



Myanmar: Public service media needed but proposed bill inadequate

Establishing a genuine public service media is desperately needed in Myanmar to provide an independent, impartial and balanced source of information, and to encourage pluralism. Unfortunately, the proposed bill on public service media would if adopted continue state control of the media and the disenfranchisement of ethnic minorities. ARTICLE 19 urges parliament to make significant changes before adopting it.

The proposed Public Service Media Bill is due to be put before Myanmar's parliament by the Ministry of Information in late June 2013. The bill would change the state owned newspapers, radio and television stations into a public service media (PSM), and create an institutional structure, principles, and governing bodies.

ARTICLE 19 supports this process of transformation of the state media into public service ones, but, like the Myanmar Press Council, is concerned by the current proposed draft of the bill.

ARTICLE 19 stands for public debate on the reform of the state media and public participation in the creation and governance of the new PSM. We have worked with civil society, media and governments worldwide to ensure new PSM laws and institutions are in line with international standards and best practices, including developing a model law on public service broadcasting.ⁱⁱⁱⁱⁱⁱ

International standards support public service and community media

Under international freedom of expression standards, states must not only refrain from interfering with the right to freedom of expression, but also take positive steps to ensure that it is fully respected and promoted. States are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of states' positive obligations to promote freedom of the media is the need to promote pluralism and diversity within, and to ensure equal access of all people to, the media. A number of international instruments stress this importance of PSM to promoting diversity and pluralism. Although Myanmar is still not a party to most human rights treaties, these instruments provide valuable insight into the implications of PSM for freedom of expression and democracy.

A core element of any PSM is to present balanced and accessible news and current affairs programming. PSM also enables programming in areas that are unprofitable and therefore ignored by private channels, such as for children, regional, rural or minority groups.

In order for it to fulfil its function, PSM does however need to be created and managed in a manner that 1) is independent from the government and political interests and is publicly

accountable, 2) has a clearly defined public service remit, and 3) has a stable system of adequate funding protected from arbitrary interference.

Basic structure of the PSM in the proposed bill

The proposed bill would create a PSM overseen by a PSM Council with two sections underneath: a Public Service Newspaper Enterprise (PSNE) that manages the public service print media, and a Public Service Broadcasting Enterprise (PSBE) that manages the public service television and radio stations, both of which have their own Governing Board. The Council would be responsible for making rules, ensuring compliance with them, and for public accountability, and the Governing Boards would be responsible for the internal policy and operation of their respective enterprises.

Positive aspects of the proposed bill

The bill includes some positive aspects:

- It ends state ownership of the media and establishes a public service broadcaster, which will enhance media pluralism and diversity
- It recognises the importance of independence for the PSM, by including specific provisions requiring members of the governing body to act independently from the government and commercial interests
- It secures adequate funding for the PSM through a mixed system with 70% coming from the state and 30% from advertising and donations
- It requires the PSM to be accountable to parliament and the public, and sets out detailed rules for this accountability.

Problems in the proposed bill and recommendations

1. The proposed Bill retains state funding for newspapers

The proposed Bill transforms state owned newspapers into public service newspapers controlled by the PSNE. However, there is no justification for spending public money on a public service newspaper because the aim of enabling a diversity of opinions and information would be better achieved by ensuring that newspapers are free to operate, and free from the system of licencing currently in force in Myanmar.

ARTICLE 19 recommends that the state owned print media is privatised and that the bill is reformed to only provide for a public service broadcaster. Once this is done, there is no need for two managing bodies, and therefore the Public Service Council and the PSBE Governing Board should be merged into one.

Therefore, the remainder of these recommendations will only apply to the PSBE.

2. The proposed bill has only weak safeguards to protect the independence of the public service broadcaster

Until now, the Myanmar state has controlled all forms of media in many different ways. This control must end if the government is serious about democratising. The PSBE must be entirely independent from state and commercial interests. The proposed bill formally proclaims the independence of the PSBE's governing body but does not include safeguards to ensure this independence:

- Members of the Public Service Council which oversees the PSBE and appoints the members of its Governing Board are chosen by politicians (president, chairperson of House of Nationalities and the chairperson of the House of Representatives)
- The proposed bill includes no eligibility criteria or nomination procedures for members of the PSBE Governing Board, which could result in politically biased appointment procedures
- Governors can be dismissed without reason or the opportunity to appeal, as long as two-thirds of the Council agree.
- Salaries for governors are not set out, which could lead to them being influenced financially
- There is no procedure for an independent determination of the PSBE's budget, which could result in funding allocations being used to influence decisions.

ARTICLE 19 recommends that the PSBE's independence is safeguarded through the following:

- The members of the Public Service Council should be nominated by media professional organisations and civil society organisations and appointed by parliament.
- The bill should outline the nomination and selection criteria for membership of the Governing Board of the PSBE Only candidates nominated by civil society and media professional organisations should be considered for appointment
- The governors' salaries should be set out in the bill or other legislation
- The criteria for dismissals of governors should be clear and include specific grounds. Unclear grounds for dismissal such as failure to "promote the interest of the PSM" or failure to respect the basic principles should be removed. The dismissed members should have an opportunity to appeal to a court
- Funding for the PSBE should be determined by an independent body through criteria set out in the law.

