

11. Myanmar

Constitutional Tribunal of the Union

Overview

The constitutional basis for the freedom of expression is found in Section 354 of the Constitution. Specifically, it mentions that “citizens shall be at liberty ... to express and publish freely their conviction and opinions ...” Section 354 also contains the rights to assembly and association, as well as guarantees regarding the development of language, literature, culture and religion. Myanmar has not ratified the International Covenant on Civil and Political Rights (ICCPR). The executive plays a unique leadership role and facilitates the effective implementation of the freedom of expression, and safeguards these rights within the framework of policy directives. In addition to stipulating rights, Section 354 of the Constitution also states that the exercise of the rights contained in this Section shall not be contrary to laws, Union security, law and order, community peace and tranquillity, or public order and morality. According to Section 381, no citizens shall be denied redress by due process of law for grievances entitled under law, except in times of foreign invasion, insurrection, or emergency. The Constitution confers the important task of the protection of citizens’ constitutional rights to the Supreme Court. According to Section 378 of the Constitution, the Supreme Court has the power to issue five types of writs. It is important to note that the Constitutional Tribunal of the Union of Myanmar can only deal with cases on constitutional rights if a reference is made by the Supreme Court. To date, such references have not yet been made. Within the context of freedom of expression on the internet, examples of relevant laws include the Computer Science Development Law, the Electronic Transactions Law, the Telecommunication Law, the Media Law, the Printing and Publishing Law, and the Law Protecting the Personal Liberty and Security of Citizens. In terms of relevant adjudication, two cases from the Township Court are mentioned in this chapter.

Outline

- I. Defining freedom of expression
- II. Legitimate restrictions
- III. Impact of the internet

Annex:

- 1. *List of cited legal provisions*
- 2. *Case statistics*

I. Defining freedom of expression

A. Scope and Character

In most of the democratic countries, constitutional rights are legal rights of their citizens and are protected by the constitution and laws. It is vital to oversee how the constitutional law regulates the fundamentals of freedom of expression. Freedom of expression is one of the important basic rights for the protection and promotion of all basic human rights, and the safeguard for this freedom requires constant support from the authorities concerned. Individual rights, such as equality before the law, freedom of speech and expression, peaceful assembly, freedom to practice religion are common to most liberal democracies. The right to freedom of expression shall be exercised and entitled to all citizens, irrespective of place of birth, religion, caste, creed, colour, race or ethnicity, nationality, sex, gender identity or sexual orientation, or political opinion. These rights are manifestly adopted for the benefit of all human beings. Sharing of information with regard to the voting processes, freedom of election campaign, freedom of peaceful assembly deal with the democratic process. Additionally, the right to access, receive and divulge information is also crucial in the democratic procedure. One of the characteristic features of modern constitutional law is the right to claim constitutional remedies with the task to protect civil rights. It can be exercise by means of an application of writs. If an individual right has been violated, an application of writs can be submitted to the Supreme Court. Violation of those rights shall be punishable under the law and subject to the discretion of the judicial sector.

As the government is responsible to protect the freedoms and liberties of all individuals whom it governs, the Constitution of the Republic of the Union of Myanmar (2008) embodies fundamental rights in Chapter I (Basic Principles) and in Chapter VIII (Citizen, Fundamental Rights and Duties of Citizens). Most of the basic rights provided in the Constitution originated from the basis of Universal Declaration of Human Rights.

These principles have been given to guide the Government to implement and to enact laws which guarantee its citizens to enjoy constitutional rights independently and in the proper manner. And also these rights serve to point out the advantages and disadvantages, arising out of the implementation of government's policies in all sectors.

According to section 347 of the Constitution of Myanmar (2008), the Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection. Under section 348 of the Constitution, the Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

Section 354 and section 365, the most significant constitutional provisions specifically highlighting the concept of freedom of expression as provided for in the Constitution of Myanmar (2008), are stated below:

Section 354 - Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:

- (a) to express and publish freely their conviction and opinions;
- (b) to assemble peacefully without arms and holding procession;
- (c) to form associations and organizations;

- (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

Section 365 - Every citizen shall, in accord with the law, have the right to freely develop literature, culture, arts, customs and traditions they cherish. In the process, they shall avoid any act detrimental to national solidarity. Moreover, any particular action which might adversely affect the interests of one or several other national races shall be taken only after coordinating with and obtaining the settlement of those affected.

There are currently around 194 Constitutions in effect in the world and 184 countries have adopted the right to freedom of expression. About 95% of these constitutions provide some form of protection for freedom of expression.¹ National laws are enacted to this effect.

Myanmar remains committed to its obligations to preserve freedom of expression so long as it does not adversely affect the rights of others. Legal restrictions will be imposed if an action undermines law and order. The basic concept of freedom of expression is one may act freely but not misrepresent others and legal restrictions can be imposed on speech which activate subversive activities or unlawful conduct.

In Myanmar, many National Laws, such as the Penal Code, 1860, the Unlawful Associations Act, 1908, the Official Secrets Act, 1923, the Electronic Transactions Law, 2004, the Telecommunications Law, 2013, the Media Law, 2014 and the Peaceful Assembly and the Peaceful Procession Law, 2011, deal with the right to freedom of expression.

Freedom of expression implies a commitment to democracy, good governance and political accountability. Accordingly, many international documents, conventions and treaties such as the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), the American Convention on Human Rights (ACHR), the ASEAN Human Rights Declaration and many other constitutions embrace the same important approach provided under the Universal Declaration of Human Rights. The valuable concept of freedom of expression is widely recognized and accepted by the international community.

