

Media freedom in Burma/Myanmar

Index on Censorship

The media in Burma are freer now than at any point in the last decade, yet significant challenges remain and there are troubling signs on the horizon. The abolition of the pre-censorship of the printed press, the return of daily newspapers and of formerly exiled independent newspapers and media outlets all point to demonstrable change since the beginning of the transition. It is also a better climate for journalists with the release of a number of journalists from jail during the transition.¹

Under Burma's five decades of military rule, the country's media environment became one of the most restrictive anywhere on earth. The 1962 Printers and Publishers Registration Act established Press Scrutiny Boards to scrutinize all material prior to publication, or in some cases after publication. After a flurry of open publication during the August-September 1988 revolution, the military amended the 1962 Printers and Publishers Registration Act to significantly raise fines payable by newspapers that break its strict rules from 2,000 Kyat (\$2) to 30,000 Kyat (\$30).²

As a result, Burma remained in the top ten of Freedom House's "least free" countries with regard to press freedom from 2002 to 2010,³ before emerging from the group in 2011 as a result of improvements made during the transition.

Progress has been made but the media is still not free.⁴ The existing media laws are still highly restrictive. Legal reform, as initiated by the Press Council and sought by domestic NGOs, is necessary to provide a proportionate legal framework to bring Burma into line with its international obligations. While the laws are restrictive, the transition has meant they are no longer used to

the same extent. As one activist said: "We call it 'rubber theory': the authorities use the law as they see fit, every day the restrictions stretch and reshape."⁵

Currently there are four laws that have been proposed or drafted with the aim of reforming the legal framework for the media: a draft Press Law which is the work of the press council, a draft Printing and Publishing law, which was proposed by the Ministry of Information and a consultation on a new Broadcasting Law. Public service media reform to create a model of majority publicly-funded, public-interest newspapers is also on the agenda.

The following will look at these proposals in more detail as well as analysing other restrictions in place that also require reform – in particular, the licensing framework for newspapers and Burma's criminal defamation laws.

Role of the Press Council

The Press Council has an important role to play in revising a number of the laws that impact on freedom of expression. The council was founded in October 2012, after the Ministry of Information instructed the main newspapers and journalist associations to set up a self-regulatory body. Journalists have complained that government intervention in the formation of the Press Council prevented the formation of a genuinely self-regulatory press council. Despite this, the current Press Council is made up of 29 members, many of whom are independent journalists and opposition media editors, as well as representatives from media business owners.

The Ministry of Information tasked the Press Council with drafting a new press law within a year. The council has been criticised for the amount of time it has taken to make proposals with still no finalised press law available.⁶ It is the case however that the significant engagement the Council has undertaken with external groups during its drafting process has taken time. The Council has committed to using a broad new press law to reshape the press freedom legal framework.

Journalists in Mandalay were positive about the Press Council's work in consulting journalists

and a broad range of civil society representatives. Beyond the clear interest of journalists in enhancing media freedom, a new press law has the potential to enhance freedom of expression more broadly. Yet the Press Council also recognises the political constraints in which it operates and the need for the final law to be acceptable to parliamentarians, who will vote on the law. The Press Council has received guidance from international organisations⁷ and the secretary of the council, Kyaw Min Swe, told Index on Censorship their law borrowed from similar laws in India, Indonesia and Austria.

The Press Council has produced two drafts of its “Press Law”.⁸ The first draft of the Press Law was criticised for falling short of international standards by setting out in statute a prescriptive list of responsibilities for journalists with overly restrictive rules on content which will encourage pre-censorship, the law also allowed for the licensing of newspapers and the prior-censorship of foreign publications.⁹ Some civil society groups thought the Press Council should go further in advocating for the repeal of restrictive laws.¹⁰

The second draft of the Press Council’s Press Law contained stronger protections for freedom of expression. The second draft contains a number of positive recommendations including: the abolition of criminal defamation, the increased use of mediation (Chapter IV) to settle disputes, including a right to correction or clarification; increased judicial oversight, a limit on criminal penalties present in the existing law and the establishment of a new right to information.

There are still improvements to be made: the internal mediation proposed by the Press Council would allow the journalists and editors who are members of the Press Council to act as judge and jury over complaints from members of the public. As the complaints could be about journalists

who are members of the Press Council, the internal mediation must be more independent from the Press Council in order for it to be attractive for claimants. The review of journalists’ requests for information, led by judges, may be less effective due to the limited knowledge of the judiciary in the field of freedom of information and the judiciary’s lack of independence. A specialist information commissioner model, with an expert in



Mural in Yangon. Photo: Tajagro.

the field of freedom of information tasked with assessing specific information requests, may be more appropriate and effective.

