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Mid-term Report on Freedom of Expression



FREEDOM OF EXPRESSION
ACTIVIST ORGANIZATION

Mid-term Report on Freedom of Expression

ATHAN - Freedom of Expression Activist Organization

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FREEDOM OF EXPRESSION
ACTIVIST ORGANIZATION

Organizational Background

ATHAN was founded by youths who respect and value freedom of expression on January 15th 2018. It is a merger of Research Team for Telecommunications Law and We Support Journalists with an aim to promote freedom of expression in a more systematic and wide-spreading manner. ATHAN activities include the followings:

- ▶ Compile list of charges filed under Telecommunications Law, Peaceful Assembly and Peaceful Procession Law, Unlawful Association Act, Section 505 of Penal Code and the Law Protecting the Privacy and Security of Citizens including list of journalists charged under various laws
- ▶ Monitor and document cases of freedom of expression violation and charges against freedom of expression and releasing reports in every three months,
- ▶ Advocate with administrative, legislative and judicial branches for the amendment of problematic laws that are obstacles to freedom of expression,
- ▶ Organize trainings, workshops and knowledge sharing programs relevant to above issues.





The Southeast Asian Press Alliance (SEAPA) is Bangkok-based non-governmental regional organisation with a specific mandate to promote and protect freedom of press and freedom of expression in Southeast Asia. Founded on November 9th 1998, SEAPA works expand across the region through collaboration with 13 member organisations as well as partners and individuals in media advocacy, media academe and human rights organisations in and outside Southeast Asia in order to nurture free and safe environment for responsible press and the media community of the region.

This report is a joint collaboration between ATHAN and SEAPA in which SEAPA provides a small grant to ATHAN to conduct the monitoring and documentation of cases related to free expression and press freedom violations. This collaboration also included consultation on documentation methodology, categorisation of cases and editorial advice.



Methodologies

ATHAN used a range of methodologies including categorical analysis on daily documentation of newspapers, journals, online news from credible sources, visiting court hearing, interviews at the court hearings and interviews on phone to compile this report.



Chapter 1

Preamble

Myanmar suffered from the lost years of freedom of expression after the military coup in 1988. The junta government installed its manipulative but well-crafted constitution in 2008. By means of 2008 constitution, Union Solidarity and Development Party (USDP), a political machinery founded to integrate retired military leaders into political system took part the power in the 2010 general elections, the first elections after since 1988, and won uncontested. The General Thein Sein was appointed as the president of Myanmar in 2010.

Freedom of expression remained curtailed U Thein Sein government which promised to promote democracy. The government allowed the protest but regulated with a specific law, deregulated private media and Thangyat (a Burmese performance art that blends traditional folk verse performances accompanied by the beat of traditional drums or musical ensemble, and interspersed with song, dance and chant routines. It is performed during festive occasions, particularly during *Thingyan*). Nevertheless, there were some progress in this area compared to previous totalitarian governments.

People of Myanmar expected more freedom of expression after the

landslide victory of the opposition party, National League for Democracy (NLD), in 2015 general elections. New civilian government initiated a few positive steps towards freedom of expression and freedom of assembly, which included freeing the students who had been arrested and prosecuted for marching from Mandalay to Yangon in protests against the National Education Law and pardoning the imprisoned politicians, activists, workers and farmers. NLD led government initiated some However, the euphoria died very soon. The government and parliament eventually resorted to restricting freedom of expression, intentionally and recklessly.

This report includes the mid-term analysis, findings and documentations of violation of freedom of expression within the two-and-half-year period from April 1st 2016 to September 30th 2018 under the NLD-led government led. ATHAN believes its activities in monitoring, documenting, identifying of situations of expression violation and critiquing about them are mandatory work of civil society organisations in order to protect freedom of expression – a fundamental right of people in democratization process – from violation by state and non-state actors.



Chapter 2

Freedom of Expression

Part 1- Violation of Freedom of Expression by Government

Under the civilian government's two-and-half-year rule, following cases of freedom of expression violation are documented.

(a) Failure to Abolish Article 66(d) of Telecommunications Law

The abuse of Telecommunications Law, enacted in October 2013 has been infamous since 2015 when the competing political parties traded accusation against each other in election campaigns on Myanmar digital platform and social media. The Telecommunications Law became a threat to internet users who expressed their voice online.

The contagious and excessive use of Telecommunications Law was triggered by a charge filed by Tatmadaw against a citizen for his criticism of Tatmadaw in 2015 election campaigns. The law was then increasingly used to sue criticism and expression on social media. The law was eventually amended by parliament in August 2017 following a push by the civil society organizations, legal experts and activists. But the amendment was superficial and fell short of the CSOs' recommendation for change. As far as ATHAN's

count is concerned, there have been 150 cases under the Telecommunications Law in which 11 cases were under previous government, 91 cases under the NLD-led government before the amendment and 48 cases after the amendment.

Amendment of the Law

There were only three effective changes in the bill amending the Telecommunications Law (amendment bill) which was passed by Amyotha Hluttaw (Upper House of Parliament) on August 29th 2017. The amendment reduced the number of grounds to file complaint from seven to four, reduced the maximum prison term and banned third party plaintiff from filing complaints unless he or she is granted official legal power. The “defamation” is retained as one the grounds to file a complaint. The three other grounds are “extortion, disturbing or intimidation”.

Defamation

The provision and punishment for defamation is already stated in Section 500, Chapter 21 of Penal Code. According to the Evidence Act, enacted in 2015, an individual who convicts a criminal defamation with intention to damage reputation of a person or an organization on social media can be sued under defamatory provision of Penal Code. Including the defamation provision in Telecommunications Law is repetitious, resulting in conflicts of laws. Moreover, the procedural complaint process has several steps under the Telecommunications Law. Even if the plaintiff and defendants agree to settle a case, it takes several steps to withdraw a charge, resulting in negative impact for both plaintiff and defendant. ATHAN found it takes about one year in procedural process of building a case and at least six months to withdraw a charge.

Case Study

In 2016, Daw Khaing (fake name) posted a photo of her sister-in-law’s daughter and her boyfriend with a caption saying “Look! Whose daughter is she from Ma Kyee Cho village?” she was sued by her sister-in-law. They

had the settlement a few days later but waited for more than 30 months to get the permission letter of Ministry of Transportation and Communications to withdraw the charge.

Third Party Complainant

According to the amendment of Telecommunications Law, no third party individual can sue on behalf of a person or organization but ATHAN found there were six charges filed by third party plaintiff after amendment.

Section 198 of Code of Criminal Procedure states that when the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity to make a complaint, some other person may, with the leave of Court, make a complaint under Section 500 of Penal Code on his or her behalf.

Yet, the Article 66(d) of Telecommunications Law is not in line with the Section 198 of Code of Criminal Procedure. Article 80(c) of the law strongly restricts third party complainant to file a lawsuit on behalf of someone without official legal power. ATHAN found that third party complainants in five cases out of all six cases documented after the amendment of the law were not granted official legal power.

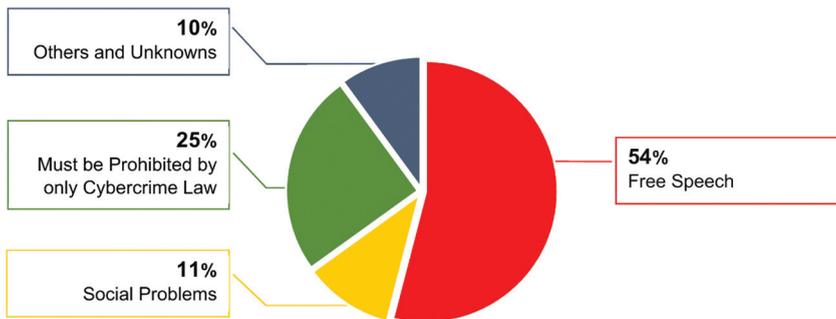
Case Study

Ko Kaung Htet Zin from Myaung Mya township was sued by an employee of Representative Office for criticizing the parliamentarians based on the news claiming primary students were ordered to welcome the parliamentarians.

