



FREEDOM OF EXPRESSION
ACTIVIST ORGANIZATION

Analysis Report on

Amendment of Telecommunications Law

September 11th, 2018

The abuse of five-year old Telecommunications Law enacted in October 2013 has been infamous since 2015 when the competing political parties strongly 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 opinion online.

The repetitious cycle of 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.

This analysis report is based on observation and figures compiled by Athan. It is also based on the updated list of cases under Telecommunications Law, announced on September 9th, 2018.

Amendment of Telecommunications Law (2017)

Original Provisions	Amended Provisions
Initial Clause of Article 66 at the Chapter XVIII – Offences and Penalties	
<p>“Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both”</p>	<p>Article 66 shall be replaced with the following: “66. Whoever commits any of the following acts 66(a), (b) and (c) shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both, and whoever commits act of 66(d) shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not more than one million or to both.”</p>
Article 66(d) at the Chapter XVIII – Offences and Penalties	
<p>“Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network</p>	<p>Extorting, defaming, disturbing or threatening to any person by using any telecommunications network.</p>
Added Article 80(c) in Chapter XIX – Miscellaneous	
	<p>80 (c) If not by the victim him/herself or the authorized person by the victim, the case against the defaming to any person by using any telecommunications network shall not be filed at any court.”</p>

Picture (1): Excerpts from the Amendment of Telecommunications Law

“ Amendment of the Law ”

There were only three significant changes in the amendment to the Telecommunications Law (amendment bill) which was passed by parliament on August 29th 2017. The amendment reduced the number of grounds from seven to four to file a complaint, reduced the maximum prison term and prevented the third-party plaintiffs from filing complaints unless they are granted official legal power.

The “defamation” clause of Article 66(d) is retained as one the grounds to file a complaint. The three other grounds are extorting, disturbing or threatening.

“ Defamation ”

The provision and punishment for defamation is already stated in Section 500, Chapter XXI of the Penal Code. According to the amendment of Myanmar Evidence Act in 2015, those who convict a criminal defamation with intention to damage reputation of a person or an organization on social media can be sued under defamatory provision of the Penal Code. Including the defamation provision in Telecommunications Law is repetitious and leading into 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, resulting in negative impacts 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 (pseudonym) 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 27 months to get the permission letter of Ministry of Transport and Communications to withdraw the lawsuit.

“ 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 lawsuits filed by third party complainants.

Section 198 of The Code of Criminal Procedure states, “provided that, where 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 unable from sickness or infirmity to make a complaint, some other person may, with the leave of Court, make a complaint on his or her behalf” under Section 500 the defamatory provision of Penal Code.

However, Article 66(d) of Telecommunications Law is not **in line** with Section 198 of The Code of Criminal Procedure. Article 80(c) of the law also strongly bans the third-party complainant to file a lawsuit on behalf of someone without official legal power. ATHAN found that no official legal power was granted to third-party complainants in five cases out of all six cases documented.

Case Study

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

“ Number of Cases

The number of cases under Telecommunications Law has raised to 150. There were 11 cases under the previous government. Under this government, there were 91 cases before the amendment of the law and there were 48 cases within one year after the amendment.

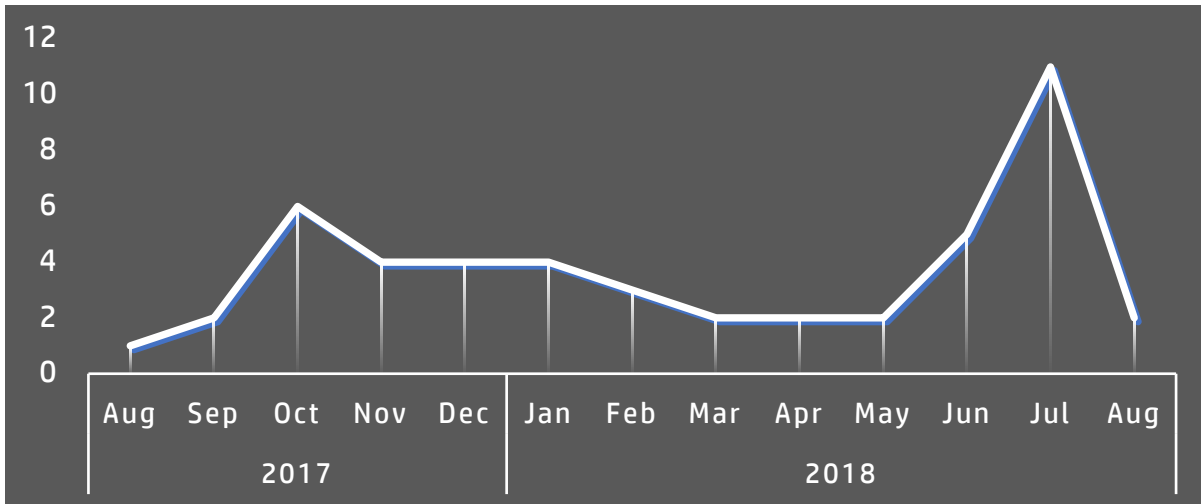


Figure (2): Monthly Record on Cases under Telecommunications Law after Amendment

“ 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 targeted by that law and to discover how it is challenging to the exercise of the right to freedom of expression of people. Athan classified five categories as followed:

Freedom of Expression	Offences That Should be Protected by Other Relevant Laws Including Cybercrime Law
<ul style="list-style-type: none"> “ Political Criticism “ News Reporting “ Defending Labor Rights and Land Rights “ Whistleblowing “ Criticism of Individual or Organization “ Criticism of Commercial Business 	<ul style="list-style-type: none"> “ Cyber Bullying “ Violation of Copyright “ Sexual Harassment and Abuse “ Spreading Fake News “ Hacking “ Extorting “ Spreading Dangerous Speech “ Threatening
Social Problems	Others
<ul style="list-style-type: none"> “ Social problems 	<ul style="list-style-type: none"> “ Unknown “ Others

Figure (3): Analysis: Categories of Cases under Telecommunications Law

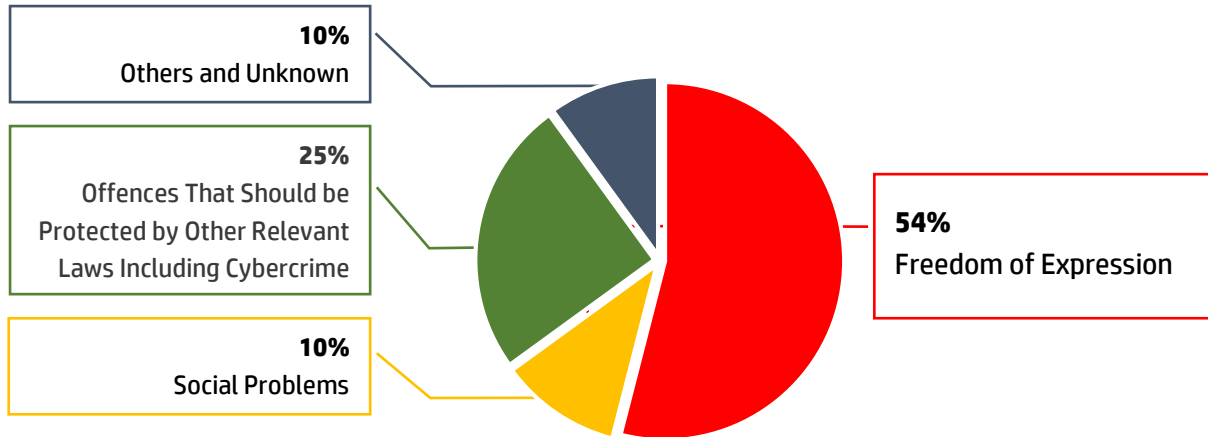


Figure (4): Complaints under Telecommunications Law after Amendment

Among the categories, ATHAN found most complaints targeted the freedom of expression. Ordinary people also sued each other under Telecommunications Law that is commonly known as 66(d). Additionally, some lawsuits of influential and politically powerful figures have made Telecommunications Law tend to attract public interest. Detailed information is shown in Figure (4) and Figure (5).

