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Strengthening Cooperation for a Free Burma

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Freedom of Expression and Opinion in Burma: Still a Long Way to Go

There have been a number of positive developments in Burma with respect to the freedom of expression and opinion over the course of 2011, including some reductions in the level of censorship of the press, the loosening of restrictions on access to the Internet, and the recent release of political prisoners. However, while the international community has been focused on these openings, hundreds more individuals remain in prison solely for expressing their opinions and numerous obstacles, including repressive laws on the books,¹ continue to make it difficult for journalists and ordinary citizens in Burma to exercise their rights to freedom of expression and opinion.

Freedom of the Press

For several decades Burma's regime has imposed such draconian restrictions on expression that the country routinely ranks near the bottom of indexes on freedom of the press and other similar measures. For example, in Freedom House's May 2011 press freedom rankings, Burma was listed as having the 191st most free press, ahead only of North Korea and Turkmenistan. These dismal ratings have been based on the requirement that, pursuant to the Printers and Publishers Registration Law of 1962, all stories be reviewed by government censors before publication as well as on the regime's refusal to grant visas to foreign journalists wishing to report from the country and the jailing of numerous journalists and bloggers.

¹ The most relevant laws currently on the books that restrict freedom of expression and opinion are:

- 1962 Printers and Publishers Registration Law requires all printers and publishers are required to register and submit copies of books, magazines and periodicals to Press Scrutiny Boards, or PSB, for scrutiny prior to publication or production, or in some cases after. The PSBs have extensive powers to ban publications and demand alterations as they see fit. Penalties for violations of the Printers and Publishers Registration Law can include up to seven years imprisonment.
- 1996 Television and Video Law requires that all video material be submitted to government censors and criminalizes the copying, distributing, hiring or exhibiting of videotape that has not been approved by the censors. Violations of this law carry a penalty of up to three years in prison.
- 1996 Computer Science Development Law provides that all computers be registered with the government prior to importation or use. Sentences for failure to register a computer can be up to fifteen years in prison.
- 2004 Electronic Transactions Law, which prohibits using electronic technology, such as videotape, to commit any act detrimental to the security of the State. It also prohibits "receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture." Violations of this act can be punished with up to fifteen years imprisonment.
- For further information see Burma Lawyers' Council, *Myanmar Law*, available at: http://www.blc-burma.org/html/Myanmar%20Law/Indexs/lr_law_ml_index.html

While the regime has recently been allowing certain types of news stories, such as those relating to sports and business, to be published without review by censorship boards, it has not changed the Printers and Publishers Registration Law. Magazines and newspapers that publish so-called “hard news” continue to be required to submit their stories to the censorship board for approval prior to publication. Additionally, all stories are still subject to post-production review with incidents of suspension of publications based on their reporting continuing. These suspensions, combined with the fact that the regime continues to control licensing of journalists and publications and the continued possibility of imprisonment under the Printers and Publishers Registration Law, have led newspapers and magazines to practice self-censorship and restrict what they publish in an effort to prevent retaliation. As part of this self-censorship, media frequently choose not to conduct interviews with those likely to be critical of the regime or, when such interviews do take place, only portions of them that are deemed less sensitive are printed. This form of censorship is no less insidious than pre-publication review as it prevents the expression of alternative points of view and creates a distorted picture of the opinions of the people of Burma.

More foreign journalists have begun to gain access to Burma but these journalists continue to be severely restricted in their ability to cover stories that the regime deems a threat. Conflict areas in Kachin, Karen, and Shan States, along with other ethnic regions, continue to be off-limits to journalists and foreign correspondents are generally restricted to covering events that flatter the regime such as high-level diplomatic visits. Reporters not traveling with foreign diplomats, especially those journalists expected to be critical of the regime, are still routinely denied visas.

While the recent release of political prisoners, including a number of journalists and bloggers, was an undoubtedly positive measure, the manner in which they were released has led to concerns that the former political prisoners will be prevented from freely expressing their opinions. This is because those prisoners released on 13 January were freed based on Article 401 of the Code of Criminal Procedure which provides that “[w]hen any person has been sentenced to punishment for an offence, the President of the Union may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.” Since the prisoners had their sentences suspended, rather than receiving amnesty as occurred in past prisoner releases, these sentences can be reinstated should the former prisoners commit another breach of the law. Given that laws prohibiting free expression remain in place, speaking out against the regime could lead to a return to prison.