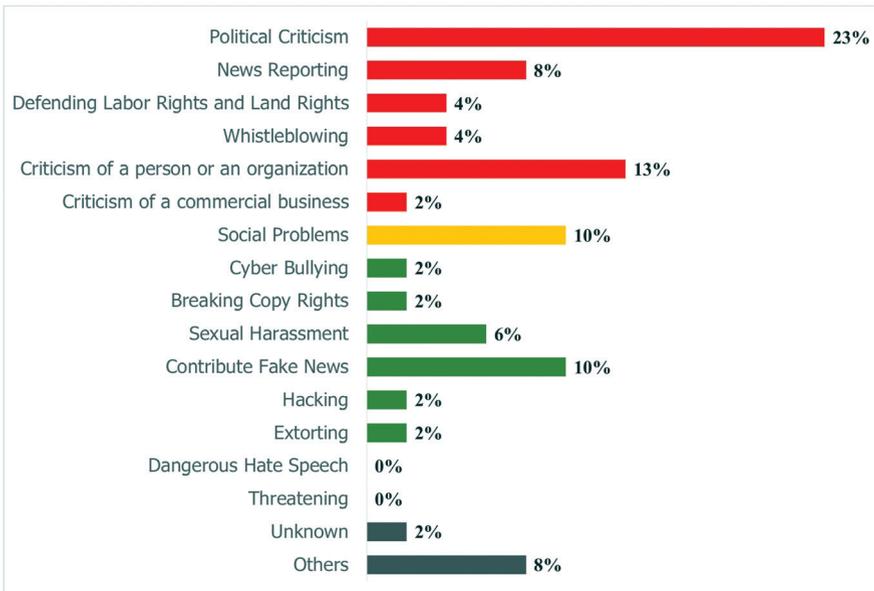
Types of complaints filed under Telecommunications Law

ATHAN conducted an analysis on the cases under Telecommunications Law based on the category to learn what kinds of contents are filed under the law and to discover whether it is an obstacle to the exercise of the right to freedom of expression of people. ATHAN classified five categories as followed:

<p>Freedom of Expression</p> <ul style="list-style-type: none"> • Political Criticism • News Writing • Uncovering the labor abuse and land abuse • Uncovering the unlawful acts • Criticism of individual or organization • Negative criticism of business 	<p>Offences to Prevent by Cybercrime Law</p> <ul style="list-style-type: none"> • Online Disturbance • Violation of copyright • Sexual harassment and abuse • Spreading fake news • Electronic fraud • Coercing • Spreading dangerous speech • Threatening
<p>Social Problems</p> <ul style="list-style-type: none"> • Social problems 	<p>Others</p> <ul style="list-style-type: none"> • Unknown • Others

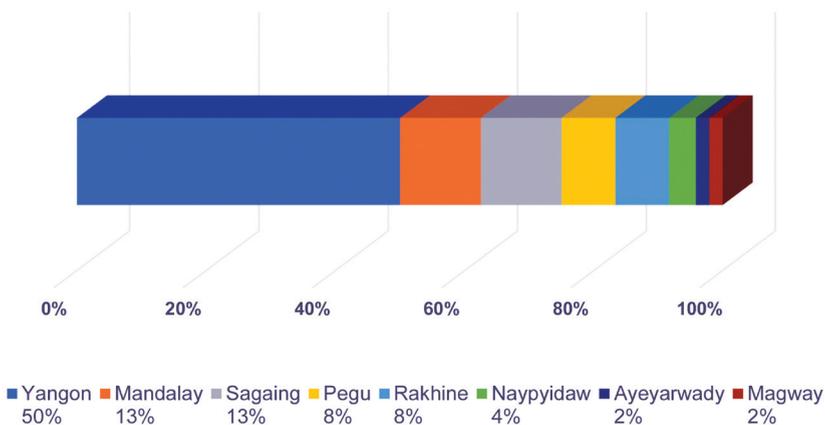


Complaints under Telecommunications Law after the amendment.



Types of complaints under Telecommunications Law after the amendment.

Among the categories, ATHAN found most charges were filed over the freedom of expression. Ordinary people also sued each other under Telecommunications Law that is commonly known as 66(d) in public. When complainants were influential and powerful figures the Telecommunications Law tended to attract public interest.



Complaints under Telecommunications Law by States and Regions after the amendment.

(b) The Law That Can't Protect the Privacy and Security of Citizens in Practice

The Law Protecting the Privacy and Security of Citizens was passed by Pyidaungsu Hluttaw (Assembly of the Union) on March 8th 2017. Legal experts, civil society organizations and activists criticized and objected the provisions of the law. Although the purpose of law is good, the provisions are much controversial and definitions in the law are vague and inconsistent.

Especially, Article 8(f) of the law is vague and has the same concept of Section 500 of Penal Code. Also, Article 10 of the law mentions the punishment of maximal punishment of three years for such defamation. Besides, the intent of law to protect the politicians from stalking and eavesdropping is not implemented. In practice, police's Special Branch (SB) is still stalking and investigating the activists and politicians.

People's criticism of government, Hluttaw (parliament), judiciary and governmental departments is a practice of freedom of expression, an inherent, fundamental and universal human right.

ATHAN believes prohibiting the political criticism and charging the critics by using a law is a pattern of politically motivated pressure and violation of people's freedom of expression. Myanmar has a number of laws which can be used to violate freedom of expression so ATHAN repeatedly suggested the governments amend or abolish these laws as needed.

Although the purpose of law is good, the provisions are much controversial and definitions in the law are vague and inconsistent.

Case Study

U Aung Ko Ko Lwin from Thaton township was sued on January 6th 2018, for allegedly committing an offence by breaking Article 8(f) of Law Protecting the Privacy and Security of Citizens. He was charged under Article 10 of the law on June 4th 2018 and arrested without getting bail on June 8th 2018. He was sentenced to one year in prison on September 27th after approximately four months of trial process.

The charge against U Aung Ko Ko Lwin is related to a viral video clip of a chief minister of a state's recommendation to "eat only a dish of curry". U Aung Ko Ko Lwin uploaded the video clip after a meeting between Mon State government, parliamentarians and respective departments and residents in January 2008.

A member of Mon State Hluttaw (Parliament) Ethnic Affairs Committee sued U Aung Ko Ko Lwin under Article 10 of the Law Protecting the Privacy and Security of Citizens for the posting that video on social media.

Yet, ATHAN found that uploading that video is not the only root cause of the complaint but also criticism of Chief Minister of Mon State, MPs, Mon State Development Committee and Mon State government. Documentary evidences include many screenshots of U Aung Ko Ko Lwin's criticism of state government, departments and parliament on social media. The content of screenshots is about development of Thahton Township, access to electricity for the township market, criticism of government and parliamentarians and political criticism.

1. How did they choose a law to sue?

It is questionable why they determined to sue him under the Law Protecting the Privacy and Security of Citizens over the Penal Code although Article 8(f) of that law and Section 500 of the penal code have similar provision.

2. Who is/are the plaintiff?

According the screenshot of U Aung Ko Ko Lwin's criticism, he criticized a chief minister of state and a member of parliament who are neither the plaintiffs nor those included among the witness of the case until the 12th court hearing. Besides, the plaintiffs did not receive the authorization letter from the two individuals.

3. Can the third party complainant sue?

There is no provision which mentions whether third party complainant

can sue (on behalf of some or some party) in the Law Protecting the Privacy and Security of Citizens. The Code of Criminal Procedure, Section 198 mentions “No Court shall take cognizance of an offence falling under Chapter or Chapter XXI of the Penal Code, or under Sections 493 to 496 (both inclusive) of the same Code”. In general, witness or third party cannot make complaint under the Section 500 of Penal Code according to the Code of Criminal Procedure. The absence of provision which clearly mentions whether third party can file complaint under the Law Protecting the Privacy and Security of Citizens is the weakness of the law.

(c) Yangon Region Government’s Scrutiny on Thangyat Lyrics

Yangon Thingyan Songs and Thangyat Scrutiny Committee of Yangon Region Government announced it would scrutinize the Thangyat lyrics and consider to grant permission. The statement said any lyrics, terms and performance that damage the “stability of union, community peace and tranquility, prevalence of law and order, any religions and any races or ethnicities, the dignity of state or government or any organization or any individual”. Such rules and regulations were issued in U Thein Sein’s government and still being issued in current government.

