

Is Myanmar sliding back into censorship?

For all its talk of press freedom, the Burmese government has produced a surprise new bill containing oppressive provisions and undermining the press council it created. Ellen Wiles reports.



As Britain gets its Royal Charter for press regulation, consider the high drama now embroiling the press in Burma. Press law and regulation here are under scrutiny, and the stakes are high. The country has experienced nearly fifty years of censorship, with thousands of writers, journalists and editors jailed as political prisoners, and articles, poems and books blocked from publication. Happily, the last two years have seen remarkable progress in the climb towards press freedom: pre-publication censorship has ended, access to many foreign news and social networking sites has been unblocked, and the world celebrated at the release of hundreds of political prisoners. But self-censorship remains widespread and fear still hangs in the air. Many of the old oppressive laws and controls remain extant. There are still political prisoners locked up for writing critically about the government. Before press freedom can be achieved, there has to be significant, consultation-based legal reform, and the establishment of an independent press council. But a surprise move by the ministry of information has prompted many to conclude that the government is sliding back into

ensorship after all.

Without any warning, to the media or to the public, the Ministry released a Printing and Publishing Enterprise Bill. It was published in the Government's mouthpiece newspaper, the New Light of Myanmar, in the Burmese language version only (freeing it from the prying eyes of foreign inquisitors) and purports to replace one of the old censorship laws. A laudable aim, were it not for the fact that the new law would perpetuate oppressive restrictions of the press by government.

The Ministry's bill provides that any publication can be declared unlawful for broadly-worded reasons like 'disturbing the rule of law' or 'violating the Constitution'. It gives a government 'registration official' the power to issue, suspend and revoke 'certificates of acknowledgment': a thinly veiled euphemism for licences. Licences are clearly contrary to international press law standards since it allows the government to select or reject publications. The new bill even creates offences which replicate the old censorship licencing offences, albeit with slightly less stringent punishments: failing to register printing or publishing companies with the government, and distributing publications deemed by the government to be 'unlawful', which can result in prison sentences of up to 6 months fines of up to £7,500. This hardly reflects advice the government has been receiving on free expression and press law over the last two years from specialist media organisations and NGOs.

To put this bill into context, it is worth recalling the core characteristics of a good legal and regulatory system for the press. At minimum, it should include the protection of freedom of expression as both a human and a constitutional right; press laws that are tightly drafted and minimally restrictive; and a system of press regulation that is independent from government control and interference.

Happily, the last two years have seen a raft of democracy-oriented changes in Burma, many of which relate directly to freedom of expression and have emanated from the ministry of information. With the lifting of pre-publication censorship, journalists and writers are ostensibly free to publish as they wish. I say 'ostensibly' because the positive changes to the censorship regime that have taken place since 2011 have not yet been sufficient to remove old fears that manifest themselves in widespread self-censorship. And there is good reason for those fears to remain. Five members of the People's Democracy Party have been detained in Kachin state since October 2012 for printing corruption allegations against the government in their newsletter. This underlines the point that, while the government has been making many of the right noises about press freedom, changes of public attitude are not enough. Effective laws and regulations need to be put in place, through a transparent, consultative process, to prevent such abuses of press freedom. Otherwise a change of government mindset in the future, for whatever reason, could result in a speedy return of oppressive practices towards the press and media community with no legal recourse.

The most important form of law for ensuring media freedom is the protection of freedom of expression as a human and constitutional right. Rights in such forms are difficult to change once

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they have been put in place, and for a good reason: to ensure that their protection remains stable throughout the inevitable to and fro of political change and of ordinary laws and regulations over time. Burma is not a signatory to the International Covenant of Civil and Political Rights (ICCPR), article 19 of which sets out the international standard for freedom of expression. It provides: 'Everyone shall have the right to hold opinions without interference... [and] to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'. This right 'may.. be subject to certain restrictions', but 'only... such as are provided by law and are necessary... for respect of the rights or reputations of others' or 'for the protection of national security or of public order or of public health or morals.' In contrast, Burma's 1975 Constitution, in place for over 30 years, incorporated a free expression protection, but only to the extent that such expression was not 'contrary to the interests of the working people and of socialism'. The current 2008 constitution, which ensures that a core proportion of government comprises members of the military, contains a minimally-worded protection of freedom of expression, reserved only for 'citizens' (defined as excluding groups such as the Rohingya Muslims in the Rakhine state), whereby they can 'express and publish freely their convictions and opinions,' but only provided that the exercise of this right is not contrary to the 'duty' of all citizens, to 'uphold non-disintegration of national solidarity'. That duty is so widely phrased that it could be interpreted to restrict any published writing that is critical of the government. One could go so far as to call the constitution censorship-friendly.

At the level of national law in Burma, a number of oppressive laws that functioned as pillars of the censorship regime still remain in force. The 1962 Printers and Publishers' Registration Law is a key example. It provides that no person 'may engage in either printing or publishing without a registration certificate' and in compliance with rules and requirements of the Printers' and Publishers' Central Registration Board, which is part of the ministry of information (now replaced by/rebranded as the Press Scrutiny Board). By international press law standards, licensing and registration are unacceptable, unless a registration system is light touch and not associated with punitive consequences. This has not been the case in Burma, where non-cronies and especially ex-political prisoners in the media world have repeatedly been denied licenses. The result is that intelligent and committed journalists such as Ma Thida, an ex-political prisoner, can only serve as employees of their own news journals.

