarnishes the image of the nation.
- Brings about the disintegration of or defames the Tatmadaw.
- Causes racial or religious conflict or harms dignity and morality.
- Exploits religion for political ends.
- Incites obstruction of peaceful educational activities/
- Incites civil service personnel to fail to perform their duty or to oppose the government.¹⁷

The first problem here is that many of these restrictions are very broadly defined. For example, strong criticism of the performance of the government could be deemed to “tarnish the image of the nation”. In some cases, the restrictions focus on speech that could be seen as critical of the government or Tatmadaw. This is not in accordance with international human rights standards, which offer heightened protection for criticism of government figures and bodies, including during election campaigning. Second, the ability of the UEC to screen manuscripts combined with these broad restrictions on speech grant too much power and discretion to the UEC, creating a right of politicised decision-making.

National Records and Archives Law

Myanmar passed a new National Records and Archives Law in December 2019 which came into effect in January 2020. CLD published a Note on the draft law in August 2019 which highlighted the draft law’s tendency to heighten a culture of secrecy rather than to promote a culture of a right to information.¹⁸ Specific concerns outlined in our Note included:

- The system of classifying information sets very lengthy periods for the classification of information, with three of the four classification categories lasting for 20-30 years and the fourth lasting for five years.
- The classification system appears to assume that all information will be subject to at least some period of classification, with no open classification being listed.
- Officials have significant discretion in determining the level of classification.
- The Law fails to establish a right to access even documents which are not classified.
- The Law lacks a strong public interest override. This would require documents to be disclosed if the public interest in accessing them outweighed the interest in keeping those document secret.

The final version, now in effect, is very similar to the draft analysed by CLD. There are a few alterations, according to secondary reports. Positively, a weak presumption in favour of public access to documents after the period of classification is over was added, although public authorities can still refuse to disclose documents. Less positively, fines under the Law were increased and it creates offences such as viewing or copying a secret document without

¹⁷ *Ibid.*, para. 7.

¹⁸ Available at <https://www.law-democracy.org/live/myanmar-archives-law-fails-to-respect-the-right-to-information>. An English version of the draft law is available at: <https://www.law-democracy.org/live/wp-content/uploads/2019/08/Myanmar.ArchivesLaw.Jul19.pdf>.

permission, punishable by prison sentences and/or fines.¹⁹ This is an especial concern given that these offences do not incorporate a specific intent requirement, meaning that individuals who are not even aware that a document is classified could be subject to sanction. The rule also fails to protect third parties, such as journalists, who innocently receive leaked classified information.

Overall, the enactment of the Law makes it all the more urgent for the government adopt a right to information law. This would create a default legal right to access information held by public authorities, to replace the current default assumption that government-held information is secret.

Hate Speech Directive

The President's Office issued Directive No. 3/2020 on preventing hate speech on 20 April 2020.²⁰ It deplores the potential impact of hate speech, which may "lead to discrimination and violence" and undermine "our aspirations to live with dignity and to build a peaceful and harmonious society". It then directs all ministries and region and state governments to ensure that personnel and staff, as well as "local people under its control or direction", take "all possible measures to denounce and prevent all forms of hate speech" and to encourage their staff to participate in anti-hate speech activities. They are also required to report on measures taken under the Directive. The Directive defines hate speech as communications that "denigrate or express animosity towards a person or a group on the basis of religion, ethnicity, nationality, race, gender or other identity factor. Incitement to violence may constitute hate speech."

This Directive is welcome inasmuch as it represents an important policy signal of support for combating hate speech, which is a serious problem in Myanmar. At the same time, there could potentially be problems in the way it is applied, given that some of the terms used are unclear.

The Directive does not create criminal penalties for hate speech. According to international law, in the context of hate speech, criminal penalties should only apply to speech which constitutes intentional incitement to discrimination, hatred or violence.²¹ Criminal hate speech rules which go beyond this will disproportionately limit speech which, while racist, does not rise to the level of hate speech *per se*.

Given that the Directive mainly focuses on administrative measures, international law standards on criminal hate speech rules may not be the appropriate standard. Indeed, it is important for public authorities and officials to denounce and take other social actions, such as education, to combat the sorts of racist speech which the Directive covers. We note, however, that this goes well beyond the definition of hate speech under international law. For example, the references to denigration of or animosity towards individuals and groups are much broader than incitement to hatred.

¹⁹ Free Expression Myanmar, New National Records and Archives Law Preserves Government Secrecy, 12 March 2020. Available at: <http://freeexpressionmyanmar.org/new-national-records-and-archives-law-preserves-government-secrecy>.

²⁰ Union of Myanmar, President's Office, Directive No. 3/2020, 20 April 2020, Prevention of Incitement to Hatred and Violence. Available in English at: <https://www.president-office.gov.mm/en/?q=briefing-room/news/2020/04/21/id-10007>.

²¹ See Article 20 of the International Covenant on Civil and Political Rights.