Beyond drafting its Press Law, the Press Council is also working to improve media standards in Burma. According to International Media Support (IMS), the media in Burma is currently dominated by young, untrained journalists with an average age of 25.¹¹ This places a large burden on editors, who must ensure that the content produced is compliant with Burma’s tough laws. The granting of licenses to newspapers to publish on a daily rather than weekly basis is viewed by editors as a significant, and welcome, challenge with more copy to check for compliance with media ethics and internal standards.

The challenge from government

During the process of re-drafting its Press Law,

the Ministry of Information unexpectedly published a draft Printing and Publishing Enterprise Law which would continue to give the Ministry of Information the power to license newspapers, news websites and foreign news agencies and has strict rules on pornography and the incitement of public disorder. Burma's increasingly vociferous civil society launched a public campaign to prevent the adoption of this law, including launching a public signature petition. The Press Council sent letters to the president and the Speaker of Parliament setting out their objections to the law.

Perhaps, as a reflection of the increased responsiveness of the government to external pressure after just one day of coordinated pressure, the Chair of Parliament's House of Representatives Sports, Culture and Public Relations Development Committee (and Vice-Chair of the Union Solidarity and Development Party), Thura Aye Myint, said the law needed reflecting upon and it would not be debated in this session of parliament. This gave the Press Council space to formulate a viable press law by June.

Unfortunately, at the time of publication [2013], the Press Council has still not published its revised press law. Instead, on 4 July, the Lower House of Parliament approved the Ministry of Information's Printing and Publishing Enterprise Law to the dismay of the Press Council.¹² Members of the Press Council have threatened to resign if the Ministry of Information law is passed by the Upper House of Parliament and signed into law by the President.¹³

The Ministry of Information's draft Printing and Publishing Enterprise Law was seen as analogous to the 1962 law. Punishments under this proposed law were not as harsh as the 1962 law with the maximum prison sentence reduced from seven years to six months and fines capped at around \$12,000 for owners of publications (equivalent to the salaries of four journalists for a year).

Even though the punishments for breach of the law would be reduced, the proposed Ministry of Information Law would be highly prescriptive and limit public interest reporting. Chapter III of the law listed a broad number of categories of article that would be prohibited:

7. Printers or Publishers shall not print or publish the relevant publications which

(a) reveals a subject that aggrieves, other similar national races or other different national races and similar or other religion.

(b) instigates for violence or jeopardize the tranquillity of community; and prevalence of law and order

(c) portrays obscene language, pictures, photos and paintings.

(d) abets and instigates any criminal case, cruelty, violence, gambling, committing Narcotics Drugs and Psychotropic Substances crimes.

(e) publish and print the matter that opposes and breaks the provisions of the constitutional law or other existing law.

The broadness of these clauses in particular the clause on portraying obscenity (clause c), abetting gambling (clause d) and publishing material that opposes the constitution (clause e) would undeniably add to the uncertainty facing journalists reporting on public interest matters.

The full range of reasons why the Ministry of Information produced this draft law are unclear; what is clear is that former military generals are seen to be the driving force behind the law and that they (in particular, Dhan Shwe) disagree with the Press Council's liberalising Press Law. The Ministry of Information's draft law is indicative of some of the complexities of the transition: the restrictive law was put forward by government officials with the clear intent of by-passing an established civil society process and to dictate the terms of the debate as the government used to.

Yet the campaign against this law highlights the new strength of civil society in Burma and its ability to put pressure on the government. The outcome of this process in particular whether the Upper House of Parliament and Presidential Office ignore the Press Council (forcing mass resignations) and allows the Ministry of Information's law to proceed, will be a key test of how much effect the transition is having on media freedom.

Existing impediments to media freedom

Criminal defamation. Criminal defamation originates from the colonial penal code of 1861.¹⁴ Section

499 of the penal code (“Of defamation”) provides for a jail sentence of up to two years. Criminal defamation is viewed as an increasing problem for Burmese journalists. Many editors told Index that although they welcomed the abolition of the Press Scrutiny Boards, pre-publication censorship removed the risk of a criminal defamation claim lodged by public officials against their journalists. In the last year, there have been a number of cases where public officials have threatened to use criminal defamation actions against journalists.

In March 2012, the Ministry of Mining lodged a case against Kyaw Min Swe, the chief editor of *The Voice*, for an article in which he alleged corruption by the ministry’s officials. The charges were dropped in February 2013 after mediation by the press council between the parties.

The list of defences in criminal defamation law is extensive including the defence of truth, a variety of honest opinion defences and the defence of qualified privilege.¹⁵ Civil defamation has a more narrow range of defences, but is viewed to be a lesser problem because it is rarely used. In order to protect media freedom, libel should be decriminalised in line with the recommendations of the UN special rapporteur on freedom of expression.¹⁶ In addition, civil defamation laws must not give rise to excessive costs or damages and must have adequate defences to protect the public interest, truth and fair comment.

