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Athan - Freedom of Expression Activist Organization

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# Research Report on Prosecution of U Aung Ko Ko Lwin under the “Law Protecting the Privacy and Security of Citizens”

September 27<sup>th</sup>, 2018

*This research is a short analysis paper of Athan on an unpopular case among the incidents of right to freedom of expression violation around Myanmar. Process of making this research includes interviewing respective people and government officials, documenting court hearings and analyzing the provisions of the Law Protecting the Privacy and Security of Citizens and trial process.*

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U Aung Ko Ko Lwin from Thaton township was sued on January 6<sup>th</sup>, 2018, for allegedly committing an offence by breaking the Article 8(f) of Law Protecting the Privacy and Security of Citizens. On June 4<sup>th</sup>, 2018, he was charged under the Article 10 of that law. On June 8<sup>th</sup>, 2018, he was arrested. His application for bail was denied and he was sentenced to one year in prison on September 27<sup>th</sup>, 2018.

The charge against U Aung Ko Ko Lwin is related to a viral video clip of Chief Minister of Mon State’s recommendation to “reduce a dish of curry (in daily meals)” to the people in a meeting between State government, parliamentarians and respective departments and local residents in January 2018. U Aung Ko Ko Lwin uploaded the video clip on Facebook after a meeting 2008.

A member of Mon State Hluttaw (Parliament) Ethnic Affairs Committee filed a lawsuit against U Aung Ko Ko Lwin under the Article 10 of the Law Protecting the Privacy and Security of Citizens for uploading the video. However, we found that root cause of U Aung Ko Ko Lwin’s case is not only viral video but also his criticism of Chief Minister of Mon State, MPs, Mon State Development Committee and Mon State government. Documentary evidences included many screenshots of U Aung Ko Ko Lwin’s criticism of state government, departments and parliament on social media. The content of criticism included complaints about development of Thaton Township, access to electricity for the township market and political criticism including criticisms of government and parliamentarians.

**He was sentenced to one year in prison on September 27<sup>th</sup>, 2018.**

## The Law Protecting the Privacy and Security of Citizens



The Law Protecting the Privacy and Security of Citizens was passed by Pyidaungsu Hluttaw (Assembly of the Union) on March 8<sup>th</sup> 2017. Legal experts, civil society organizations and activists criticized and opposed 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 similar provisions with Section 500 of Penal Code. Article 10 of the law mentions the maximum punishment of three-year imprisonment for such defamation. Besides, the intent of law to protect the politicians from stalking and eavesdropping is not implemented. In practice, Special Branch (SB) of police department 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 prosecuting the critical people by using a law is a pattern of politically motivated pressure and violation of people’s freedom of expression.

Athan has increasingly sent advises to amend or abolish a number of laws in Myanmar which can be used to violate right to freedom of expression, as needed.<sup>2</sup>

Prosecuting of political critics by using this law including U Aung Ko Ko Lwin’s case is restricting the freedom of expression by using of weakness of the law as a tool.

Law Protecting the Privacy and Security of Citizens	Chapter IV Prohibitions <b>Article - 8</b>	In the absence of an order, permission or warrant issued in accordance with existing law, or permission from the Union President or a Union-level Government body: No one shall unlawfully interfere with a citizen’s personal or family matters or act in any way to slander or harm their reputation
	Chapter V Penalties <b>Article - 10</b>	Whosoever is found guilty of committing an offence under Section 7 or Section 8, shall, in addition to a sentence for a period of at least six months, and up to three years, also be required to pay a fine of between three hundred thousand (300,000) and fifteen hundred thousand (1,500,000) kyats.

Figure (1): Prohibitions and Penalties from Law Protecting the Privacy and Security of Citizens<sup>3</sup>

## **Background of Defendant**

U Aung Ko Ko Lwin became a member of National League for Democracy (NLD) around 1997-98 and occasionally participated in political activities NLD conducted. He is an activist promoting development of city, access to water supply and electricity and rural development. As a patron of Ka Ru Na Social Welfare association, he actively criticized, acted in social activities, demanding the authorities to fulfil the development requirements of community.

He had driven an auto rickshaw to earn money before he started a rental car service, a legacy he got from his parents until two months before he was arrested. He was arrested under the Article 8(f) from the Law Protecting the Privacy and Security of Citizens while his career was going well with taxi service.

His wife, Daw Moe Thida Aung stopped her sewing job to help her husband solve the legal case after he was arrested during June and July when Mon State and neighboring Karen State were suffering from the dangerous flood because of heavy rain. Daw Moe Thida Aung was participated in relief activities of Ka Ru Na Social Welfare association in inundated areas on behalf of her husband.

U Aung Ko Ko Lwin and Daw Moe Thida Aung have three studying children including a matriculation student out of four children. Daw Moe Thida Aung had to struggle to solve financial problem of her family, seldom having medical treatment for heart attack while U Aung Ko Ko Lwin was staying in detention.

