

Burma/Myanmar: New Forms of Control and Threats to Freedoms of Expression, Assembly and Association amidst Reforms Fanfare



International Fact-Finding Mission
24-30 October 2012



> EXECUTIVE SUMMARY

An international fact-finding mission was conducted by Asian Forum for Human Rights and Development (FORUM-ASIA) on 24-30 October 2012 to assess the situation of freedoms of expression, assembly and association in Burma, against the backdrop of the apparent democratic reforms embarked by the Burma government since 2011, including among others, by releasing over 700 political prisoners to date, setting up a national human rights institution in September 2011, holding a competitive by-election in April 2012, and undertaking purported legislative reforms, which saw the repeal of several restrictive laws and the enactment of several new ones.

The four-member mission team - representatives of FORUM-ASIA, SUARAM (Malaysia) and HRD-Pilipinas (the Philippines) - spent seven days in Rangoon, where they interviewed more than 50 individuals comprising human rights NGOs, labour rights activists, former political prisoners, representatives of student unions, farmers organisations, women organisations, and media organisations (including members of the interim National Press Council), lawyers,

a Member of Parliament (who also sits in the Parliament's Rule of Law Committee), members of the Myanmar National Human Rights Commission (MNHRC), including its Chairperson, and the International Labour Organisation (ILO). The mission team also sought to meet with several government ministries and officials, but these requests were not responded to. Some follow-up interviews were conducted in a separate trip to Burma made by one member of the mission team on 21-23 January 2013.

While acknowledging some significant relative openings, including in the area of media freedom, the mission team observed that violations of fundamental freedoms continue to take place in an environment where the rule of law and an independent and impartial justice system are still largely absent. The right to freedoms of peaceful assembly and association of particular groups, including former political prisoners, labour and land rights activists, and student activists, continues to be selectively denied.

Notwithstanding the repeal of several restrictive laws, most pre-existing repressive legislations remain in place. Those relating to freedoms of expression, assembly and association include the 1908 Unlawful Association Act, the 1988 Law Relating to Forming of Organisations, and numerous restrictive provisions in the Penal Code, among others. In addition, the enactment of several new laws relating to freedoms of expression, assembly and association have largely resulted in new forms of control and restrictions that are oftentimes applied selectively.

It thus appears that the Burma government's reforms have resulted in little, if any, improvement on the respect for fundamental freedoms on the ground. In the words of one activist interviewed by the mission team, the reforms in Burma have been "heard but not yet experienced". The gaps between the government's apparent



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reforms agenda and the realities on the ground are indeed glaring; and serious and sustained attention on these issues must be given to ensure that the rhetoric and fanfare of reforms do not overshadow the continued denial of fundamental freedoms in Burma.

LEGAL RESTRICTIONS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Although the government on 28 January 2013 repealed Order 2/88 which banned public gatherings of more than four people, the Peaceful Assembly and Peaceful Procession Law, enacted in December 2011, prohibits public gatherings without official permission. Since the law was adopted, scores of individuals have been arrested, while a growing number have been charged, for organising and participating in peaceful assemblies.

There has been an emerging trend in the use of Section 18 of the Peaceful Assembly and Peaceful Procession Law, oftentimes together with Section 505(b) of the Penal Code, by the government to criminalise democracy activists and human rights defenders.

Section 505(b) of the Penal Code: “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 tranquillity... shall be punished with imprisonment which may extend to two years, or with fine, or with both.”

Section 18 of the Peaceful Assembly and Peaceful Procession Law: Permission for any public assemblies shall be filed five days in advance of the event. Applications can be rejected at the authorities’ discretion. Those found guilty of violating this article face a penalty of up to one year in prison and a fine of 30,000 kyat (approx. US\$35).

Clearly, these laws used to curb freedom of assembly are expected to be a major source of concern as resistance is growing among various communities in Burma, especially in relation to land disputes and workers’ rights, which already constitute the majority of the cases of violations of the right to peaceful assembly that have been documented by the mission team.