(d) Government Monitoring Social Media

On November 8th 2017, Daw Yin Min Hlaing, Pyithu Hluttaw (House of Lower Parliament) from Gangaw township of Magwe Reigion, proposed the government to monitor social media, pointing out that misuse of social media is destroying the morals of youths and public order. Her proposal was approved with the Ministry of Transport and Communications’ support. Union Minister of Transport and Communications U Thant Zin Maung told the parliament that authorities will form a team to monitor and control hate speech, fake news and religious incitement on social media.

On March 19th 2018, Union Minister told the parliament that MMK 6.4 billion was spent to identify those who destroy the solidarity by using internet or social media.

(e) Student Organizing Educational Dialogue Charged

On January 20th 2018, Ko Thura Lin in Bogalay township in Aye Yar Waddy region was charged under Ward and Village Tract Administration Law for allegedly organizing education dialogue. Ko Thura Lin, a member of Bogalay Township Basic Education Student Unions, applied the permission before organizing the dialogue but didn't receive permission from authorities. Ko Thura Lin was sued by administrator of Ward (4), Bogalay township in February and the court issued the arrest warrant on March 13th.

(f) Kayah State Government's Charges Against Karenni People

The Kayah State Government started a plan to install a statue of General Aung San at the Kanda Hay Won Park without consulting the people at the early stage in 2018. Karenni youth community resisted the plan when the foundation stone of the statue was being laid upon.

The Reason of Rejection

According to the letter of Karenni civil society organizations sent to Kayah State Government, the reasons of rejection by the Karenni youth community against the planned installation of General Aung San statute are; Karenni (Kayah) State has been separately independent from mainland Burma long times ago according to the documents and contracts signed by Burmese representative U Kaung and Sir Douglas Forsyth of Britain on June 21st 1875.

Karenni State did not involve in Panglong Agreement which was signed on February 12th 1947. General Aung San visited Karenni State only one time in 1946 to witness the state's gaining independence together with the mainland Burma from Britain. Karenni State never belonged to mainland Burma.

The problem of determining to either join mainland Burma or not fomented Karenni armed revolution, resulting in civil wars because Karenni people and political leaders are still disputing.

Karenni State does not achieve its political and national vision and are not granted equality, self-determination and practical assurance which General Aung San promised.

Installation of General Aung San statute in current floundering peace process is like promotion of Burmanisation and causing tension between the ethnic communities. The protest of Karenni people against the installation of General Aung San statute in public area is based on the history, nationalism and politics of Karenni State.

Protest Erupts

Union of Karenni Student Youth (UKSY), Karenni State Farmer Union (KSFU), Kayaw Youth, Kawyaw [Manumanaw] Youth, Karenni National People Liberation Front (KNPLF – Youth) and Karen New Generation Youth (KNGY – Karenni State) sent a joint open letter demanding the regional government to cancel the plans to install an equestrian statute of General Aung San on June 18th 2018. Kayah State Government failed to respond so Karenni activists distributed pieces of paper about “background of Karenni State and public declaration of opposition of plans to install General Aung San statute” in Loikaw, Demoso, Hpruso, Bawlakhe, Hpasawng and Mese townships on June 26th. Karenni civil society organizations organized a street protest of marching in Loikaw on July 3rd after notifying the authorities in advance. Police force cracked down the protest and filed complaints against 16 youth leaders at Loikaw township court under Articles 19, 20 of Peaceful Assembly and Peaceful Procession Law, excusing that they received the notification less than 48 hours. Kayah State government charged 15 Karenni youths under Section 505(b), 505(c) at respective township courts on July 2nd for distributing pamphlets about Karenni history. ATHAN found that Section 505(c) of Penal Code was unprecedentedly used as a tool to file lawsuits against protesters under the NLD led government.

(g) Ban and Lawsuit Against Forum, Interfaith Prayer Rally and Poetry Recitation Events

1. On June 9th 2018, police brought charges against Ying Kyang, under Articles 19, 20 of Peaceful Assembly and Peaceful Procession Law, one of the organizers of a prayer rally held in Manaw Ground, Myitkyina township, Kachin state to mark seventh anniversary of renewed civil wars in Kachin State. Ying Kyang was blamed for a late start of performing art featuring story of young refugees. The prayer event was behind the schedule due to weather condition and continued beyond the permitted time of 12:00 pm and ended at 12:50 pm.
2. On June 9th 2018, a planned event at Diamond Condominium, Kamaryut Township, Yangon Region by Kachin youths to mark 7th anniversary of renewed wars in Kachin State was forcedly cancelled by Yangon authorities.
3. Yangon University authorities forbid a planned political dialogue near Teachers Union office at Sagaing street, in the compound of Yangon University on June 25th 2018. Dr. Thein Lwin from National Network for Education Reform (NNER) and Dr. Arkar Moe Thu, assistant lecturer from Oriental Studies at Dagon University were invited as panelists.
4. Hinthada district deputy administrator told 68th Karen Martyrs' Day held in Hinthada township, Aye Yar Waddy region that Phado Mahn Nyein Maung, a member of central committee of Karen National Union (KNU) and five other residents would be charged under Article (26) of Ward and Village Tract Administration Law because they did not have permission to hold the event. Karen Martyrs' Day is observed to commemorate Karen martyrs who died in August 12, 1950 including former leader of KNU, Saw Ba U Gyi, Major General Sai Kay. Karen Martyrs' Day was observed in Kayin State (Karen State) whose majority

is Karen ethnic people and also in Yangon Region.

5. On August 20, 2018, Mon State government called for a meeting with New Mon State Party (NMSP) to discuss the slogan – that means “We will gain freedom if only we will revolute” in Mon language – on poster commemorating the 21st Mon Revolution Day at People’s Park and Mon Dhamma center on Bogyoke Road, Yan Gyi Aung Ward, Yay township, Mon State. Naing Myint Tun, a member of organizing committee, in Yay township, led a group in installing the posters.
6. The first conference of Karenni youth organized by Karenni National Youth Organization (KNYO) to be held in at a Baptist church in Zay Pine ward, Shar Taw township, Kayah State (Karenni State) from August 20th to 24th 2018 was banned by the authorities on ground. One of the participating organizations, the Karen National Progressive Party (KNPP), tries to sign the Nationwide Ceasefire Agreement (NCA). The State government said the organizers need a permission from National Reconciliation and Peace Center (NRPC) to hold the conference because of KNPP’s participation.
7. On August 26th 2018 Administration Department under Ministry of Home Affair banned a planned panel discussion, Maha Pyinyar Kyaw Panel Discussion on the topic “How to solve Rakhine issues” at Melia Hotel in Yangon Region, blaming the organizers for not requesting the permission two weeks in advance. The panel discussion which includes Yebaw Than Khe’, chairman of All Burma Students Democratic Front (ABSDF), Sai Nyunt Lwin, general secretary of Shan National League for Democracy and U Maung Maung Soe, politics and ethnic affair analyst as discussants, was postponed to September 30th 2018 after Thazin Community Development Institute (TCDI), the organizer, had to request permission from the authorities again.