**“ This law should be protecting the freedom of people, not theirs ”**

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Aung Ko Ko Lwin  
11<sup>th</sup> Court Hearing

Like U Aung Ko Ko Lwin, Daw Moe Thida Aung had been a member of National League for Democracy (NLD) during 1997-98. She tried to tell Daw Aung San Suu Kyi the State Counselor about her husband's unjust case when Daw Aung San Suu Kyi visited Hpa-an Township, capital of Karen State and just 30 miles away from Thaton, in July 2018. At first, she planned to give Daw Aung San Suu Kyi flora gift in which the complaint letter was attached but she had to change the plan because the security system did not allow anyone to give a present of gift such as flora to Daw Aung San Suu Kyi. Daw Aung San Suu Kyi accepted her letter when she saw security guards halted her as she was trying to overcome the security guards to give the complaint letter.

## Controversial Legal Facts

### 1. How did they determine which law to use?

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.

### 2. Who is/are the plaintiff(s)?

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 include among the witness of the case until the 12<sup>th</sup> court hearing. Besides, the plaintiffs did not receive the authorization letter from the two individuals.

#### **The Law Protecting the Privacy and Security of Citizens** **Chapter V, Article 10**

Whosoever is found guilty of committing an offence under Section 7 or Section 8, shall, in addition to a sentence for a period of at least six months, and up to three years, also be required to pay a fine of between three hundred thousand (300,000) and fifteen hundred thousand (1,500,000) kyats.

#### **Myanmar Penal Code** **Chapter XXI, Section 500**

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.<sup>4</sup>

Figure (2): Comparison of Laws

Timeline of Case	Date
A third-party complainant filed lawsuit at Thaton township police station	Jan 6 <sup>th</sup> , 2018
U Aung Ko Ko Lwin was charged for allegedly braking Article 8(f)	Jun 4 <sup>th</sup> , 2018
Arrested to detention and application of bail denied	Jun 5 <sup>th</sup> , 2018
Daw Moe Thida Aung directly gave the letter of her husband’s case to State Counselor	Jul 26 <sup>th</sup> , 2018
The court charged U Aung Ko Ko Lwin under the Law Protecting the Privacy and Security of Citizens at 10 <sup>th</sup> court hearing	Aug 7 <sup>th</sup> , 2018
<b>U Aung Ko Ko Lwin was sentenced to one year in prison</b>	Sep 27 <sup>th</sup> , 2018

Figure (3): Timeline of Case

### 3. Can the intermediary person sue?

There is no provision which mentions whether intermediary person can sue on behalf of damaged party in the Law Protecting the Privacy and Security of Citizens. The Code of Criminal Procedure, Article 198 mentions “No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code, or under Articles 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved”. In general, intermediary person or 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 intermediary person can file complaint under the Law Protecting the Privacy and Security of Citizens is the weakness of the law.

## The condition inside the Thayet Prison

*Athan interviewed U Aung Ko Ko Lwin while visiting Thayet Prison and court hearing, investigated the condition inside the prison, met the authorities and witness to document these following facts.*

Thayet prison actually is B-level prison that was designed to hold only about 200 inmates but housing around 500 inmates, about 50 percent over its maximum capacity. The prison facility should provide an average of 12 square feet (2 x 6 feet) of living space per inmate in align with international prison standards. But each inmate has only 3.0 square feet of living space instead. Each prison cell is divided into two floors where inmates share living space each other.

According to U Aung Ko Ko Lwin, inmates forcedly have to sleep with the knee bent on very narrow space in the prison cells. 40 inmates suffered from seasonal flu in July. Now, some are suffering from leprosy.

U Naing Win, Charge of Thayet Prison (warden), said prison overcrowding is a nationwide problem. A new prison which can house 500 inmates is set to be built at the Zay Ma Thwel Village, four miles away from Thayet in forthcoming September by 2018-19 fiscal year.

Now, U Aung Ko Ko Lwin is spending his time helping some inmates with law literacy level improve. He also helps the prison received more book donations for inmates.

## Recommendations

- The Law Protecting the Privacy and Security of Citizens should be amended.
- External experts and civil society organizations along with their advices should be called to involve in the process of amending the law in align with international human rights standards.
- Government leaders, MPs and public officials should pay attention carefully to the people's criticism and should not sue or response in negative way.
- U Aung Ko Ko Lwin should be released.

## Reference

1. Myanmar Law Information System (Govt Official)  
<https://www.mlis.gov.mm/IsScPop.do?lawordSn=1928>
2. Report of ATHAN  
<https://drive.google.com/file/d/13fQqfdZigwDmwHnP DyCCvaeXfZhfom3L/view?usp=drivesdk>
3. Myanmar Centre for Responsible Business' Unofficial translation of Law Protecting the Privacy and Security of Citizens  
[https://www.myanmar-responsiblebusiness.org/pdf/Law-Protecting-Privacy-and-Security-of-Citizens\\_en\\_unofficial.pdf](https://www.myanmar-responsiblebusiness.org/pdf/Law-Protecting-Privacy-and-Security-of-Citizens_en_unofficial.pdf)
4. Myanmar Law Information System (Govt Official)  
<https://www.mlis.gov.mm/IsScPop.do?lawordSn=9506>

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