Some of the recent cases that were brought to the attention of the mission team include:

- On 22-23 September 2012, a total of thirteen organisers and participants of a series of peaceful assemblies held to mark the International Peace Day on 21 September, were summoned

by the police for allegedly breaching the Peaceful Assembly and Peaceful Procession Law. Nine individuals currently face charges under Section 18 of the Peaceful Assembly and Peaceful Procession Law in ten different townships simultaneously, thus facing a possible maximum sentence of 10 years’ imprisonment - a maximum of one year in prison for each charge. The organisers applied for a permit to hold the march, but their application was rejected two days before the demonstration. They were informed that the rejection was on the grounds that the march would cause disruption to traffic and the public, and that it could cause violence. Despite assurance made by the organisers that measures would be taken to manage the crowd, their request was still rejected. Notwithstanding the rejection, the organisers decided to proceed with the march on 21 September 2012.

- On 8 October 2012, activist Ahmar Ni, who in May 2012 participated in a protest over electricity power cuts in Mandalay, was informed by the police of charges filed against her under Section 18 of the Peaceful Assembly and Peaceful Procession Law for allegedly demonstrating without a permit. Ten other protestors have also been reportedly charged for participating in the same demonstration. This case reveals an apparent retroactive application of the Peaceful Assembly and Peaceful Procession Law, which entered into force only in July 2012.
- In the Myaungdagar Industrial Zone in Rangoon, seven leaders of a workers’ protest on 8 October 2012 at Tawwin Family Co. Ltd.’s Finished Products and Furniture Factory were charged on 12 October 2012 under the Peaceful Assembly and Peaceful Procession Law for demonstrating without permit.
- In the Letpadaung copper mine in the Sagaing region, Rangoon-based activist, Ko Wai Lu, was charged under Sections 295 and 295(a) of the Penal Code for what appears to be trumped up charges of allegedly acting with the intention to “outrage religious feelings ... by insulting (a) religion or religious beliefs”. Ko Wai Lu, whom the mission team also interviewed, revealed that he was arrested when he was on his way back from a protest in Letpadaung on 5 September 2012. He was held in Sarlingyi police station until 14 September, when he was released after being made to sign a pledge that bars him from entering the Sagaing region.

After the mission team left the country, the Letpadaung protests escalated, and solidarity protests were held in several locations in the country. In Rangoon, six activists – Ko Wai Lu, Daw Shan Ma, Ko Myo Chit, Ko Ye Lin, Daw Naw Ohn Hla, and Ko Nyi Nyi – were arrested at a demonstration in support of the Letpadaung protestors on 26 November 2012. They were later charged under Section 505 (b) of the Penal Code for allegedly committing “offence against the State or against the public tranquillity”. On 2 December 2012, at least two protestors – Ko Moe Thway and Ko Aung Soe – in Rangoon were arrested and subsequently charged under the same law for protesting against the violent crackdown in Letpadaung. Meanwhile, in

Mandalay, a protest was also held on 12 December 2012. Two days later, ten protestors in Mandalay were arrested, of whom four – Aung Hmine San, Than Htike, Min Naing Lwin and Thein Aung Myint – were subsequently charged under Section 18 of the Peaceful Assembly and Peaceful Procession Law. They were convicted and sentenced to one-month in prison on 18 January 2013, but were released by the court as they had already been detained for 33 days.

JUDICIAL HARASSMENT Some of the cases brought to the attention of the mission team clearly demonstrate judicial harassment of democracy activists and human rights defenders. Nine individuals involved in the International Peace Day march on 21 September 2012 have been charged under the Section 18 of the Peaceful Assembly and Peaceful Procession Law in ten different townships in Rangoon, through which the march passed. The activists face up to one year in prison in each of the 10 townships - adding up to a maximum sentence of 10 years in prison if convicted. The activists have also had to report regularly to multiple courts - sometimes several in a day. The activists requested for the charges in various courts to be heard together in one court, but this request was rejected by the Dagon Township Court on 24 October 2012.