8. Mayangone township administrator Saw Nyi Nyi Win and Mayangone township police chief warned the organizers of a public conference for peace – principal of Khawechan school for blind, Dr. Thein Lwin, U Ngwe Lin and Daw Hnin Hnin Hmway from Democratic Party for a New Society (DPNS), U Tun Win Nyein of Thakhin Ko Taw Hmine Tomb Management Team, Ko Min Htet Soe and Ko Min Thway Thit from All Burma Federation of Student Union (ABFSU) – that the public conference can be held two weeks after the Yangon Region government granted them official permission and instruction. But the conference was push ahead on August 27th 2018 as planned before by the organizers.
9. National Peace and Reconciliation Center (NRPC) banned a planned meeting at Taunggyi township, Shan State on September 3rd and 4th, organized by Committee for Shan State Unity (CSSU). NRPC official made a direct phone call to Sai Aik Paung, alternating chairman of CSSU which comprises Shan National League for Democracy (SNLD), Shan National Democratic Party (SNDP), Restoration Council of Shan State (RCSS/SSA).
10. Administrator of ward (6) in Mayangone Township banned “Woman and Literature Hobby” discussion event organized by HARP (Peace Process Improving Based on Public Activities) to re mark the International Literacy day at Dhamma center of ward (6) on September 9th. Among panelists were blogger and writer Pandora and Ma Khin Lay Nge, director of Phan Tee Eain (Creative Home).
11. The 11th anniversary of Saffron Revolution, led by Buddhist monks to protest against the price increase of fuel and basic commodities in September 2007, was held at Dhamma Piya monastery in Thingangyun Township on September 18th instead of Taw Win Hnin Se Restaurant whose owner was pressured by authorities to cancel the event. The

working committee marked 11th anniversary of Saffron Revolution to call for an abolishment of 2008 constitution, an end of civil wars, better living standards and public safety.

12. Kyauktada Police Force sued Ko Zeyar Lwin, Ko Khant Min Htet and Shwe Kyal Moe aka Ye Wint Aung under Article 19 of Peaceful Assembly and Peaceful Procession Law after they participated in poetry recitation event held at Mahabandula Park on May 14th 2018 to call for an end to armed conflicts between Tatmadaw and Kachin Independence Army (KIA) in Kachin State. Kyauktada Township gave them an option of being fined for Kyat 20,000 or staying in prison for 15 days. Poet Khant Min Htet and Shwe Kyal Moe agreed to pay the offered amount but Ko Zeyar Lwin chose imprisonment, standing firm on the right to freedom of expression, pointing out that judicial system is broken and peace is insulted.

A poet, named Clint (Mandalay) was also sentenced to two months in prison on May 10th 2018 for reciting a poem in peaceful protest calling for peace, held in Mandalay.

13. Civil society organizations in Mandalay had to cancel a meeting about response to crime crisis in Mandalay on September 2018 for failing to get the authorities' response to their permission on time. The organizers submitted a request for permission to respective township, district and regional administrations on September 11th and 12th. The meeting was planned by local CSOs at Wayzayantar Mahabandula Dhamma center in the compound of Thakya Thiha Pagoda, Mandalay city on September 13th 2018. The meeting agenda evolved around issues of how to encourage people's participation, measures to prevent crimes, educating people, early warning and early response to crimes and make Mandalay safe 24/7.

14. Ann township police force halted a workshop on lands, farms and natural resources at Shwe Ann Taung hall on 21st July 2018, citing some unauthorised persons attended the workshop although the workshop was authorised.

15. Administration Department of Yamethin Township, Mandalay Region banned public events and ceremonies at Amay Htwe Hall in Shwe See Gone Ward, Yamethin Township on August 13th 2018, defending the hall accepted to host an unauthorised event after the hall hosted a press conference. A press conference about the closure of a Computer Basic Training at Community Centre of Information and Public Relations Department, organized by W.COM Company. The training was forcedly ended on August 1st one week in advance. The department had sent letter to owners of halls in Yamethin Township warning various events including religious ceremony, meeting, sermon, literature talk show, commercial promotional events, music concert, public forum, opening ceremony of road or bridge could not be organized without permission of the department or the owner will be charged.

(h) Charges Against Dr. Aye Maung and Writer Wai Hin Aung with High Treason

Rakhine political leader Dr. Aye Maung and Rakhine writer Way Hin Aung were arrested after giving speech at a talk show held in Rathedaung town on January 15th 2018 to mark the anniversary of the fall of Rakhine Kingdom.

The government's statement said Dr. Aye Maung told the audience that Burman people considered the Rakhine people as slaves and did not give them equal rights. He was also quoted as saying some people were preparing armed revolution to regain sovereignty. The statement accused Dr. Aye Maung of inciting the audience to regain the sovereignty and taking advantage of weakness of current politics to achieve the goal. Based on their speech at talk show, the resolution (4/2008) of Rakhine State government

decided to file lawsuit against them under Sections 112(1) and 505(b) of Myanmar Penal Code – “high treason” and “defaming the state” clauses – plus Article 17(1) of Unlawful Association Law.

On September 10th, Sittwe Township court charged them under Sections 122(1) and 505(b) of Penal Code but dropped the charge under Article 17(1) under Unlawful Association Law.

(i) Pro-military Former Columnist Offensively Criticizing the State Counsellor Sentenced to Seven Years Imprisonment

Myanmar Police Force arrested and filed a lawsuit against Ngar Min Swe under Section 124(a) of Penal Code for allegedly posting abusive words against State Counselor Daw Aung San Suu Kyi. Ngar Min Swe did not hire a lawyer. He defended himself during two-month trial process until he was sentenced to seven-year imprisonment and fined for Kyat 100,000.

Section 124(a) of Penal Code says “Whoever by words, either spoken or written, or by signs, by visible representation, or otherwise, brings into attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards [the Government established by law for the Union or for the constituent units thereof], shall be punishable for transportation for life imprisonment? or an a shorter term, to which fine may be added, or with imprisonment which may be extended to three years, to which fine may be added, or with fine.”

(j) Activist Criticizing the Verdict Sued

U Aik Lin, owner of Nan Htike Taw Win Restaurant and Great Nine Jewelry Company sued Ko Htin Kyaw, leader of Myanmar Democracy Current Force (MDCF) with defamation for his speech in a press conference to address unsolved land disputes between U Aik Lin and people living in 6th Ward, Mayangone Township since 2004.

Ko Htin Kyaw, a former political prisoner, also sued U Aik Lin citing he gave the false evidence and fabricated ownership certificate in judicial proceeding to prove his ownership. Yet, Yankin Township court did not take

actions against U Aik Lin, triggering Ko Htin Kyaw to criticize it. Yankin Township court charged Ko Htin Kyaw with accusation that his criticism is likely to incite commit an offence against the State or against the public tranquillity, under Section 505(b) of Penal Code on August 30th 2018.

(k) Human Rights Lawyer Daw Khin Khin Kyaw and Ko Than Htike Jailed

Daw Khin Khin Kyaw, a human rights lawyer representing the detained 68 students and their supporters who suffered from the police's brutal crackdown on their protest calling for educational reform, in Latpadan Township, had an argument with the judge U Chit Myat.

The argument followed the judge's decision to deny Daw Khin Khin Kyaw's request to correct the wrong name of defendant in her lawsuit from, "Colonel Nanda Win" to "Lieutenant Colonal Nanda Win" who was sued for police's violence against the students. On September 1st 2018, Daw Khin Khin Kyaw and Ko Than Htike who went on strike against the court were charged under Section 228 of Penal Code "Intentional insult or interruption to public servant sitting in judicial proceeding".



Part 2 - Violation of Freedom of Expression by Tatmadaw

Tatmadaw does not change their bigoted intolerance against freedom of expression. Tatmadaw has continued restrictions against freedom of expression, particularly filing charges against those who criticize the Tatmadaw and its military leaders. Under the civilian government's two and a half years rule, Tatmadaw recorded 14 incidents in violation of the freedom of expression including official lawsuits. On September 1st, Tatmadaw withdrew five charges "to serve for the interest of nation and people".

1. Tatmadaw sued Ko Htin Kyaw, director of Movement for Democracy Current Forces (MDCF), under Section 505(a) on October 22nd — just six months after the National League for Democracy (NLD) took power on April 1st 2016. Ko Htin Kyaw was charged for his expression about the Myanmar military officers in front of North Oakklar Pa Township court. Tatmadaw dropped the charge on September 1st 2017.
2. Tatmadaw filed a lawsuit against U Myo Yan Naung Thein, secretary of Central Committee for Research and Strategy Studies, under Article 66(d) of the Telecommunications Law on October 31st 2016 for his criticism of Commander-in-Chief Senior General Min Aung Hlaing on social media. He was sentenced to six-month imprisonment on April 7th 2017.
3. Students of Pyinya Parami Charity School in Pathein Township, Aye Yar Waddy Region staged an anti-war play in a peace workshop of civil society organizations at Pathein Hotel on January 9th 2017. According to the Tatmadaw, the drama was damaging the reputation of the families of the military personnel and the South Western Command — which, on behalf of Tatmadaw, filed a lawsuit under Section 500 of the Penal Code at Pathein Court on January 17th. Five of the nine students were taking their matriculation exam. After more than a year of the trial process, eight students and the one who did not appear in

court hearing were fined MMK 30,000 and MMK 50,000 respectively. Tatmadaw appealed to tighten the punishment to the Patheingyi District Court on July 3rd but the district court upheld the township court's verdict.