Decades of repressive military rule in Burma have not only created a climate of fear that prevents individuals from expressing themselves but have also prevented the development of institutions that could take advantage of potential openings in restrictions on media. For example, the requirement that newspapers and magazines run all stories by government censors prior to publication has created a significant time lag between the writing of stories and their publication, a delay which has meant that no private daily newspapers exist in Burma to challenge the state run New Light of Myanmar, all private magazines publish only weekly or monthly. Similarly, television and radio frequencies are dominated by channels run by the state, the army, or their allies, with little opportunity for independent news and entertainment broadcasts.

Access to the Internet

Beyond the relaxation of press censorship, one of the most celebrated recent changes in Burma has been in the easing of restrictions on the internet. Previously blocked sites such as YouTube and numerous media sites, including Burma exile media such as the Irrawaddy and Democratic Voice of Burma, are now accessible from within the country. However, many popular blogging sites such as BlogSpot and wordpress remain blocked. There is an important distinction here in that it appears that the regime has begun to allow freer access to information for its citizens while continuing to restrict their ability to publicly express their own opinions.

In truth, the unblocking of internet sites should be viewed primarily as a public relations maneuver designed to show the outside world that the regime is “reforming” without significantly loosening its grip on power. This is due to the fact that internet penetration in Burma is minimal with recent estimates putting those with internet access in their homes at less than 1% of the population. Thus most ordinary civilians and undercover journalists in Burma must use internet cafes in order to access the web. The regime has required such cafes to install surveillance cameras and keystroke logging software in order to monitor internet use.

Most important in terms of prospects for free expression in Burma going forward is the fact that recent openings have not been accompanied by changes in the country’s repressive laws, including the Electronic Transaction Act. Thus, despite the unblocking of certain internet sites, those seeking to upload, or even forward, videos or other content critical of the regime continue to risk arrest. Given the monitoring devices currently in place in internet cafes, the continued presence of such laws on the books perpetuates a culture of fear preventing individuals from using the internet freely. Additionally, the fact that there has been no change in the relevant laws suggests that any openings could be reversed arbitrarily at any point.

Recent Violations of the Rights to Freedom of Expression and Opinion

One clear example of where expression of opinions critical of the ruling regime continue to be restricted is in the case of opposition to development projects by farmers and other villagers whose livelihoods were in jeopardy. On 27 October 2011, 100 farmers demonstrated in Rangoon to protest the confiscation of their land. This protest was broken up by the police who detained two of the demonstrators as well as their lawyer, Pho Phyu, who was reportedly interrogated for twelve hours before being released. In November activist Myint Naing was detained briefly and then released under the electronics act for filming a similar march in September by two hundred landless farmers on a government office in Irrawaddy Division.

Another recent case which demonstrates the limits of the regime’s willingness to allow expression of dissenting opinion is that of Shwe Nya War Sayardaw, a senior Buddhist monk who has been a long time critic of the regime. The abbot has called for the release of political prisoners, used his monastery for political gatherings and was one of a number of civil society activists who met with US Secretary of State Hillary Clinton. As a result the State Sangha Council, the regime backed authoritative council of Buddhist monks, forbade him from delivering public speeches. When, in mid-December, a video circulated of him delivering a sermon at the office of National League for Democracy, the opposition party led by Daw Aung San Suu Kyi, he was officially condemned as “disobedient” by the Sangha Council and ordered to vacate his monastery. While the abbot

appealed the ruling, that appeal was denied and he is now required to leave his monastery by 19 February.

Conclusion

While the loosening of restrictions on access to the internet and reduction in pre-publication censorship are certainly welcome developments, Burma has a long way to go before its citizens will truly be able to exercise their rights to freedom of expression and opinion. The international community and specifically the United Nations must not accept half measures and must continue to call on the regime to change the laws such that they protect, rather than hinder, free expression and release all of those imprisoned for expressing their opinions.