The mission team was informed that some of these activists also face numerous other charges under the same law, including for protests that they had participated in previously. Activist U Win Cho found out that he had also been charged on three other counts under the Peaceful Assembly and Peaceful Procession Law in relation to land rights protests that he had participated in previously. He was not informed of the previous charges until he was summoned for his participation in the 21 September peace march. Another activist, Nay Myo Zin, a former army personnel and political prisoner, who was imprisoned in 2011 under the Electronic Transactions Act, currently faces at least 11 possible charges relating to demonstrating without a permit in various cases across the country for the past one year.

ATTACKS AGAINST LAND RIGHTS ACTIVISTS AND THE USE OF VIOLENCE Resistance and dissent is growing among communities affected by the endemic phenomena of land grabbing and disputes over land in the country. The government has responded to this development by cracking down on such protests and demonstrations, oftentimes employing violence to disperse and arrest protestors, and charging protestors under both pre-existing and new restrictive laws.

When the mission team arrived in Burma, protests were beginning to escalate in Letpadaung in the Sagaing region, where villagers and activists have been calling for the suspension of the Letpadaung copper mine, a joint venture project between China's Wan Bao Company and the military-owned Union of Myanmar Economic Holdings Ltd. They claim that their lands have been confiscated and that the project may potentially have damaging impacts on the local communities and the environment.

Protests have been held regularly since September 2012. On 5 September 2012, Rangoon-based activist Ko Wai Lu was arrested and was subsequently charged under Sections 295 and 295(a) of the Penal Code. The mission team was also informed that twelve women from the local community in Letpadaung, who were planning to protest at the copper mine site, were arrested on 10 September 2012 by some 30 security force officers when they were on their way to the monastery where a Buddhist prayer cum rally was scheduled



to be held. Nine of the twelve were released on 11 September 2012, while the remaining three were released on bail on 14 September 2012. They claimed to have been assaulted in detention.

After the mission team's departure from Burma, protests in Letpadaung heightened, and on 29 November 2012, the Burma government violently cracked down on protesters allegedly using water cannons and white phosphorus grenades resulting in serious injuries to at least 70 protestors that required immediate medical attention in makeshift hospitals. In addition to



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the violent crackdown, eight individuals who organised a parallel demonstration in Rangoon to voice their support towards the protest movement in Letpadaung were also arrested, detained and subsequently charged under Section 505(b) of the Penal Code. In Mandalay, four activists who held a protest against the violent crackdown in Letpadaung were also charged under the same law and were subsequently sentenced to jail for one month in January 2013.

Meanwhile, the mission team was also informed of the numerous other protests over land rights held elsewhere around the country around the time of the mission's visit. In Latha Township, Rangoon, around 50 farmers held a "sit-in" protest in front of War War Win Company on 31 October 2012 to demand for compensation and that the land they alleged was confiscated from them be returned; while in Chaung Tha Village, Irrawaddy Division, more than 100 land owners held a protest march on 2 November 2012 to demand the return of the land which they claim was confiscated from them for a hotel project development.

In the Moethi Moemi gold mine in the Mandalay division, about 100 police personnel and plain-clothed officials allegedly attacked the protestors on 23 November 2012, after a confrontation in which four miners – Ye Yint Htun, Naing Win, Saw Naung, and Aung Htet – were arrested. The four were charged under Section 505(b) of the Penal Code and Section 18 of the Peaceful Assembly and Peaceful Procession Law on 30 November 2012. They were subsequently convicted and were each sentenced to six months imprisonment under Section 505(b) of the Penal Code and fined 10,000 kyat under the Peaceful Assembly and Peaceful Procession Law on 3 January 2013.