4. Ko Tun Tun Oo, leader of the Human Rights Activists Association in Patheingyi, who broadcasted the video of anti-war theatrical play, performed by students, live on Facebook using a mobile phone was charged under the Electronic Transactions Act on January 31st 2017. Later, police changed the charge under Article 66(d) of the Telecommunications Law and Ko Tun Tun Oo was sentenced to three month-imprisonment on May 7th after one-year long trial process.
5. Chief editor of the Voice Daily Newspaper U Kyaw Min Swe and columnist British Ko Ko Maung were charged under Article 66(d) of the Telecommunications Law in May 2017 for the satire “Kyi Htaung Su Thitsar”, which means “Faith of Bullet Union” in the Burmese language and was frequently shared on social media, after the Tatmadaw aired a movie titled “Pyi Htaung Su Thitsar”. The movie means “Faith of Union” and was showed as a memorial for the Tatmadaw Day (Myanmar Armed Forces' Day), which original name was Revolutionary Day and was later changed by former totalitarian leader Ne Win. British Ko Ko Maung was released because of the Ministry of Transport and Communications' comment that the satire only appeared on print media. U Kyaw Min Swe and British Ko Ko Maung were charged again under Article 25(b) of the News Media Law. The court rejected U Kyaw Min Swe's appeal eight times before he finally got bail on August 4th. Tatmadaw dropped the charges on September 1st.
6. Tatmadaw's True News Information Committee announced a statement of denouncement on the comment of U Win Htein, secretary committee of National League for Democracy (NLD), when he was interviewed

by the Irrawaddy news agency. About the “fake news” spreading on social media, he said, “We don’t know if USDP or others or some cells of military or some IT experts who do not like us (were spreading the fake news)”. Tatmadaw declared his “insults and accusation”, which they gathered from the fabricated news, were against the Tatmadaw and have damaged its reputation breaking the provision “Writing news which relate to the interest of the public, writing style which deliberately affects the reputation of a specific person or an organization or generates negative impact to the human right shall be avoided”, in Chapter 4 of News Media law. Tatmadaw added it would respond as needed and it strongly condemned the unreasonable “insults” of a spokesperson of the NLD party while the government is working towards national reconciliation.

7. Tatmadaw filed a lawsuit against Ko Aung Htet and Ko Wai Yan Thein under Section 505(b) of the Penal Code, citing the Thingyan Thangyat lyrics by Kaytu Oh-Way, which composed of the Taungoo Student Union members including the two accused. Ko Wai Yan Thein did not appear at court but Ko Aung Htet was arrested without bail when he appeared at a court hearing. Ko Aung Htet stayed in prison until he got bail due to his head injury on August 15th. Tatmadaw dropped the charges on September 1st 2017.
8. Tatmadaw arrested Irrawaddy journalist Lawi Weng also known as (aka) Ko Thein Zaw and two DVB journalists U Aye Naing and Ko Pyae Bone Aung at the Nangsang –Sipaw highway after they covered a drug-burning event in the Ta-ang National Liberation Army (TNLA)’s area in northeastern Shan State. The lawsuit was filed under Article 17(1) of the Unlawful Association Act. Their bail was rejected several times before Tatmadaw withdrew the charges on September 1st 2017.

9. The Chief Minister of Yangon Region apologized to Tatmadaw on July 13th 2017 for his remark that there is no civil-military relation in a democratic system, in which the military stands under the administration of civilian government and the commander-in-chief is the same as a director general in accordance with protocol on July 9th. Tatmadaw sent a letter to the President's office to take action against him on July 11th 2017.
10. Tatmadaw urged the media to use the term "Tatmadaw" to refer to the country's Armed Forces and not use it when referring to non-military organizations (for instance, ethnic armed organizations) on July 26th 2017. Tatmadaw stated no other organizations are entitled to use military rankings except the military personnel of the Army, Navy, and Air Force of the Tatmadaw.
11. Tatmadaw sued Ko Aung Ko Htwe under Section 505(b) of the Penal Code for sharing his experience of being a former child soldier with Radio Free Asia (RFA) in August 2017. On February 14th 2018, he was sentenced to six months in prison including the penalty for contempt due to his alleged transgression in court awaiting trial. On March 28th 2018, the court sentenced him to two years in jail, the maximum imprisonment penalty under the provision in Section 505(b) of the Penal Code. Ko Aung Ko Htwe had another lawsuit under Article (7) of the Union Seal Law that has a maximum imprisonment of three years after he stepped on a copy of the 2008 Constitution during a protest. The Botahtaung Township court charged him under the Union Seal Law after his dossier was sent from the Dagon Seikkan Township court. Ko Aung Ko Htwe was jailed for attempt to desert Tatmadaw after he was conscripted in 2005 and released in July 2007.

12. Daw Thiri Yadanar, Amyotha Hluttaw (House of Upper Parliament) for constituency 12 of Mon State, wrote a post about her feelings on becoming a member of parliament (MP) directly elected by the people on Facebook on March 23rd 2018. She said she's very honored to be a people's elected MP. She heard that the parliament announced that MPs who were not elected by the people should need to go out and a meeting of people-elected MPs would be held soon. She sent an apology letter to the head of the military MP of Amyotha Hluttaw on March 29th after criticisms went viral on social media.

13. A big event – which includes dramas, music concert, and football match – was organized by the 88 Generation Peace and Open Society together with singer Saw Phoe Khwar on January 27th 2018 to show support for the Union Peace Conference – 21st Century Panglong. On January 28th 2018, Tatmadaw strongly denounced U Min Ko Naing's peace drama, in which people were shown running with fear and the men were wearing military uniforms without specific insignia aimed the guns at the children. U Min Ko Naing told he is fully responsible for the performance.

14. Lieutenant Colonel Myo Min Oo from the Northern Command of Tatmadaw filed a lawsuit for defaming the Tatmadaw against U Zau Jat, U Lum Zawng, and Daw Nang Pu at Myitkyina Township court after they led a protest in Myitkyina Township, Kachin State in May 2018 to save the refugees. The court charged them with defamation and they are now preparing to appeal.



Chapter 3

Freedom of Press

(a) Murder of a reporter

A Monywa-based reporter of Eleven Media, named Ko Soe Moe Tun, was murdered on December 13th, 2016. The victim — covered in blood, lying on his belly — was found by the locals at midnight of December 12th near 16th Battalion (Khamaya 16) on Pyidaungsu Road, eastern Monywa Township. When Ko Soe Moe Tun was admitted to Monywa General Hospital, it was confirmed that he was already dead. An autopsy revealed he died of a skull fracture resulting from being beaten, and bruises were found on his face and arm.

Sagaing Region police force filed the case under the Penal Code's Section 302 as they formed a special investigation team but has not caught the criminal yet. Ko Soe Moe Tun reported mostly about illegal logging and narcotic drugs. A few days before his death, he posted about illegal logging — several data, such as telephone numbers, concerning illegal logging arrests — relating to the cases under U Thein Sein's government. The police officers gave some comments to media that Ko Soe Moe Tun may have been assassinated.