If measures taken by implementing bodies were to go beyond the social, and invoke the power of the State to prevent the exercise of freedom of expression, that would be problematical. Given that the Directive is unclear as to what measures it envisages, which are left entirely to the implementing ministries and governments, this is a risk. And this risk is exacerbated by the call, in the Directive, for implementing bodies to “prevent”, as well as “denounce” hate speech. Prevention measures could easily take on the characteristics of prohibitions on speech rather than social measures to combat racist speech.

To help prevent this, we recommend that implementing bodies make public their reporting on the measures they have taken to implement the Directive. It would also be useful for central authorities, such as the President’s Office which issued it, to provide guidance on the specific measures which ministries and region/state governments are expected to take to combat racist speech and to affirm that the policy should be implemented in a manner that accords with international freedom of expression standards.

Meanwhile, draft legislation on hate speech is reportedly still moving forward, although it is not clear whether a draft is actively under consideration in parliament and a recent draft has not been shared publicly.²² Public review of any draft hate speech legislation is vital, given that this sort of law represents a restriction on freedom of expression and the challenges inherent in striking an appropriate balance between prohibiting hate speech legislation while still respecting freedom of expression.

Amendment to the Law on Protecting the Privacy and Security of Citizens

On 28 August 2020, parliament amended the Law on Protecting the Privacy and Security of Citizens. The Law prohibits a range of actions if they are taken absent authorisation by an existing law or an order or permission from a Union government body. These offences are punishable by between six months’ and three years’ imprisonment and a fine.²³

The prohibited acts include slandering or harming the reputation of others. It may be noted that there are several other rules in Myanmar prohibiting defamation (i.e. slander or harming reputations), so that there is simply no need for another rule on this. Furthermore, criminal penalties for defamation are not appropriate according to international human rights guarantees and any defamation rules should be accompanied by various defences, such as truth, which is not present here.

Previously, the prohibitions in the Privacy Law applied to everyone but, pursuant to the August amendments, they now only apply to a “competent authority who possesses official powers and

²² ARTICLE 19, Myanmar Briefing Paper: Countering ‘Hate Speech’, 4 February 2020. Available at: <https://www.article19.org/resources/myanmar-briefing-paper-countering-hate-speech/> (describing a 2019 draft law on hate speech which had been shared with ARTICLE 19 but not released publicly).

²³ Law Protecting the Privacy and Security of Citizens, 8 March 2017, sections 8 and 11. Available in English at: https://www.myanmar-responsiblebusiness.org/pdf/Law-Protecting-Privacy-and-Security-of-Citizens_en_unofficial.pdf.

duties”.²⁴ This will significantly narrow the applicability of the Law to cover only government officials who abuse their powers.

Inasmuch as this means that ordinary citizens will no longer be barred from engaging in criticism or commentary on the behaviour of others, it is a positive development. While other laws still criminalise defamation for ordinary citizens, the defamation provision in the Privacy Law had become a favourite among those seeking to target political opponents or seek personal revenge because its defamation rules remained non-bailable, so that even individuals who were ultimately found to be innocent could still spend a long time in jail during the investigation and trial.²⁵ In contrast, a similar provision in the Telecommunications Act was amended in 2017 to make defamation a bailable offence.²⁶ Originally, the proposed amendments to the Privacy Law would have made offences under it bailable but the amendment ultimately adopted should have a similar effect in terms of limiting its use as a form of defamation law.

On the other hand, there is no general protection for privacy in Myanmar law, even if certain types of privacy invasions are proscribed, so the limitation of the Privacy Law to competent authorities deprives individuals of important protections against attacks on their privacy from ordinary citizens and corporate actors, which is unfortunate. It may be noted that this Law defines privacy to include the rights to freedom of movement, residence and speech, but not actually “privacy” *per se*. But some of the specific prohibitions in the Law, such as against search of a residence, interception of communications and interference with personal or family matters, do constitute important privacy protections. Overall, however, a clearer definition of what constitutes interference with privacy would improve the Law.

More generally, there are serious problems with the way the Privacy Law protects privacy. The blanket criminal provisions in the Law, both before and after the amendments, represent an overly heavy-handed approach towards privacy protection. Furthermore, given that all that is required to override these prohibitions is permission from a Union government body, the protection provided is unduly limited. Major amendments to the Law would be needed for it to represent a proper approach towards protecting privacy. Indeed, what is needed is comprehensive and tailored legislation to protect both personal data and privacy.

Adoption of Broadcasting Law By-laws

²⁴ According to One Trust Data Guidance, Myanmar: Parliament Amends Privacy Law, Narrows Prosecutions under Article 10, 9 September 2020. Available at: <https://www.dataguidance.com/news/myanmar-parliament-amends-privacy-law-narrows-prosecutions-under-article-10>.

²⁵ Myat Thura, Myanmar Legislators Seek to Stop Privacy Law Abuse, Myanmar Times, 20 February 2020, available at: <https://www.mmtimes.com/news/myanmar-legislators-seek-amendment-stop-privacy-law-abuse.html>; and San Yamin Aung, Myanmar Lawmakers Submit Bill to Amend Controversial Privacy Law, The Irrawaddy, 18 February 2020, available at: <https://www.irrawaddy.com/news/burma/myanmar-lawmakers-submit-bill-amend-controversial-privacy-law.html>.

