

Myanmar Authorities Must drop the Case Against Ko Swe Win and Decriminalise Defamation

JOINT STATEMENT

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On the second anniversary of the defamation charges brought upon Ko Swe Win, editor at online newspaper *Myanmar Now*, we, the undersigned 77 civil society organisations, call on the relevant authorities to drop the case against him. Spurious defamation charges under Article 66(d) of the Telecommunications Law were filed against him on 7 March 2017 by ultranationalists intent on suppressing free speech. The Government of Myanmar must take concrete steps in parliament to decriminalise defamation, repeal Article 66(d) of the Telecommunications Law and drop the charges and release all activists and human rights defenders currently in prison and being charged under this repressive legislation.

Article 66(d) of the Telecommunications Law of 2013 was amended in 2017, but notably, defamation is still criminalised and carries a punishment of up to two years of imprisonment or a fine of up to one million kyat or both. The law is still frequently used to stifle free speech in Myanmar and silence critics. To date, a reported 173 cases have been filed under Article 66(d) since its enactment.

The UN Human Rights Committee has called on all states to decriminalise defamation, indicating that imprisonment for defamation is a penalty that can never be appropriate or compatible with the right to freedom of expression. In addition, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that defamation should be treated as a matter of civil rather than criminal law, stressing that criminal prosecution for defamation inevitably becomes a mechanism of political censorship, which contradicts freedom of expression and of the press. In the case of Article 66(d), Myanmar law allows for agents of the offended party to file charges for defamation and initiate criminal proceedings on their behalf. In effect, this means that powerful organisations and individuals can operate via proxies to target those that they consider disturbing, a form of judicial harassment with severe implications for the individuals who are accused.

Ko Swe Win was charged with defamation under Article 66(d) of the Telecommunications Law for sharing a story by *Myanmar Now* on *Facebook*. The story quoted a senior monk who said that well-known ultranationalist monk U Wirathu's actions could be cause for him to be expelled from the monkhood as they violated the tenets of Buddhism. U Wirathu, notorious for using *Facebook* to agitate against Muslims, had previously expressed support for and thanked U Kyi Lin – the recently convicted gunman who shot and killed prominent lawyer U Ko Ni in January 2017. U Ko Ni was an expert on constitutional law and was working to change the military-drafted 2008 Constitution. The plaintiff, a follower of U Wirathu, brought the charges in March 2017 and the court proceedings started in July 2017.

Since then, Ko Swe Win has had to travel regularly to the courthouse in Mandalay, where the charge was filed, from his home in Yangon and back – a distance of over 1,200 kilometres.

The court hearings, now totalling 55, have been ongoing for almost two years, but the court has still only heard the plaintiff's side, which has consistently been stalling the process. On some occasions, Ko Swe Win has travelled from Yangon only to find that the plaintiff or witnesses have failed to appear in court and that the proceedings have been postponed. The plaintiff himself was arrested in August 2017 and has since been detained, which has caused significant delays to the process.

U Wirathu has been summoned twice but failed to appear. On the first occasion, his lawyer informed the court that U Wirathu could not make the hearing because he was attending a donation ceremony. On the second occasion, U Wirathu's lawyer requested that the hearing be held at his monastery compound. That request was denied by the township court, but U Wirathu appealed to the higher district court, which also denied the request. While the district court considered the request, no hearings could be held in the township court. Ko Swe Win however, was still required to make an appearance every two weeks before the township court judge just to be informed of the next date he was due to appear in court. This procedure, which required him to travel from Yangon to Mandalay, was typically over in a matter of minutes.

The many irregularities of this case highlight the lack of independence of the Myanmar judiciary. It appears that the authorities are determined to target those that are working to expose troubling truths and terrible crimes, rather than those who commit them. Those responsible for spreading dangerous speech and inciting violence face no consequences, while those who criticise such dangerous actions continue to be prosecuted. In a recent parallel case, also fraught with controversies, two *Reuters* reporters – Wa Lone and Kyaw Soe Oo – were convicted to seven years in prison for exposing a mass killing of Rohingya men and boys carried out by the Myanmar military in northern Rakhine State.

In Myanmar, high-ranking military commanders, some of whom are accused by UN investigators for war crimes, crimes against humanity, and even genocide, remain at large, while journalists who expose the truth and report on human rights violations in the country are charged under repressive laws. This inverted idea of justice needs to come to an end if Myanmar is to continue its path towards democracy.

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

In light of the above, we call on the Government of Myanmar and its relevant authorities to:

- Drop the defamation charges under Article 66(d) of the Telecommunications Law against Ko Swe Win and other activists and human rights defenders and release those currently imprisoned under this repressive legislation;
- Repeal Article 66(d) of the Telecommunications Law, or at a very minimum, amend it to ensure that:
 - defamation is no longer criminalised by deleting references to “defamation” as well as vague language such as “disturbing”;

- only a government prosecutor can file a criminal complaint under Article 66(d);
- where recognisably criminal acts such as “extortion” and “threats” occur in the law they are clearly and narrowly defined in line with international human rights law, to ensure it is not used to criminalise the peaceful expression of views.