(b) Charges Against the Journalists

Based on the research and documentation by Athan, last updated on September 30th 2018, there are 43 journalists charged under 25 lawsuits. There were 15 lawsuits filed by governmental personnel, three lawsuits by the military, and seven cases by civilians. In 19 lawsuits, the Telecommunications Law was used to file charges. Other legislations used were the Unlawful Association Act, Aviation Law, Export and Import law, Immigration law, Burma Official Secrets Act, Section 500 of the Myanmar Penal Code, News Media Law, and the Law Protecting the Privacy and Security of Citizens. Some of the lawsuits filed against the journalists are as followed:

1. Ko Swe Win (Myanmar now)

Ko Swe Win, incumbent Chief Editor of Myanmar Now Media, was sued under Article 66(d) of the Telecommunications Law on March 16th 2017 by an ultra-nationalist. The plaintiff said that he was defaming U Wira Thu — who is a prominent leader of the Patriotic Association of Myanmar, abbreviated Ma Ba Tha in Burmese. A member of the Ma Ba Tha, as well as the Nation Unity Party (Ta Sa Nya), filed the legal action on behalf of U Wira Thu.

U Wira Thu, who is regarded as an extremist nationalist, had posted that “his thanks belong to the assassinator of U Ko Ni,” a Muslim lawyer and legal advisor to NLD, on his Facebook page. During the interview with the Speaker Journal, U Wira Thu revealed his “unreasonable happiness” for the killing of U Ko Ni. He also said that U Ko Ni was a “mad dog” and eliminating that such “dog” was really good. Myanmar Now Media looked into this “hate speech” and interviewed U Aye Paing, lawyer of Ma Ba Tha and asked comments from U Vimala Buddhi, a Buddhist monk and general secretary of Ma Ba Tha and U Seintik, a monk living in Mandalay, on U Wira Thu at the point of view of Vinaya Pitaka (monastic regulations for monks and nuns). During the interview, the venerable monk U Sein Tika spoke out that U Wira Thu had committed third parajika — an act warranting expulsion from the monkhood – so he should be disrobed and facing legal action.

Ko Swe Win shared this news on his Facebook page and posted a criticism that stated U Wira Thu's monkhood was over. Ko Swe Win was charged under Article 66(d) of the Telecommunications Law by U Wira Thu's follower Ko Kyaw Myo Shwe for defaming his master. The government had already declared Ma Ba Tha an illegal association on July 16th 2016. Ma Ba Tha never registered officially. However, the authorities still allowed Ko Kyaw Myo Shwe to open a lawsuit on behalf of Ma Ba Tha.

Ko Swe Win is a Yangon resident but was charged at the Maha Aung Myay Township Court, Mandalay Region, 400 miles away from Yangon. The defamation trial case has been ongoing for over 20 months, regularly requiring Ko Swe Win to present himself to the court in Mandalay. On August 23rd 2018, Ko Swe Win's attorney requested the Regional court to drop the charges against his client.

2. Eleven Media Versus Yangon Region Chief Minister

Yangon Chief Minister Phyo Min Thein sued Eleven CEO and founder U Than Htut Aung and chief editor Ko Wai Phyo under Article 66(d) of the Telecommunications Law. The editorial "Myanmar: a year after the Nov 8 polls" cited reports on social media that an elected minister received a Patek Philippe watch that is worth around ten thousand dollars from a businessman. The article was published on the Daily Eleven newspaper and its Facebook page, as well as made available in English, distributed through the Asia News Network, and published on the websites of the Singapore-based Straits Times and The Nation from Thailand. On November 9th 2016, Yangon Chief Minister Phyo Min Thein sued the Eleven Media Group's (EMG) CEO. The police force got a warrant ready and apprehended Dr Than Htut Aung and chief editor Ko Wai Phyo within a few days. The appeal of Dr. Than Htut Aung and Ko Wai Phyo were turned down by the court on November 30th 2016. EMG asked for forgiveness to the Chief on November 27th Dr Than Htut Aung and Ko Wai Phyo got bail on January 7th 2017, after the Daily Eleven newspaper, Journal, and Facebook page issued "Sincere Apologies" publicly.

3. An Election Campaign Smile

Thanintharyi Region government filed a lawsuit against the executive director of a local Thanintharyi weekly journal for publishing the satire “An election campaign’s smile” written by columnist Mue Say Oh on November 20th 2017. Deputy regional director of Thanintharyi Region government office, under the instruction of Chief Minister of Thanintharyi Region Dr. Lei Lei Maw, submitted the lawsuit to editor-in-charge U Myo Aung under Article 25(b) of the News Media Law citing complaints of defamation about Dr. Lei Lei Maw. After 15 court hearings in the township court, the accused appealed at the regional court to drop the charge. The court rejected the appeal on July 31st 2018. Both plaintiff and accused testified at 25th court appearance on September 17th. The Dawei Township court will decide whether to charge the accused under Article 25(b) of News Media Law, on October 1st 2018.

4. Ko Wunna Tun

A village administrator sued DVB journalist Ko Wunna Tun and a resident of rural area in Bago Region under the Telecommunications Law after a local person uploaded a video of his news report about the “financial fraud of loans for farmers”. Ko Wunna was requested by the local people to cover the news about the embezzlement of agricultural loans in Thitseint village in Yay Ngan village tract on September 13th 2016. He met and interviewed the associations and village administrator, ensuring that the report was not one-sided. DVB news agency did not air the full video report but included it on their “brief news”. As a result, the villagers including Ko Ye Naing, the one who introduced Ko Wunna Tun with the farmers misunderstood that Ko Wunna Tun was bribed not to report the news. Ko Wunna went back to the village to show Ko Ye Naing that he had the video for proof, but told him not to upload on Facebook. Ko Ye Naing proceeded to post.

The administrator of Yay Ngan village tract sued them under Article 66(d) of the Telecommunications Law but the police changed it to 68(a) that

says “Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine or to both; (a) communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation”. He appeared in court for more than 30 times from October 6th 2016 to April 9th 2018, when the case was settled.

(c) Myanmar Journalist Network Office Suppressed to move

The Anti-Justice Committee arranged a press conference about U Wira Thu whose accounts and pages were removed repeatedly as he was spreading hate speech on the social media, on February 25th at Myanmar Journalist Network office. On the scheduled date, the press conference was postponed when uninvited Buddhist monks and some groups of people who seemed to disturb the press conference reached near the office.

A day after the incident, the room owner of the Myanmar Journalist Office — due to pressure — asked them to move to another place although the rental period has yet to expire. The room owner was reportedly summoned by the ward administrative office.

(d) Reporters Under Threat

Ko Tin Zaw Oo — a regional reporter based in Thabeitkyin township, Mandalay Region — wrote an article in the Voice Daily on October 5th 2016 about the illegal wood cutting factories in the area. On October 6th, a group of people from the wood factories came to his home asking him to come with them saying: “Are you Tin Zaw Oo? You are famous these days. We come from the jungle (to meet you)”. Ko Tin Zaw Oo called the township administrator and asked for help after he told the strangers to wait at a teashop excusing that he had to finish his work. The township administrator told Ko Tin Zaw Oo to call police officers. The strangers left his home after an unexpected visit by an official. Ko Tin Zaw Oo and his family were guarded by the neighbours on that night and escaped to Mandalay the next day. He also received death threats via calls and messages on social media.

The case of Ko Tin Zaw Oo is not incidental as other reporters have faced different kinds of threats.

(e) Two Journalists Fired Over Freedom of Expression

1. Ko Aung Myit Myat aka Ko Shwe Mann

Ko Aung Myint Myat aka Ko Shwe Mann – a reporter of the Mandalay Daily Newspaper, owned by Mandalay City Development Committee (MCDC) – was fired for his criticism of Mandalay Region Chief Minister Dr. Zaw Myint Maung. After posting his comments on Facebook, unknown people who he believes are connected to his newspaper started asking him about the incident day after. Then, the newspaper fired him citing that he was an unethical and undisciplined journalist. Given the huge amount of pressure, he tried to apologize to the chief minister but there were some procedural delays that he failed to meet and apologize.

2. Fiona MacGegor

Fiona MacGregor – a foreign journalist, who worked at the English edition of Myanmar Times – wrote a news about Rohingya women’s allegations of their rape by the Myanmar security forces. The news was published on October 27th 2016. Myanmar Times fired her saying her reporting has breached the paper's reputation and damaged national reconciliation.

(f) BBC Burmese Broadcasting Program ended in MNTV channel

The Yangon-based MNTV channel announced on August 30th 2017 that it ended the airing of BBC Burmese programs, which they had broadcasted from April 2014. MNTV said that the BBC content included some terms banned by the Myanmar government and reasoned that its respect and obedience to the statements of the government has led to the decision.