RIGHT TO FREEDOM OF ASSOCIATION OF STUDENT ACTIVISTS AND FORMER POLITICAL PRISONERS

The mission team was informed that students activists and unions' activities remain tightly controlled and often being targeted for punitive actions by the government. In early July 2012, student activists from the All Burma Federation of Students' Union (ABFSU) who were organising activities to commemorate the 50th anniversary of the then-military regime's crackdown against students in Rangoon on 7 July were harassed and arrested. On 5 July 2012, members of ABFSU were summoned by the police and were warned not to hold any commemorative events on 7 July. On 6 July 2012, more than two dozens of ABFSU members were detained for a day.

The mission team was also informed that student unions remain banned under the 1988 Law Relating to Forming of Organisations. The student activists interviewed by the mission team claimed that some students who were released from previous detentions have faced numerous obstacles, including being blocked by universities from commencing their studies or graduating, while others have had to fill out a form barring them from any political involvement.

Former political prisoners have also faced obstacles in exercising their fundamental freedoms. Despite the many active groups of former political prisoners that exist albeit informally in the country – including those who advocate for the rights of political prisoners and provide support for former political prisoners and their family members – none of these former political prisoners' groups are currently registered as legal organisations. Many former political prisoners have also been denied their passports.



NEW NGO LAW AND OTHER REGULATIONS AGAINST CIVIL SOCIETY

A new legislation to regulate the registration of NGOs has been proposed and is currently being drafted. Consultations with civil society on this proposed new law have been extremely limited and selective at best. Most of the NGOs and activist groups interviewed were not involved in any consultation process. Furthermore, the law, if enacted, could potentially tighten the grip of government controls over the establishment and activities of NGOs and associations, in addition to the pre-existing 1908 Unlawful Associations Act and the 1988 Law Relating to Forming of Organisations.

The mission team was informed that many NGOs and organisations still face obstacles in the current registration process. Among others, organisations need to get recommendations from their respective counterpart ministries for their registration. For example, an NGO working on education would need to get a recommendation from the Ministry of Education in order to proceed with its registration application. Many NGOs and civil society groups that are yet to be registered have informed the mission team that this requirement poses problems for many groups, for example those working on human rights, due to the perceived “sensitivity” of the issue that they work on, and because there is simply no counterpart ministry in charge of human rights per se. It has also been brought to the attention of the mission team that NGOs applying for registration have been made to sign a declaration that prohibits them from involvement in politics.

The mission team interviewed an NGO that has undertaken a study of NGO registration in the country and held consultations with various NGOs and civil society organisations. The NGO informed the mission team that although there have been considerable significant changes at the top levels of government since it undertook its reforms process, “only few changes have been observed at the township level”, with many township authorities “still reluctant to give recommendation for the organisations”. The NGO also noted that the process has often been long and cumbersome, with some organisations experiencing three to six months for their applications to reach the capital Naypyitaw, and eight months to one year to get registration. The registration fee of 100,000 kyat (approx. USD120) every two years has also been found to be high for many organisations.

RESTRICTIONS ON FREEDOM OF EXPRESSION AND MEDIA FREEDOM

The removal of the pre-publication censorship functions of the Ministry of Information’s Press Scrutiny and Regulations Department appears to be a significant development for media freedom in Burma. However, there remain serious concerns over the possibility of continued control of the media through post-publication censorship, as well as the Ministry of Information’s powers to register and de-register media publications, which may possibly be exercised arbitrarily. It has also been brought to the mission team’s attention that the government has issued restrictive 16-point guideline for print media publications.

Meanwhile the drafting processes of two proposed new laws relating to the media – on print media and broadcast media respectively – have been non-transparent and non-consultative. Consequently, concerns have been raised that the proposed new legislations could be used to restrict media freedom in the country. Some of these concerns appear to be addressed with a new drafting process of the print media law, with a reconstituted new interim National Press Council, formed in September 2012 and which includes independent journalists in its composition, tasked to draft the new law following criticisms on the previous drafting process. However, the extent of which inclusive consultations will be held in the drafting process and whether this new draft law will fully comply with international human rights norms and standards remains to be seen. On the other hand, the drafting process of the proposed broadcast media law, have remained top-down, non-transparent and non-consultative.

