



Burma's Repressive Laws

66d Telecommunications Law

Summary

The Telecommunications Law was introduced in 2013 and since then it has been used repeatedly to restrict freedom of speech and expression.

Defamation charges under Section 66 (d) of the law have been brought against reporters, politicians and social media users. Many people have been arrested for criticising the military, the government or merely posting on Facebook.

Background

In 2013, former President Thein Sein's government passed the Telecommunications Law to regulate private telecom operators. However, one section of the law is being used in an attempt to restrict peaceful speech for political reasons.

Section 66(d) of the Telecommunications Law stated that:

"anyone found guilty of extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person by using any telecommunications network shall be punished with a maximum three years in prison, a fine or both."

About Section 66 (d) of the Telecommunications Law

When Section 66 (d) was first introduced in 2013, it permitted anyone to file a complaint that a particular communication has violated the law and most of the defamation complaints have not been filed by the person allegedly defamed, but by others who were or claimed to be offended by the statement.

Burma's Parliament amended the Section 66 (d) in August 2017 but human rights groups see it as a disappointment as the law is still incompatible with international human rights law and standards and will continue to be used to limit freedom of speech in the country.

According to the amended version of the law, judges can release on bail those charged under the law. Only people directly affected by an alleged offence, or those with the permission of an affected person, can press charges under the law. The maximum prison sentence was also cut to two years from three.

Arrests under Section 66 (d)

Since the law was introduced in 2013, there have been many arrests. Since the NLD-led government came into power in April 2016, there have been at least 61 cases under Section 66 (d) and at least 11 people have been sentenced to jail. Many of the cases involve criticism of public figures; many involve comments on matters of public interest.

For example, in October 2015, Kachin activist Patrick Kum Jaa Lee was arrested for allegedly sharing a picture on Facebook of an unidentified person stepping on a photo of army Commander-in-Chief Senior General Min Aung Hlaing. He was being detained in Insein Prison before being sentenced to 6 months imprisonment.

Poet Maung Saungkha was arrested in November 2015 for writing a subversive poem called “Image” and allegedly insulting the former President Thein Sein. The rough translation of his poem is: “I have the President’s portrait tattooed on my penis/ how disgusted my wife is.” He was sentenced to 6 months in jail.



Maung Saungkha, imprisoned for writing a subversive poem.

Myo Yan Naung Thein was sentenced to 6 months imprisonment in April 2017 for a Facebook post criticizing the military commander-in-chief and calling for his resignation.

In May 2017, a journalist, Kyaw Swa Naing, was sued by the Burmese military for writing a satirical article in The Voice newspaper. The article took aim at senior leaders for sitting around holding peace talks and drinking wine while low-ranking soldiers are being killed. He was arrested along with the paper’s editor and they are currently on trial. Myint Kyaw from the Myanmar Press Council said the military viewed the article as creating “divisions” between high and low ranking soldiers.

As of June 2017, at least 7 defamation cases have been filed by the Burmese military.

Threat to Freedom of Expression

Section 66 (d) is a threat to freedom of expression and media. It is widely used against journalists and activists. Some media even refuse to publish articles which criticise the military or the government to avoid being sued and jailed. The law puts such control on the media that it leads to self-censorship. It also appears that some NLD leaders find Section 66 (d) useful to suppress criticism towards the government.

As of June 2017, at least 6 defamation cases have been filed by the NLD-led government.

International Standards

The United Nations Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression has recommended that criminal defamation laws be abolished, as have the special mandates of the UN, the Organization for Security and Co-operation in Europe, and the Organization of American States, which have together stated:

“Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”

Many countries around the world are increasingly recognising that defamation should be considered a civil matter, not a crime punishable by imprisonment.

The United Nations Special Rapporteur on the situations of human rights in Burma stated the following in the April 2017 Human Rights Resolution:

“Notes with concern that charges for criminal defamation have increasingly been used to target journalists, politicians, students and social media users for their peaceful expression, online as well as offline, in particular under section 66 (d) of the Telecommunications Act.”

“calls for open and participatory legislative processes to reform those laws in line with the international human rights law obligations of the Government of Myanmar;”

Recommendations

- Amend the law to make clear that only a government prosecutor can file a criminal complaint under section 66(d).
- Delete the references to “defaming,” “disturbing,” and “undue influence.”
- Amend the law to specify that it apply only to serious threats to commit violence against another person, where the government can show the speaker intended the speech as a threat and the speech induced real fear in the person who was the target of the threat.
- To the extent that restrictions on extortion or wrongful restraint refer to criminal actions that are not otherwise already penalized in the Penal Code, clearly and narrowly define those terms to ensure that telecommunications users can determine what communications fall within the bounds of the law and that restrictions on free expression are minimized.
- Where actions are already prohibited under the Penal Code, eliminate duplicative language in the Telecommunications Law.

If you live outside of the UK, you can find a Burmese Embassy in your country here:

http://www.mofa.gov.mm/?page_id=364

Action

Please write to:

The State Counsellor, Daw Aung San Suu Kyi, to call for the repealing of the Section 66 (d) of the Telecommunications Law:

Daw Aung San Suu Kyi
C/O U Kyaw Zwar Minn
Embassy of the Republic of the Union of Myanmar
19A Charles Street
London W1J 5DX

The Attorney General to call for the repealing of Section 66 (d) of the Telecommunications Law:

U Tun Tun Oo
C/O U Kyaw Zwar Minn
Embassy of the Republic of the Union of Myanmar
19A, Charles Street
London W1J 5DX

The Commander-in-Chief of the Burmese army and urge him to stop filing complaints against people who criticise the army:

Senior General Min Aung Hlaing
C/O U Kyaw Zwar Minn
Embassy of the Republic of the Union of Myanmar
19A, Charles Street
London W1J 5DX

Draft letter

Dear _____

I am writing to you regarding Section 66 (d) of the 2013 Telecommunications Law. Section 66(d) 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.

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 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.

The current Telecommunications Law is not compatible with international human rights law and standards and 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.

Therefore, I urge you to repeal Section 66 (d) of the Telecommunications Law.

Yours sincerely,

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**for Human Rights, Democracy
& Development in Burma**