The licensing of newspapers. The end of pre-publication censorship began with the termination of the Press Scrutiny and Registration Division (PSRD). According to the state journal *New Light of Myanmar*, it was signed off at the cabinet meeting on 24 January 2013.¹⁷ It was a Ministry of Information official, not an NGO, that described the abolition of the Press Scrutiny and Registration Board as necessary in order for the country to be consistent with the “Myanmar Constitution and the UN Declaration of Human Rights (UNDHR).”¹⁸

1 April 2013 heralded the return of independent daily newspapers to the streets of Burma, effectively ending the government’s use of the 1962 Printers and Publishers Registration Act

to limit non-state media to publishing only weekly journals. However, other provisions from the 1962 Act are still in force. Newspapers continue to be licensed by the Ministry of Information under the Press Scrutiny and Registration Division (PSRD). Failing to register for a licence prior to publication carries a maximum jail sentence of three years under the Printers and Publishers Registration Law of 1962.¹⁹

The licensing of newspapers is an unwarranted restriction on freedom of the media in Burma on principle and in practice. In practice, the process for licences has failed to be transparent. On 1 February 2013, the government allowed newspapers to apply for daily licences. A number of publications were refused licences for arbitrary reasons including the Eleven Media Group, whose application apparently lacked an official revenue stamp valued at 100 kyats (\$0.12).²⁰ Eventually the decision was overturned and the group launched a daily newspaper *The Daily Eleven* symbolically on World Press Freedom Day on 3 May.²¹

Editors and journalists were concerned that their previous political activities would be assessed by the PSRD when awarding daily licences after the application included questions as to the previous political activities of the applicant. On the whole, these fears were not realised during the granting of daily licenses for newspapers, yet the threat that politicians or the military will move to withdraw licenses remains.

The registration process has been time-intensive and restrictive with the application requiring a code of practice, a code of ethics and a code of conduct for the publication – even though the Press Council is working on a series of ethical codes for journalists as part of its ongoing negotiations to draft a more proportionate press law.

In principle, the licensing of newspapers in Burma has proven to be problematic as it grants the government the power to stop publication. Under the existing licensing regime, newspapers continue to have their licences revoked. In July 2012, the license of *The Voice* journal was temporarily suspended for breaking news of a cabinet reshuffle²² and printing a satirical cartoon on the cover page, while the *Snapshot* news journal was

also suspended in June 2012 for printing a photograph of a murder victim whose death triggered sectarian violence.²³

The banning of the sale, reproduction, distribution or even possession of the *Time* magazine issue, “The Face of Buddhist Terror” by The Central Management Committee for Emergency Periods demonstrated the limited space in Burma for discussion of ethnic conflict and the sensitivity of the government on this issue. The use of emergency legislation and its impact on press freedom in Burma is of particular concern to the Press Council who believe a dangerous precedent has now been set. The Press Council was not consulted and it claims neither was the Ministry of Information.²⁴

Media plurality

The return of formerly exiled media groups such as Mizzima, the Irrawaddy, the Democratic Voice of Burma and the ethnic media umbrella group Burmese News International²⁵ has added to the plurality of the media in Burma and demonstrates that media organisations are optimistic that the transition could be sustainable.

There is a push from civil society, in particular from members of the Press Council, for parliament to create a media anti-monopoly law to promote media pluralism. While there is, as yet, no draft anti-monopoly law, the Ministry of Information is working on a plan to reconstitute the state-run newspapers – *New Light of Myanmar*, *The Yadanabon*, *The Mirror* – into a model of public service media, comprising public funding for public interest journalism (of up to 70 per cent of revenue) with editorial independence.²⁶ In June 2013, it [was] expected the Public Service Media law [would] be tabled in the Lower House. The draft law has been criticised for creating public service newspapers that could intensify the government’s competition with private newspapers, with the result of undermining their income.²⁷

The government has indicated the Public Service Media Law will move state-owned television channel MRTV towards a public service broadcasting model, which is a positive step.²⁸ Concerns remain²⁹ that the law has insufficient

safeguards to guarantee the independence of the new public service broadcaster. In the meantime, both the BBC and VOA are involved in training work to improve editorial standards at MRTV and at the Ministry of Information to move the organisation towards a public service broadcasting model.³⁰ In March 2013, it was announced that MRTV will work with UNICEF regarding programming on healthcare for children and for ethnic minorities.³¹

The new public service broadcasting model will also require new rules prior to the 2015 presidential elections to ensure not only the impartiality of the coverage but also to restrict election spending in order to prevent the block purchase of advertising on limited frequency media by one particular political party.³²

Broadcasting law

The government is consulting on a new Broadcasting Law which has also seen input from international experts³³ and UNESCO. UNESCO’s representative in Myanmar has welcomed the provisions that the new Broadcasting Law has to create an independent broadcasting council similar to the United State’s Federal Communications Commission (FCC). The draft law includes safeguards to ensure media plurality and prevent excessive media cross-ownership though there continues to be concern over the ability of the government to influence the state broadcaster.³⁴ ■

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Notes

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