Signed by:

1. Progressive Voice
2. Athan – Freedom of Expression Activist Organization
3. Swedish Burma Committee
4. Protection Committee for Myanmar Journalists
5. Youth Circle
6. Halcyon
7. Burma Monitor
8. Southeast Asian Press Alliance (SEAPA)
9. Citizen Action For Transparency
10. The Seagull: Human Rights, Peace & Development
11. Association of Human Rights Defenders and Promoters
12. Human Rights Foundation of Monland
13. ASEAN Parliamentarians for Human Rights
14. Info Birmanie
15. PEN America
16. Myanmar Cultural Research Society
17. Minhla Youth Centre
18. Burma Human Rights Network
19. Karen Human Rights Group
20. The Swedish Rohingya Association
21. Odhikar
22. Front Line Defenders
23. SYNERGY (Social Harmony Organization)
24. Civil Rights Defenders

25. Society for Threatened Peoples – Germany
26. Equality Myanmar
27. Assistance Association for Political Prisoners
28. Generation Wave
29. Oway Education and Youths Institute
30. Yangon Youth Network
31. Future Light Center
32. Nyan Lynn Thit Analytica
33. အလင်းစေတမန်
34. Karen Student Network Group
35. Asian Forum for Human Rights and Development (FORUM-ASIA)
36. Fortify Rights
37. International Commission of Jurists
38. Karenni Human Rights Group
39. Action Committee for Democracy Development
40. ရွှေခြံမြေကွန်ရက်၊ ကွမ်းခြံကုန်း ၊ ရန်ကုန်တိုင်းဒေသကြီး။
41. လူ့အခွင့်အရေးကာကွယ်မြှင့်တင်ရေးကွန်ရက်၊ ချောက်မြို့နယ်၊ မကွေးတိုင်းဒေသကြီး။
42. အလုပ်သမားအဖွဲ့ဖွဲ့စည်းပေါ်ပေါက်ရေးနှင့် အမျိုးသမီးအခွင့်အရေးအသိပညာပေးရေး ပဲခူးကွန်ရက်၊ ပဲခူးတိုင်းဒေသကြီး။
43. တောင်သူလယ်သမားများနှင့် ရေလုပ်သားများ အကျိုးစီးပွားကာကွယ်စောင့်ရှောက်ရေးကွန်ရက်၊ မြစ်ကျိုးတိုက်နယ်၊ ပဲခူးတိုင်းဒေသကြီး။
44. ဥသျှစ်ပင် လူငယ်ကွန်ရက်၊ ဥသျှစ်ပင်မြို့၊ ပန်းတောင်းမြို့နယ်၊ ပဲခူးတိုင်းဒေသကြီး။
45. တောင်သူလယ်သမားများဥပဒေအထောက်အကူပြု ကွန်ရက်၊ မြောက်ဦးမြို့နယ်၊ ရခိုင်ပြည်နယ်။
46. မွန်လူငယ်ကွန်ရက်၊ ရေးလမိုင်း၊ မွန်ပြည်နယ်။
47. လူမှုဖွံ့ဖြိုးရေးနှင့် ငြိမ်းချမ်းရေးကွန်ရက်၊ ပေါင်မြို့နယ်၊ မွန်ပြည်နယ်။
48. Ramkhye - ရမ်းခေး မြစ်ကြီးနား ကွန်ရက်၊ မြစ်ကြီးနား၊ ကချင်ပြည်နယ်။
49. Justice Drum ကွန်ရက်၊ ရှမ်းပြည်နယ်တောင်ပိုင်း။
50. ရပ်ရွာငြိမ်းချမ်းရေးနှင့်ဖွံ့ဖြိုးရေးရှေ့ဆောင်အဖွဲ့၊ ကလေးမြို့နယ်၊ ကလေးခရိုင်၊ စစ်ကိုင်းတိုင်း။
51. ဒို့လယ်ယာကွန်ရက်၊ အင်္ဂပူမြို့နယ်၊ ဟင်္သာတခရိုင်၊ ဧရာဝတီတိုင်း။
52. Free Expression Myanmar

53. Olive Organization
54. Myanmar Media Lawyers' Network
55. The Students' Era
56. Metta Development Foundation
57. Paung Ku
58. COMREG
59. University Teachers' Association
60. Dawei Development Association
61. Burmese Women's Union
62. Cambodia Center for Independent Media
63. National Union of Journalists in the Philippines
64. Philippines Center for Investigative Journalism
65. Women Peace Network
66. Public Legal Aid Network
67. The International Women's Partnership for Peace and Justice
68. Myanmar People Alliance (Shan State)
69. Yangon Watch
70. Human Rights Educators Network
71. Burma Campaign UK
72. Human Rights Watch
73. Olof Palme International Center
74. Swedish Peace and Arbitration Society
75. The National Council of Swedish Youth Organisations
76. The Swedish Foundation for Human Rights
77. Christian Solidarity Worldwide