Notwithstanding some of the significant relative improvements in the aspect of media freedom, an array of laws that restrict freedom of expression still remain. These include the Electronic Transactions Law (2004), Motion Picture Law (1996), Computer Science Development Law (1996), Television and Video Law (1985), Printers and Publishers Registration Act (1962), and Wireless Telegraphy Act (1933), among others. The mission team documented the use of the Electronic Transactions Law by the government as recent as in August 2011, after the reforms process had already begun, when Nay Myo Zin, a former Burmese captain was sentenced to a ten-year jail term for allegedly circulating an email criticising the government. He was released from prison on amnesty in January 2012, but is now facing numerous charges under the Peaceful Assembly and Peaceful Procession Law after his release.

ABSENCE OF HUMAN RIGHTS PROTECTION AND EFFECTIVE REMEDIES

Finally, in an environment where the rule of law and an independent and impartial justice system are still absent, the MNHRC has also largely failed in providing additional safeguards and protection of human rights. The MNHRC, established in September 2011 by a Presidential Decree, does not comply with the Paris Principles. Current efforts to draft new legislation to re-establish the MNHRC to ensure better compliance with the Paris Principles has involved very limited and selective consultation with civil society.

The MNHRC has also not substantially fulfilled its mandates. The Commission has not made any public positions on any of the cases of violations of the rights to freedom of expression, assembly and association. When the mission team asked the Commission on its position on several recent cases, including arrests and charges made under the Peaceful Assembly and Peaceful Procession Law, the Commissioners merely noted that the cases were demonstrations and assemblies organised without permits. The MNHRC also told the mission team that it has not investigated on any of the allegations

of violations of freedoms of expression, assembly and association because none of the complaints it received pertained to these issues.

The mission team also observed the very serious problems concerning the MNHRC's complaints-handling mechanism. For example, the MNHRC requires a copy of the complainant's national registration card to be submitted for a complaint to be admissible, which automatically excludes an important number of victims of human rights violations, especially those from ethnic and religious minority groups who may not have national registration. Moreover, as the Commission does not have a protection mechanism to ensure the safety of victims and witnesses, providing personal information to the MNHRC may put complainants at risk of reprisals, especially considering many of the complaints have been referred to the government.¹ There is also a lack of clarity of whether others, including human rights organisations, can make a complaint to the MNHRC on behalf of victims of human rights violations. One of the NGOs interviewed by the mission team claimed that it had submitted over 800 complaints to the MNHRC, out of which, only 15 were responded to.



¹ According to the MNHRC, in 2011, 102 complaints out of 1,037 were referred to the Office of the Union Government and the offices of relevant state and division governments; while in 2012, 830 out of 2,866 complaints were referred to the government. Information obtained from MNHRC (2013) "Presentation on the recent developments on Myanmar National Human Rights Commission: Complaints handling, investigations and cooperation with the Special Procedures of the United Nations", OHCHR Workshop on International and national human rights mechanisms, 22 January 2013, Rangoon.



> RECOMMENDATIONS

TO THE GOVERNMENT OF BURMA/MYANMAR:

Legislative reforms

1. Review all legislation, including the 2008 Constitution and those laws specifically identified by the UN Special Rapporteur on the situation of human rights in Burma/Myanmar, with the view to ensure that all laws are in line with international human rights norms and standards;
2. Repeal the Peaceful Assembly and Peaceful Procession Law as well as all restrictive provisions of the Penal Code that are inconsistent with international human rights norms and standards;
3. Repeal the 1908 Unlawful Associations Act and the 1988 Law Relating to Forming of Organisations, and ensure that the recently-proposed NGO registration law does not further restrict the right to freedom of association while ensuring the meaningful representation and participation by the democratic opposition, civil society, and ethnic nationalities in the drafting process;
4. Ratify and effectively implement core human rights treaties and their optional protocols, including the International Covenant on Civil and Political Rights (ICCPR);
5. Engage technical assistance from the Office of the UN High Commissioner for Human Rights (OHCHR) in the current law reform efforts;