MNTV added that the government has announced that people should not support the Arakan Rohingya Salvation Army (ARSA) terrorist group and terrorists, including the media not to include them on the news, or they would face charges under the Counter Terrorism Law.

The BBC announced that it has ceased broadcasting Burmese language news bulletins via MNTV and their Director of World Service Group Francesca Unsworth said that any interference in their programmes by partner stations represented a serious breach of trust with their audiences, which the BBC could not allow.

Government also banned Radio Asia Free (RFA) programs broadcasting on Democratic Voice of Burma (DVB) for using the term “Rohingya”, on June 12th 2018.

(g) Two Journalists Sentenced to Long Jail Term

Two Reuter’s reporters, Ko Wa Lone and Ko Kyaw Soe Oo were arrested under the Burma Official Secrets Act’s Article 3 on December 12th, 2017. Before the arrest, Ko Wa Lone was investigating and about a massacre of 10 villagers in September, at Indin village, Rakhine State. To strengthen his findings on concrete evidences, Ko Wa Lone strove from November to early December 2017, for meeting up with some police officers who had been stationed in the Indin village at the time of massacre besides he tried to contact a police officer who then stayed in Htauk Kyant Township but had been assigned to work in Maungdaw Township.

On the evening of December 12th, 2017, the police officer made rendezvous on phone, to meet at a restaurant. Ko Wa Lone went to the restaurant accompanied by his colleague, a reporter Ko Kyaw Soe Oo whose ethnicity is Rakhine. At the restaurant, some policemen handed them some documents without their request. When the two reporters left the restaurant, policemen arrested them for allegedly keeping secret documents related to national security over Rakhine issues. Ko Wa Lone and Ko Kyaw Soe Oo were charged with violation of the Burma Official Secrets Act, a draconian British colonial-era law, enacted in 1923, which carries a maximum sentence of 14 years. The permission letter of presidential office to sue against Ko Wa Lone and Ko Kyaw Soe Oo was ready after an hour the two reporters were arrested. Police captain Moe Yan Naing who met then was also charged under Police Force Maintenance of Discipline Law, was jailed for one year

and dismissed from the force.

On September 3rd, Ko Wa Lone and Ko Kyaw Soe Oo were sentenced to seven years in prison under Article 3(1)(c) of Burma Official Secrets Act after deputy district judge of Yangon Northern District, U Ye Lwin charged them on July 9th 2018. Tatmadaw had to admit that its soldiers murdered 10 villagers of Inn Din and actions were taken against the seven military officers, through military court, who committed atrocities because of two Reuters journalist's investigative news.



Chapter 4

Freedom of Assembly, Procession and Demonstration

Peaceful assembly and peaceful procession is the basic right which was restricted or prohibited under the previous Myanmar regimes. The right to peaceful assembly and peaceful procession is still questionable under the current civilian government. According to the data collected by Athan, there are 39 cases prosecuted under Peaceful Assembly and Peaceful Procession Law, and 142 activists are facing lawsuit.

(a) Amendment of Peaceful Assembly and Peaceful Procession Law

On December 2nd 2011, under the previous government led by U Thein Sein, Peaceful Assembly and Peaceful Procession Law was enacted and strongly criticized by human rights activists because the law has several articles and provisions which are problematic to freedom of assembly. The law was subsequently amended in June 2014 and October 2016 with some restrictions were removed. But it still retains several provisions that countervail freedom of assembly. Civil society organizations repeatedly advised the governments to amend the provision that stipulate an organization or an individual who wants to exercise the right to peaceful assembly and peaceful procession will need to submit detail information including their profile,

flags, poster, chants and the number of protesters and need to notify or inform the respective township police force. Activists also pointed out the lack of provisions regulating the imminent and urgent assembly and procession, and also suggested to amend the Article 10(k) which says the protesters shall obey the existing local orders or regulations. Despite of the suggestions, Amyotha Hluttaw (Upper House of Parliament) Bill Committee on February 20th, 2018 submitted an amendment bill to Peaceful Assembly and Peaceful Procession Law which turned out to be more complicated, draconian and problematic than the version before the amendments.

Article 4(d) of amendment says “The agenda of the peaceful assembly or peaceful procession and approximate number of attendees, and estimated budget and source of funds”. The requirement is not implemented equally, making it easy for a political party or a crony to submit the source of funds for the demonstration but difficult for the demonstration organized by farmers fighting for their occupied farms, workers fighting to get full minimum wage, student unions fighting for educational reform and citizens fighting against the injustice in courts. Civilian demonstrations and protests are mostly funded by collectively small amounts of donation like Kyat 500 or Kyat 1,000 from civilians including the participants in the protest. And, the civilian donors, out of fear of breaking the law may be hesitant to submit their names.

Moreover, another addition in the amendment, Article 18 that says “Whoever with the intention to break national security, rule of law, public order or public morals, knowing of the potential result, can be proven to have incited, persuaded, influenced or forced others to protest by giving money or things or any other means of support, shall be sentenced to a term of imprisonment up to three years or [unlimited] fined as well”. “National Security” is a complicated and vague word. The added amendment of Article 18 seems targeting to charge the demonstrations in which protesters are allegedly paid MMK 5,000 to take part. But the term “money or things” in the clause expands the meaning to the distribution of T-shirts in campaigns, making it more difficult to show the key message. The word “any other means (of support)” also broadens the meaning infinitely. Specific means of

support should be written. The newly proposed punishment for breaking the article is three-year imprisonment might seem effective to prevent the paid protests but, in reality, it can be used for a politically motivated lawsuit to suppress the political activists.

The newly proposed punishment for breaking the article is three-year imprisonment may not be effective to prevent the paid protests but, in reality, it can be used for a politically motivated lawsuit to suppress the political activists.

In democratic countries, no law is enacted to prevent the protests and demonstrations whether protesters are hired or not, until the protests go above the line of promoting the incitement to violence and discrimination. Right to freedom of assembly is universal inherit right and no community or group shall be excluded from right to freedom of assembly. Governments should listen to every protest and address the protested issues if they are valid instead, regardless whether the protesters are paid or not.

(b) Student Protesters Expelled from Universities

40 students from three universities were expelled from their universities on January 29th 2018 after taking part in a protest for an increase in educational budget at Yadanaarbon University on January 22nd. They were accused of breaching morality of the university's discipline. Some students were forcedly ordered to sign in appeal letter to continue their education. But, Magway Region government negotiated and students were allowed to attend their classes without appealing. ATHAN believes that using the university disciplines to expel the students for their protest calling to "increase education budget" is direct violation of freedom of expression.

(c) Protest Banned in 11 Townships in Yangon Region

Yangon Region government started banning peaceful assembly and peaceful procession in 11 townships – Kyauktada, Panbedan, Latha, Botahtaung, Bahan, Sanchaung, Dagon, Ahlone, Mingalar Taung Nyunt and Pazundaung – of Yangon on November 7th 2017, claiming the ban issued by Yangon

Region Security and Border Affairs Minister Colonel Aung Soe Moe on behalf of chief minister, to avoid “disturbance of traffic”, “public annoyance” in crowded areas.

According to the Peaceful Assembly and Peaceful Procession Law, the organizers only need to inform the township police stations before exercising the right to assembly and procession. NLD’s MPs, politicians and activists criticized that Yangon Region government’s instruction over a union law is violation of rule of law and ban on peaceful assembly and procession is prohibiting the citizen rights, according to existing laws.

Yangon Region Social Minister U Naing Ngan Lin defended the purpose of assembly ban was necessary to raise security during the visit of Pope Francis to Myanmar. However, the ban was not lifted even after the Popo visit ended.

(d) 47 Activists Sued under Peaceful Assembly and Peaceful Procession Law in Only One Month

On May 2018, 47 activists were charged by Myanmar government in 15 cases related to the public peace movements, peaceful anti-war protests, poetry recitation events for peace that were erupted after hundreds of civilians were trapped in conflict areas during the war between Tatmadaw and Kachin Liberation Army (KIA) earlier in the year. Among those arrested involved in seven cases in Yangon, three in Mandalay, another three in Bago and two in Kachin State.

