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Freedom of Speech Remains Illusory in the New Burma

Published in *The Irrawaddy**For More Commentary See Here***Linda Lakhdhir**

Legal Advisor, Asia Division

@LLakhdhir

Among the many hopes engendered by the November 2015 election of a National League for Democracy (NLD)-led government was that those who criticize or protest against the government would no longer need to fear being arrested and jailed.

Yet that hope has not come to fruition.

The recent arrest of prominent NLD member U Myo Yan Naung Thein for criticizing the military on social media is just the latest in a series of arrests and prosecutions for peaceful speech and assembly utilizing the same broad and vaguely worded laws used by the Thein Sein and previous military governments. He was arrested under section 66(d) of the 2013 Telecommunications Act, which the Thein Sein government repeatedly invoked to prosecute those who “insulted” the military or the president.

He is not the only one facing criminal prosecution under section 66(d) in the new Burma. In recent months, section 66(d) has been used to arrest individuals alleged to have insulted or “defamed” **Aung San Suu Kyi**, President U Htin Kyaw, or the military. In September, **Aung Win Hlaing** was sentenced to nine months in prison for calling the president an “idiot” and “crazy” on Facebook. **Ko Hla Phone** is currently on trial for allegedly posting digitally altered images of Thein Sein and military chief Min Aung Hlaing on social media. Social and political activist Ko Yar Pyae, also known as Ko Myo Thu Win, is facing charges of “defaming” Min Aung Hlaing in remarks on Facebook. As the United Nations Human Rights Committee has **pointed out**, insulting someone should never be the basis of a criminal prosecution.

Another abusive law still being used is section 505(b) of the Penal Code, a broadly worded law that has been used by successive Burmese governments against activists and critics, particularly those involved with public protests. In August, **Khine Myo Thun**, an environmental activist and deputy spokesperson for the Arakan Liberation Party, was charged with violating sections 505(b) and 505(c) of the Penal Code by accusing the Burma Army of committing war crimes in Arakan State.

Veteran activist Htin Kyaw was arrested on Oct. 26 and charged with making statements likely to cause a member of the military to “disregard or fail in his duties” in violation of section 505(a) of the Penal Code. The basis for the charge: statements he allegedly made accusing the military of committing human rights abuses. He is currently in Insein Prison awaiting trial. Htin Kyaw, who in 2014 received more than **10 years in prison** for political activities under the prior administration, was released from prison in an amnesty by President U Htin Kyaw less than eight months ago.

Prosecutions for peaceful assembly have also continued under the new government—with even those who have sought to comply with Burma’s overly restrictive Peaceful Assembly and Peaceful Procession Law facing prosecution. Student leaders who led an **interfaith “peace walk”** of almost 100 people in downtown Rangoon in May were charged with violating the Peaceful Assembly and Procession Law by following an “unauthorized” route. **Lungjung Tu Raw** was charged with violating the peaceful assembly law after thousands of ethnic Kachin marched against the war in their state on Oct. 6. He had received permission from the authorities to protest, but police say that the protesters violated the law by chanting slogans that had not been pre-approved. While Parliament has undertaken to amend Burma’s draconian assembly law, the proposed revisions fall short of international standards for protection of freedom of assembly.

Until the laws used to criminalize peaceful speech are amended or repealed, freedom of

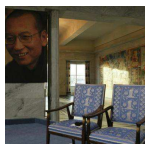
speech will remain illusory in Burma.

Looking ahead, these incidents raise the question of what senior NLD officials think about the use of these laws, and what they might do about them. One possibility is that these cases do not represent their views or policy since the constitution, which the NLD wants amended, still gives the military control over the army and police, while the country's prosecutors and judges are largely holdover military appointees. Another view is that some NLD officials are now willing to use military-era laws for political purposes to go after their own critics.

With a critical mass of cases now being filed, Daw Aung San Suu Kyi, long a strong advocate for free speech, should make her views crystal clear. She should make a public call for all criminal charges for peaceful expression to be dropped. She should also call for a moratorium on the use of these vague and abusive laws until they can be repealed or amended. There may be some blowback from the military and police, but if she and her party are going to set Burma on the road to being a rights-respecting democracy, this is an essential place and moment to start.

Region / Country Asia, Burma

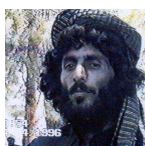
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