Law enforcement officials regulating public assemblies

6. Ensure that all law enforcement officials comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

Human rights defenders and civil society organisations

7. Cease all forms of intimidation, including arbitrary detention and judicial harassment of human rights defenders and civil society organisations, as well as restrictions and charges against peaceful protesters;
8. Release immediately and unconditionally all political prisoners, including those charged and sentenced under the 1908 Unlawful Associations Act and the 1988 Law Relating to Forming of Organisations;
9. Ensure that the Political Prisoner Verification Committee is comprised of independent experts and representatives of civil society to guarantee its independence, impartiality, and expertise to investigate, verify, and identify individuals currently imprisoned on politically-motivated charges;
10. Restore full citizen's rights to all released political prisoners, including the right to obtain their passports and travel abroad;

Human rights protection and effective remedies

11. Ensure that independent and impartial courts are accessible to everyone in the country;
12. Establish an independent commission on the appointment of judges in order to strengthen the accountability of the judiciary;
13. Establish an independent and impartial commission with a clear and transparent mandate to investigate land confiscation claims;
14. Ensure that the proposed enabling law of the MNHRC fully complies with the Paris Principles and that the drafting process includes meaningful participation by the democratic opposition, civil society, and ethnic nationalities;
15. Ensure adequate resources for the MNHRC to operate fully in order to promote and protect human rights more effectively;



> RECOMMENDATIONS

TO THE PARLIAMENT AND MEMBERS OF PARLIAMENT:

16. Ensure that all restrictive laws are discussed with the view to ensure full compliance with international human rights norms and standards;
17. Ensure that all draft laws debated in Parliament, including the upcoming enabling law of the MNHRC and the law on NGO registration, are in compliance with international human rights norms and standards, before passing them;
18. Create committees that will be tasked to hold broad-based and inclusive consultations with civil society, ethnic nationalities, and other democratic forces on draft laws before they are passed in Parliament;

TO THE JUDICIARY:

19. Ensure that clear, structured, and coherent procedures for filing complaints at all levels of the judiciary are implemented and made accessible to all individuals;
20. Institute internal rules governing the judiciary to ensure respect for civil and political rights, such as the right to fair trial, the right to access to justice, the right to a legally competent judge, and the right to an effective remedy;

TO THE MYANMAR NATIONAL HUMAN RIGHTS COMMISSION:

21. Fully utilise its existing mandate to investigate and make public positions on cases of violations of freedoms of expression, assembly and association in the country;
22. Make public positions and recommendations to the government on the need to repeal or amend the existing restrictive legislations to ensure that all laws are in line with international human rights norms and standards;

23. Improve its complaints mechanisms to ensure effectiveness, including by allowing for complaints to be submitted by individuals or groups on behalf of other victims;
24. Create a mechanism to protect victims and witnesses of human rights violations from possible reprisals;
25. Establish a focal point for the protection of human rights defenders within the MNHRC;
26. Engage inclusively and meaningfully with civil society in both the drafting of its enabling law and in undertaking its mandates;

TO THE INTERIM NATIONAL PRESS COUNCIL:

27. Ensure that the proposed print media law fully complies with international norms and standards, and that the drafting process includes meaningful participation by the democratic opposition, civil society, and ethnic nationalities;
28. Make recommendations to the government to repeal all existing laws that restrict media freedom and freedom of expression;

TO THE UN HUMAN RIGHTS COUNCIL:

29. Continue to highlight the need for a systematic monitoring on the ongoing human rights challenges existing in Burma, while outlining expectations for substantive and far-reaching reforms; and
30. Support the establishment of an OHCHR office in Burma with a full mandate of human rights protection and promotion as well as unhindered access throughout the country, and urge the government of Burma to sign the host country agreement to formalize their commitment.

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