A particularly draconian set of rules issued under this law was contained in a 'Memorandum to all printers and publishers concerning the submission of manuscripts for scrutiny', issued in 1975. The contents of these rules would be comical if breaking them had not been cause for imprisonment. The rules required all publishers to submit books, journals and magazines to the board in advance of publication, so that they could be 'scrutinized to see whether or not they contain: ...anything detrimental to the ideology of the state... any incorrect ideas and opinions which do not accord with the times... any descriptions which, though factually correct, are unsuitable because of the time or the circumstances of their writing...any criticism of a non-constructive type of the work of government departments'. The result was that editors had to pay costs to produce their

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magazines or books ready for release, send them in to a censorship officer, and expect them back again with articles, short stories or poems ripped out, or with selected lines painted over so that the old words could no longer be read. This was the form that publication would then have to take, at the monetary cost of the publisher, and the reputational cost of the writer. Fortunately these particular rules and pre-publication scrutiny associated with them have now been abolished. However, there is still a legal requirement for licensing of publishers under the 1962 law, and post-publication scrutiny can be required by the Press Scrutiny Board.

Another oppressive law that remains in force today is the 1975 State Protection Law. This law has been described by the Burma Lawyers' Council as the 'broadest law in the world'. It authorizes the government to restrict 'any fundamental right of any person ... believed to be about to commit, any act which endangers the sovereignty and security of the state or public peace and tranquillity'. Furthermore, it gives the government power to detain a person without trial for a period of up to ninety days, extend that detention to a period not exceeding 180 days, and if necessary, restrict the movement of a person for a period of up to a year. This law has been used to detain Aung San Suu Kyi under house arrest, as well as to imprison many lesser-known writers and journalists.

Last but not least, there is the 2004 Electronic Transactions Law. This has been used to imprison young bloggers such as Nay Phone Latt, who have communicated news of events such as the 2007 saffron revolution to the world. It provides that it is an offence punishable with up to 15 years imprisonment and a fine to use 'electronic transactions technology' to do 'any act detrimental to... community peace and tranquillity or national solidarity or national economy or national culture', or to receive, send or distribute 'any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquillity or national solidarity or national economy or national culture.' Under this law, an email to a friend mentioning a new art exhibition in town could be enough to get you sent to jail.

Fortunately, the government is now considering repealing those laws. However, it wants to replace them first, and the task of drafting replacement media laws was assigned to the new Interim Press Council. This leads to the second reason why the ministry's new bill has caused such controversy: it directly conflicts with the new draft Press Law that is currently being produced by the interim press council. The ministry created that council and assigned its functions; and yet its decision to publish this bill was a decision to usurp those functions. To begin to understand this apparent conundrum, it worth noting that the government had difficulty with the concept of a press council from the start. Its first attempt last year involved quietly convening a 'committee for professional conduct': a quorum of selected media professionals who had connections to the military government, mainly through ownership stakes in the various news journals. This body dissolved as quietly as it had emerged. A few months later, in August 2012, the government announced publicly, again in the New Light of Myanmar, that it had formed a new Core Press Council. By name, this is the type of regulatory body that international press law standards require, and the government may have been hoping that international observers might have ticked the relevant box. But by nature the new council was not remotely independent from government, defeating the whole point of its

existence. This fact was not lost on the Burma media, and there was an immediate outcry. The government conceded, at least to some extent – though no evidence of such a concession made its way into the New Light of Myanmar. It didn't go so far as to authorise an independent press council to be formed by journalists, but it did appoint a new interim press council which was a hybrid body, including at least some independent members who had a history of either impartial political reporting or even mild criticism of the government.

This interim press council was expressly tasked with drafting new press and media laws and a code of conduct for the press. They have already prepared a series of drafts, in a process which has involved consultation with selected members of the media. The drafts they have produced contain numerous positive elements, for instance upholding in their press law the objective of freedom of the press. It must be said that there remains a great deal of room for improvement in their early drafts, but they were ready send these draft sout for further consultation with media stakeholders, when they was ambushed by the ministry's release of the new bill. Just five days later the Ministry of Information submitted its bill to parliament, without any consultation either with media stakeholders or the wider public.

In response, all the independent media associations in the country issued statements condemning the Ministry's draft. The interim press council wrote a collective open letter to the President, Minister of Information, the Upper and Lower Houses of Parliament, and relevant parliamentary committees, complaining about this unreasonable and unexpected interference with its own functions. Ye Tint, Public Relations director for the ministry of information, defended the bill on the basis that 'other countries also have laws like this to control risks to state security or to the unity of the state': hardly a compelling argument for the content, and certainly not an explanation for the timing or the process.

Why did the ministry of information decide to take this apparently bizarre course of action at this point in time, when it knows that the world has been waiting to judge whether the Burmese government is serious about achieving democracy and putting an end to censorship? It is hard to avoid the conclusion that it was precisely because the ministry knew what the interim press council were drafting, in particular the provisions being pushed for by the council's more liberal and independent members, that it wanted to impose its own version before the fruits of that labour went to parliament. One member of the interim press council confided in me that, the more its members have met together over time, the more those appointees who were initially considered censorship sympathisers became influenced by the views of the more liberal end of the spectrum. The ministry may now have realised that the animal it created to look hybrid, but really intended to remain under its control, has taken on a life of its own. After all its liberal talk over the past two years, perhaps the ministry is ultimately unable to cope with the reality of its pending loss of press control.

The good news is that the media outcry has caused parliament to announce this week that they will at least delay discussion of the ministry's new bill for a couple of months. In the meantime, the onus is on the interim press council to set an example for media law reform and the consultative

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process as they proceed with drafting their press law bill.

It can only be hoped that the Burmese government will reflect on these events, and realize that its actions in relation to law reform over the next few months will speak louder than its words in demonstrating a genuine commitment to freedom of expression in its journey towards democracy.

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