

Myanmar: Repeal Section 66(d) of the 2013 Telecommunications Law

Joint statement by 61 Myanmar and international human rights organizations

Concerned by reports that the Myanmar authorities will retain the criminal defamation provision of Section 66(d) during a review of the Telecommunications Law, 61 national and international human rights organizations are urging the Myanmar authorities, and in particular the Ministry of Transport and Communication and the Parliament, to ensure it is repealed in the amended law.

Section 66(d) of the 2013 Telecommunications Law provides for up to three years in prison for “*extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network.*” In the last two years, this law has opened the door to a wave of criminal prosecutions of individuals for peaceful communications on Facebook and has increasingly been used to stifle criticism of the authorities. According to the 2013 Telecommunications Research Group, which has been documenting prosecutions under Section 66(d), at least 71 people are known to have been charged for online defamation under the law.

The current review of the Telecommunications Law offers an important opportunity to repeal Section 66(d) and bring the 2013 Telecommunications Law fully in line with international human rights law and standards.¹ Failure to do so would raise serious questions about the government’s commitment to freedom of expression. It would, worryingly, leave people in the country at risk of imprisonment simply for sharing opinions online. It would also undermine the government’s reform and responsible business agenda, by chilling or even silencing the ability of the public and the media to report on public sector mismanagement, harmful and illegal business practices, and corruption.

VAGUELY-WORDED, SECTION 66(D) HAS ALLOWED FOR AN ABUSIVE APPLICATION OF THE LAW

One of the most problematic aspects of Section 66(d) is its vagueness. Under international human rights law and standards, restrictions on the human right to freedom of expression are allowed for certain, narrowly defined purposes only, including to protect the rights and reputation of others.² Restrictions should be clear, detailed and well-defined in law, limited to those specified purposes, and necessary and proportionate to achieve their aim.

Section 66(d) does not adequately define what actions would be considered “disturbing”, or “causing undue influence.” These terms are overly broad and subject to widely different interpretations. Previous military governments for

¹ For recommendations on how to bring the entire 2013 Telecommunications Law into line with international human rights law and standards see: Article 19: *Myanmar Telecommunications Law (2013)*, *Legal Analysis*, 8 March 2017, <https://www.article19.org/data/files/medialibrary/38665/Myanmar-analysis--8-March-2017.pdf>.

² Other purposes for which restrictions on the right to freedom of expression are permitted are for the protection of national security, public order, public health or morals. In addition, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited. See for instance Article 19(3) of the International Covenant on Civil and Political Rights.

example, deemed the views of people who promoted democracy and human rights to be “disturbing.”

This vagueness carries risks. Section 66(d) has been used to stifle criticism of both the civilian government and the military. For instance, individuals have been imprisoned for Facebook posts calling Myanmar’s President Htin Kyaw an “idiot” and “crazy” and for posts mocking the Myanmar Army. One criminal prosecution revolved around the posting of an image depicting the Army’s Commander-in-Chief with a women’s *htamein* (a sarong-like garment) on his head.

It is important to keep in mind that under international law, the purpose of laws covering defamation, libel, slander and insult is to protect the rights and reputations of people, not to prevent criticism of the government or of individual officials. According to UN Special Rapporteurs on the right to freedom of expression and the UN Human Rights Committee, public figures are necessarily subject to a greater degree of criticism than private citizens because of their institutional role, to ensure open debate about matters of public interest.³

The high volume of cases brought under Section 66(d) has also been facilitated by the fact that it allows anyone to file a complaint, even individuals other than the person who has allegedly been defamed. As a result, in Myanmar people have filed complaints on behalf of State Counsellor Aung San Suu Kyi and President Htin Kyaw, as well as members of the military.

In the past year we have also seen a surge in the number of criminal prosecutions initiated by private Facebook users against each other for posts that they believe to be untrue, insulting, offensive, or otherwise objectionable. These include, for example, Facebook posts saying that someone was a cheat, warning people against using specific businesses, or complaining about land disputes.

DEFAMATION SHOULD NEVER BE CRIMINALISED – WHERE IT OCCURS THERE ARE OTHER WAYS TO ADDRESS IT

Although international human rights law and standards do not prohibit the use of defamation laws for purposes such as protecting the rights and reputations of people, international authorities including the UN Special Rapporteur on the right to freedom of expression and the UN Human Rights Committee have affirmed that defamation should never be a criminal offence.⁴ This is because imprisoning someone for defaming another person is disproportionate and can threaten the right to freedom of expression itself. The threat of imprisonment can prevent people from peacefully speaking out on sensitive issues and lead to self-censorship.

