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Burma: Continued Violations of Fundamental Freedoms and New Forms of Control Expose the Empty Façade of Reforms

*Preliminary Findings of FORUM-ASIA's Fact-Finding Mission on the Situation of Freedoms of Expression,
Assembly and Association in Burma in the Context of Apparent Democratic Reforms*

(Rangoon/Bangkok, 5 November 2012) Human rights protection in Burma will remain illusory if fundamental freedoms of expression, assembly and association are not properly safeguarded in the current legal reforms in Burma, warned the Asian Forum for Human Rights and Development (FORUM-ASIA) after concluding a fact-finding mission in Burma.

Today, on **5 November 2012**, the **Parliament is scheduled to debate a proposal to abolish the provision in the 1975 State Protection Act** that provides the government to restrict “any fundamental right of any person suspected of having committed or believed to be about to commit, any act which endangers the sovereignty and security of the state or public peace and tranquillity”. Numerous individuals, especially activists and human rights defenders, have been imprisoned in previous years on charges of disrupting public peace, security and tranquillity under various restrictive laws. This proposal is the latest of a number of legislative initiatives as part of the Burma government’s apparent reform process.

Despite these apparent efforts, **fundamental freedoms of expression, assembly and association continue to be systematically violated**. Purported legislative reforms, with the enactment of several new laws and review of existing ones relating to fundamental freedoms of expression, assembly and association, has largely resulted in **new forms of controls and restrictions that are applied selectively**. It thus appears that the Burma government’s reforms process is largely an empty showcase to appease the international community, which has resulted in little, if any, improvement on the respect for fundamental freedoms on the ground.

This general trend is based on the preliminary findings of FORUM-ASIA’s recent fact-finding mission to Burma on 24-30 October 2012 to assess the situation of freedoms of expression, assembly and association, particularly focusing on the application of existing laws as well as new legislative initiatives in relation to these rights. FORUM-ASIA’s fact-finding mission team to Burma comprised Fadiyah Nadwa Fikri (Suara Rakyat Malaysia, SUARAM), Renato Mabunga (HRD-Pilipinas, the Philippines); Sayeed Ahmad (FORUM-ASIA) and John Liu (FORUM-ASIA).

The mission team interviewed more than 50 individuals comprising political and human rights activists, human rights NGOs, former political prisoners, labour rights activists, representatives of student unions, farmer 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), four Commissioners, including the Chairperson, of the Myanmar National Human Rights Commission (MNHRC), and the International Labour Organisation (ILO).

Information obtained from these interviews reveals that the right to freedoms of peaceful assembly and of association of particular groups, including **former political prisoners, labour rights activists, student unions**, and members of **ethnic nationalities** have been **selectively denied**. In addition, an array of laws that restrict the fundamental freedoms of the rights to expression, assembly and association still remain in Burma. These include the **Emergency Act**, the **Unlawful Association Act**, and the **1988 law relating to the formation of associations**, among others.

The **right to freedom of assembly** in particular has been **denied selectively** with leaders of demonstrations and peaceful assemblies on issues that are considered “sensitive” or threatening to the government being targeted for persecution and charges under the new **2012 Decree on the Right to Peaceful Assembly and Peaceful Procession**.

In the past two months alone, several peaceful assemblies were held by several different groups that resulted in very different outcomes. Since the law was adopted, scores of individuals have been arrested for organising and participating in peaceful assemblies. On 22-23 September 2012, a total of **13 leaders, organisers, and participants** of a series of peaceful assemblies held to mark the **International Peace Day** on 21 September, were summoned and subsequently **charged under the 2012 Decree on the Right to Peaceful Assembly and Peaceful Procession** after their application for permit to hold the event was rejected by the government. They currently each face charges of violating the Decree on Peaceful Assembly in several townships in Rangoon simultaneously – thus becoming the first cases of prosecution under the 2012 law. Leaders and organisers of several ongoing peaceful demonstrations, including the organisers of **protests against a copper mining project** in the **Letpadaung** region, are also facing **threats and harassment** from government authorities.

In stark contrast, **some other recent demonstrations have been allowed to proceed** by government authorities. These included anti-Rohingya demonstrations held respectively by Buddhist monks in the months of September and October 2012, and by university students in Rakhine state on 24 October 2012.

On the aspect of freedom association, **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, while 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 existing **Unlawful Associations Act** and the **1988 law on the formation of associations**.

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. Meanwhile, although the **removal of the censorship functions** of the Ministry of Information’s Press Scrutiny and Regulations Department appears to be a step in the right direction, there remain serious concerns over the possibility of continued control of the media through 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 guidelines for print media publications**. In addition, **criminal defamation** charges currently faced by at least two media groups, **The Voice** and **Monitor**, for their recent news reports, have already raised doubts whether there has been any real improvement in media freedom in the country.

Finally, the continued violations of rights have been exacerbated by the **MNHRC’s failure to protect human rights**. The MNHRC, established in September 2011 by a Presidential Decree, **does not comply with the Paris Principles**. The MNHRC is currently tasked to draft its own enabling law in coordination with the Attorney-General and the President’s Senior Legal Advisor. While the plan to ensure its establishment is based on legislation rather than a Presidential decree appears to be an effort to ensure better compliance with the Paris Principles, the MNHRC has **consulted with civil society only selectively** on the drafting of its enabling law, consistent with its position to **only engage with registered NGOs and associations**. The MNHRC has also **not substantially fulfilled its mandates**. It has no public positions on any of the cases of violations of the rights to freedom of expression, assembly and association, while there are serious concerns over its complaints-handling mechanism. One of the NGOs interviewed by FORUM-ASIA during this mission had submitted **over 800 complaints to the MNHRC**, out of which, **only 15 were responded to**.

FORUM-ASIA thus calls on the Burma government:

1. to respect all fundamental freedoms and ensure that these rights are applied equally to all groups and individuals;
2. to repeal all existing laws that restrict fundamental freedoms, including the Unlawful Associations Act, the 1988 law relating to the formation of associations, the Electronic Transactions Act, and the Emergency Act;
3. to ensure inclusive, consultative and transparent processes in all pending legislative initiatives, including the drafting of new laws such as the print and broadcast media laws, the NGO registration law, and the enabling law of the MNHRC;
4. to ratify all remaining core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR);
5. to engage technical assistance from the United Nations Office of the High Commissioner for Human Rights (OHCHR) in the current law reform efforts to ensure human rights are properly safeguarded; and
6. to ensure adequate resource for the MNHRC to operate fully in order to promote and protect human rights more effectively.

FORUM-ASIA further calls on:

1. all Members of Parliament to ensure that all restrictive laws, in addition to the latest debate on the 1975 State Protection law, are discussed with a view of abolishing or amending these laws to ensure full compliance with international human rights law and standards; and to ensure the enabling law of the MNHRC will safeguard the independence of the MNHRC from the Burma government in order for it to promote and protect human rights effectively; and
2. the MNHRC to engage with civil society inclusively in both the drafting of its enabling law and in undertaking its mandates.

For inquiries, please contact:

- Sayeed Ahmad, Country Programme Manager, FORUM-ASIA, +66842176150 or sayeed@forum-asia.org
- John Liu, East Asia Programme Officer, FORUM-ASIA, +66802828610 or johnliu@forum-asia.org