

ဆက်သွယ်ရေးဥပဒေ ပြင်ဆင်ရေးနှင့် ပုဒ်မ ၆၆ (ဃ) ဖျက်သိမ်းရေးလှုပ်ရှားမှု ပူးပေါင်းအဖွဲ့
**Coalition on the Movement for
the Telecommunications Law Reform and Art.66D Abolishment**

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Joint Statement to Demand Abolishment of Telecommunications Law Section 66D

24th June, 2017

There is a noticeable increase in confinements and prison charges against citizens for their expressions on the internet for "defamation" with the use of Telecommunications Law section 66D which defines "defamation" as a crime during the current government's rule which violates human rights. Therefore, **"Coalition on the Movement for the Telecommunications Law Reform and Section 66D Abolishment"** formed with 22 Civil Society Organizations made a joint statement to request the government and the parliament to abolish section 66D and revise the Telecommunications Law.

- 1) The Telecommunications Law; 1.) Violates human rights including the freedom of expression, 2.) Discourages the Government's anti-corruption procedures, 3.) Violates the rule of law and public safety due to the misuse of the law and is required to be revised and presented to the government and the parliament. Thus, the **"Coalition on the Movement for the Telecommunications Law Reform and Section 66D"** is formed with 22 civil society organizations including the organizations working on human rights issues and freedom of Expression, and media organizations in early 2017 to review the law.

According to the available survey data from the Research Team for Telecommunications Law of the Coalition, there are 70 cases (up to 24th June, 2017) charged with the Telecommunications Law. According to the data from the Ministry of Transportation and Communications, there are 166 cases requesting "permission" from the Ministry to prosecute with **Section 66D's** "defamation" according to the section 80B. The data from the Research Team shows that there were 7 cases sued with **Section 66D** during the previous government's rule but increased to 63 cases in the current government's rule.

Review upon Section 66D

When the provisions of **Section 66D** and cases charged with it are compared with human right standards and good practices of international laws, it is found out that **Section 66D** is unfair and lacks the true meaning of justice due to the following factors. The provisions of **Sector 66D** such as "extortion, coercing, wrongful confinement, defamation, disturbing, undue influencing or threatening" are –

1. Ambiguous and broadly worded without clarity and precision to carry out upon individuals according to the law

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- ❖ Especially, the terms such as "disturbing" or "undue influence" are broadly worded and ambiguous so that the provisions could be utilized according to favor. There is no clear definition of "disturbing" action or "undue" influence according to the law.
- 2. The charges against the crimes stated in the section are sufficiently included in the Myanmar Penal Code and The Evidence Act which was amended in 2015.
 - ❖ Penal Code
 - Extortion (Penal Code section 383 to 389)
 - Coercing (Penal Code section 147, 349, 350, 362)
 - Wrongful Confinement(Penal Code section 340,341)
 - Defamation (Penal Code section 499 to 501)
 - Disturbing (Penal Code section 268)
 - Threatening (Penal Code section 189, 388, 503)
 - ❖ In 2015, the amended Evidence Act (1872) (the amendment law for The Evidence Act, 2015 Parliament Law no 73) has thorough provisions for evidential "telecommunication documents" relating to the stated crimes. The amendment of section 3 of The Evidence Act added the phrase "electronic record and information are included" for the definition of the term "documents".
"any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter."
It is also described in the following provision.
(4) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; (7) Any record generated, sent, received or stored by means of electronic, magnetic, optical or any other similar technologies in an information system or for transmission from one information system to another.
- 3. It is not in accordance with the standards of the international practices and defined "defamation" as police case with criminalized penalties.
 - ❖ According the UN General Comment 34 – Freedom of Expression which was declared on the 102nd Convention of United Nations Human Rights Commission, it is found that in international practices, "defamation" is not categorized as a charge with criminalized penalties. Only in worst case scenario, "defamation" could be considered to be charged with one of the penal laws and it is not considerate to charge "defamation" with detainment and prison sentence.
- 4. Permission of third-party complaints without the permission or consent of the victim
- 5. Lack of coherence and legal consistency in bailing procedures

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6. The provision to permit charging with criminal penalties for violating the law without a provision for the definition of "intention" contradicts with the Penal Code.

When conducting research upon such cases charged with **Section 66d**, there are 7 cases charged as defamation against the Army, 6 cases sued by NLD members and 8 third-party cases for defamation against State Counselor Daw Aung San Suu Kyi. There are 10 charged cases against news and broadcasting media and 17 media personnel are still in court waiting for the verdict. Furthermore, there are cases charged with "defamation" for writing posts on the internet which unveil corruption. Thus, the coalition reviews the law as follows;

1. Charging against one's own thoughts and opinions, freedom of expression and writing, criminalizing responsible media personnel by charging with "defamation" could silence the voices from the diversities and violate the freedom of expression.
2. Intentional oppression of legal politic criticism which is necessary for a democratic nation could terminate good democracy practices.
3. Charging the ones who unveil bribery cases with defamation could discourage the Government's anti-corruption procedures.
4. It is found that the ambiguous and broadly worded law together with the lack of precise procedures and weak legislation power could lead to the misuses of the law which could in turn violate the public security and ultimately cause to lose trust in the government.

Recommendations to Government and the Parliament

1. To abolish **Section 66D** of Telecommunications Law
2. To review and amend other sections of Telecommunication Law which have an impact on freedom of expression, human rights and democracy standards
3. To include public participation in consultations for the steps of the amendment of the law

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1. Action Committee for Democracy Development (ACDD)
2. Article 19
3. Burma News International (BNI)
4. Democratic Youth Organization

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5. Engage Media
6. Equality Myanmar
7. Free Expression Myanmar (FEM)
8. Generation Wave (GW)
9. Heinrich BoellStiftung Myanmar
10. Human Rights Defender Forum
11. Mass Movement Associations Network
12. Myanmar Centre for Responsible Business (MCRB)
13. Myanmar ICT for Development Organization (MIDO)
14. Myanmar Journalists Association (MJA)
15. Myanmar Journalist Network (MJN)
16. Myanmar Journalists Union (MJU)
17. Myanmar Media Lawyer Network (MMLN)
18. Myanmar Women Journalists Society
19. PEN Myanmar
20. Phandeeyar: Myanmar Innovation Lab
21. Protection Committee for Myanmar Journalists
22. Research Team for Telecommunications Law