There are other ways to address defamation, including online defamation, which do

³ See Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, to the Human Rights Council, UN Doc. A/HRC/7/14, 28 February 2008, para. 85; and the Joint Declaration by Ambeyi Ligabo UN Special Rapporteur on Freedom of Opinion and Expression, Freimut Duve OSCE Representative on Freedom of the Media, and Eduardo Bertoni OAS Special Rapporteur on Freedom of Expression, 2002.

⁴ The Human Rights Committee has also stated that “States parties should consider the decriminalization of defamation.” Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 47.

not involve imprisonment, for example through making it a matter of civil rather than criminal law. In addition, those responsible could be made to issue an apology, a public rectification or clarification in order to restore the reputation that has been harmed.

Our organizations are deeply concerned that some members of the administration appear to view Section 66(d) as a solution to address advocacy of hatred. We recognize that Myanmar has a growing problem in this regard and welcome attempts to address this. However, Section 66(d) has done little to prevent such activity. Instead, it has enabled an environment of intolerance and conflict by allowing anyone who deems a Facebook post "offensive" to sue the author.

As the government has expressed its intention to adopt a separate law on hate speech, we would like to stress that any prohibition of advocacy of hatred must be formulated precisely and not unlawfully restrict freedom of expression. Beyond legislation, our organizations believe authorities at all levels should speak out against discriminatory rhetoric and ensure broader policy measures are undertaken to tackle the root causes of intolerance, including for instance by promoting intercultural dialogue and education on diversity and pluralism.

RECOMMENDATIONS

In light of the above, our organizations are urging the Myanmar authorities to:

- Repeal Section 66(d) of the 2013 Telecommunications Law;
- Or at a very minimum, amend it to ensure that: defamation is no longer criminalized and that where recognizably criminal acts such as "extortion", "coercion", "wrongful restraint" and "threats" occur in the law they are clearly defined in line with international human rights law, so as to ensure it is not used to criminalise the peaceful expression of views.

As long as Section 66(d) remains, people in Myanmar – especially those who criticise officials and government policies online – will be at risk of being imprisoned for their peaceful exercise of the right to freedom of expression.

List of signatories:

1. Alin Mee Ain
2. Alternative ASEAN Network on Burma (Altsean-Burma)
3. All Arakan Students' and Youths' Congress (AASYC)
4. Amnesty International
5. Arakan Rivers Network (ARN)
6. Area Peace and Development Forward
7. ASEAN Parliamentarians for Human Rights (APHR)
8. Assistance Association for Political Prisoners – Burma (AAPP-B)
9. Association of Human Rights Defenders and Promoters (HRDP)
10. Association Suisse Birmanie (ASB)
11. Burma Campaign UK (BCUK)
12. Burma Human Rights Network (BHRN)
13. Burma Link
14. Burmese Rohingya Organisation UK
15. Charity-Oriented Myanmar
16. Cherry Images
17. Christian Solidarity Worldwide (CSW)

18. CIVICUS
19. Civil Rights Defenders (CRD)
20. Colors Rainbow
21. Committee to Protect Journalists (CPJ)
22. Equality Myanmar (EQMM)
23. Farmer Rights and Development Organization
24. Farmer Union, Magway
25. Fortify Rights
26. Free Burma Campaign (South Africa)
27. Free Expression Myanmar (FEM)
28. Future Light Center
29. Gender Equality Network
30. Green Network Sustainable Environment Group
31. Human Rights Documentation-Burma (ND-Burma)
32. Human Rights Educators Association (HREA)
33. Human Rights Educators Network (HREN)
34. Human Rights Foundation of Monland (HURFOM)
35. Human Rights Watch (HRW)
36. Info Birmanie (France)
37. Institute for Asian Democracy
38. International Campaign for the Rohingya
39. International Commission of Jurists (ICJ)
40. International Federation for Human Rights (FIDH)
41. Karen Human Rights Group (KHRG)
42. Korean House for International Solidarity
43. Magway EITI Watch Group
44. Mon Youth Educator Organization (MYEO)
45. Mwetaung Area Development Group
46. Myaing Youth Development Organization
47. New Generation (Shan State)
48. Nyein Chan Yar
49. Norwegian Burma Committee
50. Odhikar
51. Peace and Justice Myanmar (PJM)
52. Progressive Voice (PV)
53. Promotion of Indigenous and Nature Together (POINT)
54. Reporters Without Borders (RSF)
55. Shwechinthae Social Service Group (Shwe Bo)
56. Swedish Burma Committee
57. The Seagull: Human Rights, Peace & Development
58. United-ACT
59. US Campaign for Burma
60. Women and Peace Action Network (Shan State)
61. Women Peace Network