²⁶ Amendment of Telecommunications Law, 2017, available at: <http://freexpressionmyanmar.org/wp-content/uploads/2017/01/Telecommunications-Law-Amendment-EN.pdf>; and Khin Moh Moh Lwin, Leaders Find New Tool to Silence Critics after Telecom Law Amendment, Myanmar Now, 26 November 2019, available at: <https://myanmar-now.org/en/news/leaders-find-new-tool-to-silence-critics-after-telecom-law-amendment>.

In October 2020, the Government of Myanmar finally adopted By-laws under the Broadcast Law,²⁷ which was itself adopted in 2015. This was an essential precondition for bringing the Broadcast Law into effect. In particular, by-laws needed to be adopted before the National Broadcasting Council, the main regulatory body under the Broadcast Law, could be appointed. According to the Law, the Council is responsible for undertaking such tasks as issuing (and revoking) licences to broadcasters and setting and enforcing standards regarding content, including by adopting a Code of Conduct for broadcasters.

Among other things, the Broadcasting By-laws elaborate on the procedures for appointing members of the Council that are outlined in the Broadcast Law. The next step is to move forward and actually appoint the Council. The Broadcast Law provides that 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”.²⁸ Members of the Council are also required to be “independent and impartial in the exercise of their functions”.²⁹ It is very important that these provisions be respected in practice as members of the Council are appointed.

Telecommunications Commission Bill

In March 2020, the Amyotha Hluttaw passed the Telecommunication Commission Bill,³⁰ which was under discussion in the Pyithu Hluttaw as of July.³¹ The Bill would establish a new regulatory body for telecommunications, including allocating licences. It would provide a legal framework governing the appointment, duties and operations of the new Commission.

Establishing an independent telecommunications regulator in Myanmar is desirable. Currently, there is a reference to a telecommunications regulator in the Telecommunications Law, which instructs the Union Government to form “the independent Myanmar Communications Commission”, be led by an “appropriate person at the Union level”.³² However, no further detail is provided to ensure that such a Commission would actually be independent. Better practice internationally is for primary legislation to include detailed rules on the appointment of members of such commissions and other rules to protect their independence. In this area, then, specific legislation creating a Telecommunications Commission is welcome.

If the Bill currently under consideration is similar to the public version of the Bill released in English in 2017, it provides that the Commission shall be an independent and impartial body.³³

²⁷ No. 53 of 2015, 28 August 2015. Available in English at: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/2015-08-28-Broadcasting_Law-en-red.pdf.

²⁸ *Ibid.*, Article 2(q).

²⁹ *Ibid.*, Article 16(a).

³⁰ Global New Light of Myanmar, Amyotha Hluttaw Passes Myanmar Telecommunication Commission Bill, 24 March 2020. Available at: <https://www.gnlm.com.mm/amyotha-hluttaw-passes-myanmar-telecommunication-commission-bill>.

³¹ Global New Light of Myanmar, Pyithu Hluttaw Raises the Curtain on 17th Regular Session, 14 July 2020. Available at: <https://www.gnlm.com.mm/pyithu-hluttaw-raises-the-curtain-on-17th-regular-session>.

³² Telecommunications Law, note 6, section 86.

³³ Draft Myanmar Communications Regulatory Commission Law, 2017, section 53. Available in English at: <https://www.mlr.ltd/news/myanmar-telecommunications-law/article/motc-notice-2017-draft-myanmar-communications-regulatory-commission-law-mcrc>.

The members are appointed by the President based upon a list of nominees chosen by a selection committee. The selection committee would be required to advertise these positions publicly and engage in a transparent selection process. Once appointed, a member may only be removed prior to the end of his or her term after an *ad hoc* investigation committee conducts an investigation and recommends the removal to the president.³⁴ The Bill would give the Commission power to investigate violations in several other laws, including the Telecommunications Law and the Electronic Transaction Law, and provides that references in those laws to the Posts and Telecommunications Department, which currently regulates telecommunications, should be replaced by references to the Telecommunications Commission.³⁵

Despite these guarantees, the Bill fails to include provisions to ensure that the commission is actually independent. The selection committee is made up of three people, one designated by the Speaker of the Pyidaungsu Hluttaw, one by the Minister responsible for communications and one by a person who is not a ministry official who is nominated by the Chairman of the National Telecommunications Advisory Committee. However, because the Minister responsible for communications designates the National Telecommunications Advisory Committee Chairman,³⁶ the former essentially controls two of the three positions on the selection committee. Furthermore, while the Bill states that the Committee shall be independent, it also provides for it to be responsible to the President.³⁷

If the Bill passes, this would represent an important step towards creating a more independent telecommunications sector. However, ideally the Bill would be significantly strengthened to bolster the independence of the Commission.



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³⁴ Draft Myanmar Communications Regulatory Commission Law, note 33, section 29.

³⁵ Draft Myanmar Communications Regulatory Commission Law, note 33, section 68.

³⁶ Telecommunications Law, note 6, section 74.

³⁷ Draft Myanmar Communications Regulatory Commission Law, note 33, section 16.