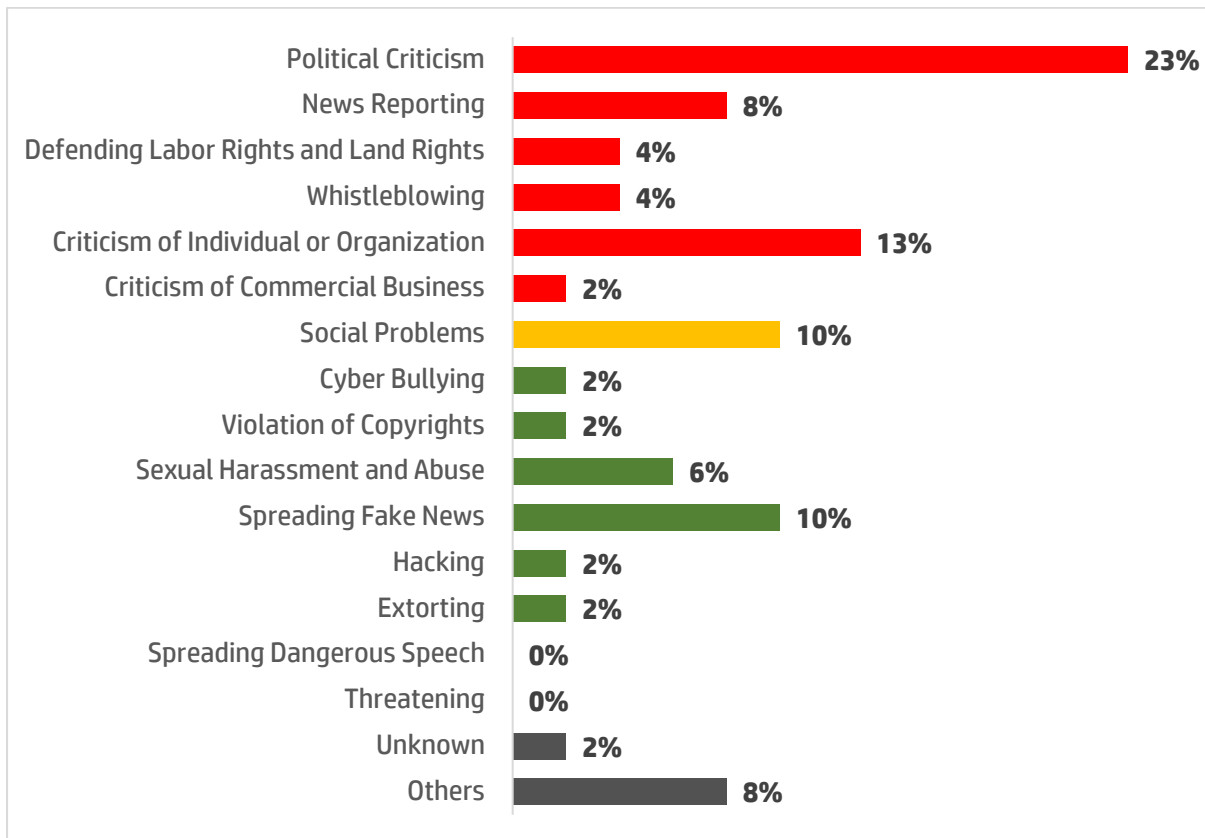
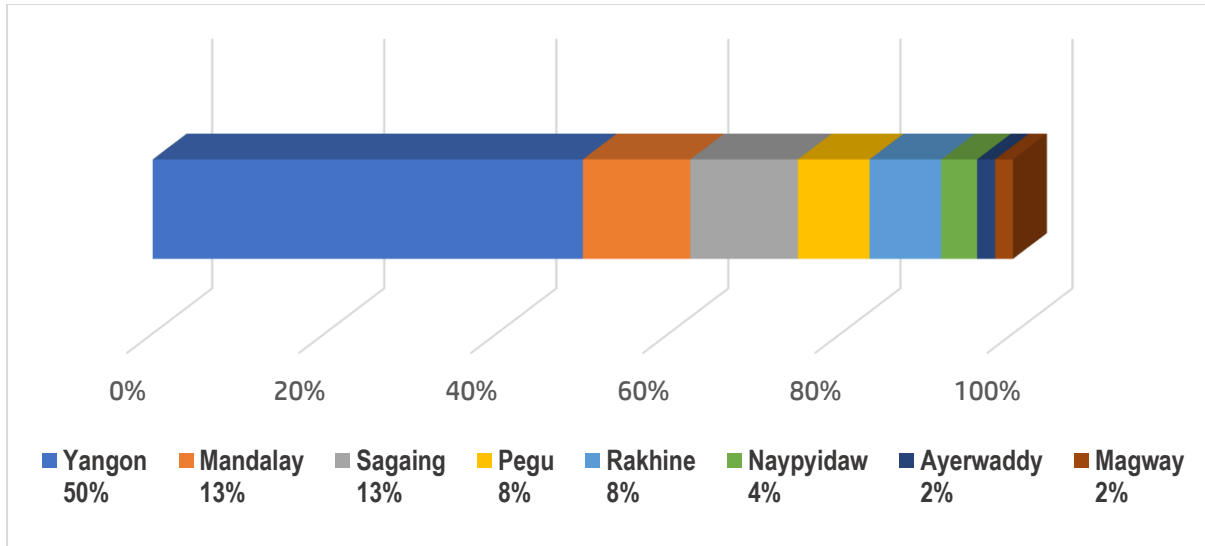


Figure (5): Type of Complaints under Telecommunications Law after Amendment



*Figure (6) : Complaints under Telecommunications Law
by States and Regions after the Amendment*

“ Recommendations ”

1. Article 66(d), 68(a), 77 and 78 of Telecommunications Law should be permanently repealed.
2. Article 75 and 76 should be reconsidered to amend.
3. Hultlaw should call for discussion to get suggestions from experts and civil society organizations and to enact a Cybercrime Law in accordance with international standards and value of right to freedom of expression.
4. Political leaders, government personnel, MPs and respective government departments should withdraw the charges against people who criticized them.

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