3. The proposed bill gives only a limited mandate for the PSBE

Although the proposed mandate of the PSBE includes the creation of quality programming that reflects the general public's needs and views, it does not include the provision of impartial and independent information or the responsibility to act as a forum for democratic debate, social cohesion and integration.

ARTICLE 19 recommends that the PSBE first and foremost encourages democratic debate and impartial, independent information. The bill should specify that the mandate of the PSBE is to act as a forum for democratic debate, a contributor to social cohesion and the integration of all individuals and communities.

4. The proposed bill has only weak safeguards for editorial independence

Although the proposed bill declares editorial independence, it fails to safeguard it in any meaningful way. For example, it does not ban staff from taking instructions whatsoever from external sources, nor does it stipulate where editorial independence applies. It is silent about editors' and journalists' right to protect their sources, or to receive protection when reporting

about unlawful acts in the operation of the PSM (whistleblower protection). Neither does the bill provide for adequate salaries for staff to dissuade financial influence. It does include unclear provisions for fining those who “disturb” PSBE journalists, but does not provide for the bodies that would examine such complaints and impose sanctions.

ARTICLE 19 recommends that editorial independence is safeguarded through the following:

- Staff should be banned from taking any instructions whatsoever from external sources
- The principle of editorial independence should be set out in law, including: definition of programme schedules, conception and production of programmes, and editing and presentation of news and current affairs programmes
- Journalists and editors working for the PSBE should be entitled to protection of their sources, and when reporting about unlawful acts in the operation of the PSBE
- Journalists and editors should be entitled to adequate salaries
- A body with powers to examine complaints about editorial interference should be included with the powers to impose sanctions.

5. The proposed bill fails to encourage media pluralism or diverse viewpoints and perspectives

It is vital that the PSBE reflects through programming the range of different groups, regions and ethnic minorities in Myanmar, as well as from abroad. By doing so, the PSBE would help to encourage pluralism and ensure social cohesion by enabling different groups to voice their opinions, ideas and values, and enabling other groups to hear, see and interact with one another. This is particularly important given the range of conflicts in the country between different ethnic, linguistic and religious groups.

Although the bill states that the PSBE should include programmes in the languages of “national races” and minorities, it does not include any specific obligations. Therefore, the governors and managers could decide on their own which minorities to create content for, and how much. Without any obligations, they could discriminate and choose to create limited content only for some minorities, which would further build discord and distrust between groups.

ARTICLE 19 recommends that the bill clearly provide for a fair amount of minority programming on the basis of non-discrimination, including for example by providing radio and television programme space to any significant ethnic minority group.

6. The proposed bill includes no regional stations

The bill creates a PSBE with a highly centralised structure that would not properly reflect the size and diversity of the country. In other countries of a similar size, a PSBE would instead include a range of regional hubs to ensure inclusivity and plurality by providing regional content to the national service, but also to create region-specific content to be broadcast only to local parts of the country, using regional languages.

ARTICLE 19 recommends that the bill should provide for the establishment and operation of a network of regional PSBE hubs to ensure the production of diverse local content.

7. The proposed bill has insufficient guarantees for public participation in PSBE governance

Although the proposed bill provides for civil society organisations to nominate members of the governing boards of both the newspaper and broadcasting enterprises, their nominations are not binding and their candidates may never be appointed. The proposed bill also fails to ensure that the public are consulted over programming and governance, or that the public can be involved in creating content through independent productions. As a result, there is a high risk that the PSM will fail to get public support.

ARTICLE 19 recommends that the bill provide for creation of public advisory structures to represent the public in all its diversity, so as to reflect in PSBE programming and policy the wishes and requirements of the public. The bill should also provide for independent broadcasting productions.

8. The proposed bill regulates “non-commercial” media

The proposed bill regulates “non-commercial” or community media that is non-profit and operated by civil society, NGOs or educational organisations. While such non-private and non-public media should be encouraged to ensure that a greater diversity of information, languages and opinions are available to the public, particularly at a local level, the unique nature of this kind of media justifies a separate and more detailed law.

ARTICLE 19 recommends that the bill not cover “non-commercial” or community media, which should be a separate law altogether.

ⁱ See for example MEMORANDUM on the draft Public Service Broadcasting Law for Ukraine, London, 2005 <http://www.article19.org/data/files/pdfs/analysis/ukraine.psb.05.pdf>

ⁱⁱ A Model Public Service Broadcasting Law, London, June 2005, available at <http://www.article19.org/pdfs/standards/modelpsblaw.pdf>

ⁱⁱⁱ Future or Funeral, A Guide to Public Service Media Regulation in Europe, 2011. <http://www.article19.org/data/files/medialibrary/2760/11-10-06-europe-media-regulation.pdf>