17 of them are youth activists, now facing trials over the anti-war protest held in Tarmwe township on May 12th.

The charges proceeded despite the fact that the organiser informed the respective township police forces in line with Peaceful Assembly and Peaceful Procession Law. Police force denied the permission referring to Tarmwe township administrator’s instruction claiming the protest can cause “disturbance to public transportation”, “public annoyance”, “danger” or “damage” plus “traffic congestion.

The organizers defied the police’s decision and finally staged the protest

citing the Peaceful Assembly and Peaceful Procession Law only required them to inform the police. The protest was met with police-lead violent crackdown and arrest of protesters. Police allowed which a hooligan group so-called nationalist people to help with the arrest. ATHAN said Yangon Region government should investigate and identify the authorities who allowed the police to overreact the protest.

(e) Nationalist Protesting Against the Government Sentenced to 18 Months in Prison

On July 25th 2018 , Ko Kyaw Myo Shwe was sentenced to one and a half years in prison under Section 505(b) of Penal Code by Chan Mya Tharzi Township Court for participating in anti-government protest along with ultra-nationalist Buddhist monks and civilians in 2017. Ko Kyaw Myo Shwe was arrested on August 7th 2017. Since he had been in Oh-Bo prison for one year, he would only serve a half year in prison for the rest of sentence. Other six Buddhist monks who were involved in anti-government protest were sentenced to one and a half years in prison, in December 2017.

(f) Activists Protesting Outside of Court Sentenced to 18 months in prison

On September 11th 2018, Dagon Seikkan Township Court sentenced activists Daw San San Oo aka Daw Lay Lay and Ko Naung Naung each to one year in prison for violating Section 505(b) (Defaming the state) of Penal Code and six months imprisonment for violating Section 153, provision of intent to cause a riot, of Penal Code The pair staged a protest on behalf of Aung Ko Htwe, former child soldier, to abolish 2008 constitution at the court hearing of Aung Ko Htwe who was arrested and charged under Section 505(b) of Penal Code. Both were arrested on January 18th. Other protesters – Ma Nay Zar Tun, Ko Zaw Gyi, Ma Khin Cho Naing and Ma Than Than Htwe are on an arrest warrant.

(g) Factory Workers on Strike Fired

On August 2nd 2018, 80 workers at Good Morning Bread factory at Shwe Than Lwin Industrial Zone, Hlaing Thar Yar Township, Yangon Region were fired after they went on a strike to demand for a reinstatement of extra fees such as incentive or allowance. The strike took place on the day the factory stopped awarding them the extra fees in addition to their salary. The factory's management and workers met at Hlaing Thar Yar township's labor negotiation office but failed to find a solution. The workers were eventually fired and paid with the compensations including compensation based on the experience, and compensation for unused leaves.

(h) One-Person Protest Violently Cracked Down

Police violently arrested a member of Myanmar Democracy Current Force (MDCF), U Tin Maung Kyi in when he was protesting alone, calling ICC to charge Myanmar military, in front of Maha Bandula Park, on September 28th 2018. The violent followed Kyauktada township police station's denial of permission to U Tin Maung Kyi's notice letter according to the Peaceful Assembly and Peaceful Procession Law on September 19th 2018.

Most of the protests that were noticed to police but not permitted are persecuted under Article 20 of Peaceful Assembly and Peaceful Procession Law but U Tin Maung Kyi was charged under Section 505(b) of Penal Code, state defamation clause.



Executive Summary

Athan found that the right to freedom of expression in Myanmar under the first two years of government led by the National League for Democracy (NLD) is worsening despite initial hopes of improvement.

Failure to repeal Article 66(d) of Telecommunications Law in amendment, the increasing use of the Telecommunications Law, increasing arrests and charges against journalists, sentencing two journalists to long jail term, charges over the criticism of government under the Law Protecting the Privacy and Security of Citizens, ban on panel discussion, prayer and poetry recitation events, unprecedented use of Section 505(c) and 124(a) of Penal Code, ban on peaceful assembly and peaceful procession in 11 townships of Yangon Region, bringing lawsuits against 47 activists under Peaceful Assembly and Peaceful Procession Law in May, sentencing anti-government protesters to one and a half year imprisonment, charging protester who notified the police in advance, under Section 505(b) of Penal Code, sentencing the activists who supported detained former child soldier to one and a half year imprisonment, worsening the Peaceful Assembly and Peaceful Procession Law with proposed amendment, the continuing intervention and sensitivity of the Tatmadaw towards criticism have severely affected the freedom of expression downwards.

Recommendations

For Hluttaw

- Hluttaw should repeal Articles 66(d), 68(a), 77, and 78 and reconsider and amend 75 and 76 of the Telecommunications Law;
- Hluttaw should repeal Article 8(f) of Law Protecting the Privacy and Security of Citizens;
- Hluttaw should amend Peaceful Assembly and Peaceful Procession Law in accordance with democracy and human rights standards;
- Hluttaw should enact a Right to Information Law to override the Burma Official Secrets Act;
- Hluttaw should abolish Section 505(a), 505(b) and 124(a) of the Penal Code;
- Hluttaw should reconsider the articles of Unlawful Association Act;
- Hluttaw should decriminalize defamation sections in every law;
- Hluttaw should enact a Cybercrime Law to protect the rights of people and address cyber security issues;
- Hluttaw should reconsider and amend conflicting laws or laws that have similar provisions, using the human rights approach and principles;
- Hluttaw should engage civil society organizations, particularly when drafting, enacting, and amending regulations and laws, to ensure active participation of citizens in decision-making.

For Government and Tatmadaw

- Government leaders and public officials should listen to the people's voices, particularly when it involves legitimate comments and criticism guaranteeing the practice of the rights to freedom of expression and press freedom;
- Governmental departments and agencies, MPs, and political leaders should repeal draconian laws that restrict free expression, in particular withdraw charges and free individuals in jail charged;
- Government should plan national and local strategies on media, digital, and information literacy, particularly organizing and initiating trainings

- and awareness campaigns;
- Government and Tatmadaw should ensure that state-owned/controlled and ministry-owned/controlled media outlets work for the interest of the public, otherwise abolish them within a certain period;
 - Government should ensure the privacy of data and public, avoiding mass surveillance, monitoring, and/or eavesdropping;
 - Tatmadaw should guarantee and respect the people's rights to freedom of expression, opinion, to know, and access information;
 - Tatmadaw MPs should not obstruct through debates and legislations the people's rights to freedom of expression, opinion, to know, and access information.

For Judiciary and Courts

- Judiciary and courts should uphold the rule of law and ensure the independence of the judicial system;
- Judges should undergo trainings to better understand and resolve cases following international human rights standards and principles.

News Media Council

- News Media Council should help build and foster an environment where people could fully utilize and practice their rights to free expression, opinion, information;
- News Media Council should lead the discussion and amendment of the News Media Law, Printing and Publishing Enterprise Law, and Television and Broadcasting Law;
- News Media Council should help ensure that the online and cyberspace are free, open, accessible, and safe, in particular communicate and coordinate with existing organizations and mechanisms to create a people- and rights-oriented internet policy and governance in the country.





အသံအဖွဲ့မှ ကောက်ခံရရှိသောစာရင်းများအရ လက်ရှိအစိုးရလက်ထက် သက်တမ်း(၂)နှစ်ခွဲအတွင်း ငြိမ်းစုစီဥပဒေဖြင့် တရားစွဲဆိုခံထားရသော အမှုပေါင်း(၃၉)မှု ရှိနေပြီး တက်ကြွလှုပ်ရှားသူ(၁၄၂)ဦးထိ တရားရင်ဆိုင်နေရသည်။

According to the data collected by Athan, there are 39 cases under Peaceful Assembly and Peaceful Procession Law, in which 142 activists are facing trials, within two and a half years under the current government.

လွတ်လပ်စွာထုတ်ဖော်ပြောဆိုခွင့်

အစိုးရသက်တမ်းဝက်အစီရင်ခံစာ

Mid-term Report on Freedom of Expression