Although Myanmar has not ratified the International Covenant on Civil and Political Rights (ICCPR), the Government enacted the Peaceful Assembly and Peaceful Procession Law with a view to implement the freedom of expression in alignment with the international practice since 2011. Previously, the prior approval by the authorities is required concerning censorship before publication for all print media and this procedure was totally lifted by the Government in August 2012. Consequently, the publications of independent daily newspapers are permitted and allowed exiled Myanmar media organizations to return to the country.

In order to prevent effectively the grave abuse of the noble concept of freedom of expression with criminal intent such as unlawful activities, defamation and obscenity are penalized by the following laws under certain conditions if it affected the public interest. The following provide examples from relevant legislation:

Section 66 (d) and 68 (a) of the Telecommunication Law, 2013

¹www.constitutionalrights.constitutioncenter.org

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Or do you mean:
www.constitutionalrights.constitutioncenter.org

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Section 66 (d) of the Telecommunications Law provides criminal penalties for ‘extorting, defaming, disturbing or threatening to any person by using any telecommunications network’.

Section 68 (a) the Telecommunication Law prohibits "communication, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation".

Sections 33 and 34 (d) of the Electronics Transactions Law, 2004

Section 33 criminalizes any of the following acts using ‘electronic transactions technology;

- (a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture,
- (b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture.

Section 34 (d) of the Electronic Transactions Law, 2004 criminalizes the creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.

The Unlawful Associations Act, 1908

The Unlawful Association Act was enacted in 1908. Section 17(1) of that law provides for two to three years imprisonment for any person who "is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association".

The Official Secrets Act, 1923

Consecutive Myanmar authorities have applied the Official Secrets Act, enacted since 1923, disclosures of confidential restricted official documents, papers,.. etc. Section 3(1) of the Official Secrets Act, 1923 establishes criminal penalties of up to 14 years’ imprisonment within a wide range of activities from "entering a prohibited place"; making sketches, plans, models or notes that may be "useful to an enemy"; and obtaining, collecting, recording, publishing or communicating "any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy".

Some provisions of the Penal Code 1861

Article 295 (a) of the Penal Code, which provides for up to two years of imprisonment for ‘outraging religious feelings’, has frequently been used against religious minorities and individuals speaking out against extremism.

Article 505 of the Penal Code provided that whoever makes, publishes or circulates any statement, rumor or report,-

- (a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or

- (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception. - It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumor or report has reasonable grounds for believing that such statement, rumor or report is true and makes, publishes or circulates it without any such intent as aforesaid.

B. Rights Holders

Basically, citizens are entitled to constitutional rights. Section 345 of the Constitution prescribes that all persons who have either one of the following qualifications are citizens of the Republic of the Union of Myanmar:

- (a) person born of parents both of whom are nationals of the Republic of the Union of Myanmar;
- (b) person who is already a citizen according to law on the day this Constitution comes into operation.

Under section 346 of the Constitution, citizenship, naturalization and revocation of citizenship shall be as prescribed by law.

According to section 347 of the Constitution, the Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection and section 348 of the Constitution provided that the Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

In accordance with the above section 354 and 365 of the Constitution, every citizen of the Republic of the Union of Myanmar shall be entitled the right to freedom of expression.

Under existing laws, the misuse of the right to freedom of expression to affect the public interests and the legal order is strictly prohibited. These rights shall be observed but must give due respect to the rights of others and not to infringe on the constitutional system and public moral. The bill of rights for non-citizens is neither provided nor supported in the Constitution.

C. Obligations

The executive sector plays a unique leadership role and facilitates the effective implementation of freedom of expression and safeguards these rights within the framework of policy directives. Formulation, monitoring and evaluation of policy should be focused in pursuance of universal rights.

It is also vital for citizens to observe and follow laws and rules, and violations will be held accountable on their action.

Nevertheless, the fundamental rights may be suspended to a certain extent in case of unavoidable circumstances. Section 379 of the Constitution stipulates that "at the time of the occurrence of the following situation, the rights under Section 377 shall not be suspended unless the public safety may so require:

- (a) in time of war;
- (b) in time of foreign invasion;
- (c) in time of insurrection."

During a state of emergency, the President may, if necessary, restrict or suspend as required one or more fundamental rights of citizens residing in the areas where the state of emergency is in operation. The President shall also specify the areas and the duration that the state of emergency is in operation.

The Constitution addresses the important task of protection of the constitutional rights of citizens by empowering the Supreme Court to use various types of writs. Under section 295 of the Constitution, the Supreme Court has the power to issue writs for protecting and promoting the constitutional rights of citizens. In connection with the filling of application for rights granted, the Supreme Court of the Union shall have the power to issue the following writs suitable: (1) Writ of Habeas Corpus; (2) Writ of Mandamus; (3) Writ of Prohibition; (4) Writ of Quo Warranto; (5) Writ of Certiorari.² The Constitutional Tribunal can give the resolution over cases of constitutional rights which are transferred by the Chief Justice of the Supreme Court for the requirement of interpretation, resolution and opinions of the Constitutional Tribunal. The application submitted by citizens with regard to the issuance of writs for their redress shall be suspended in the specific areas where the state of emergency is declared.

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A mechanism namely, Myanmar National Human Rights Commission (MNHRC)³ was established under Paris Principle, since 5th September 2011 in order to promote human rights protection in Myanmar. In 2014, after the Myanmar National Human Rights Commission Law was promulgated, the commission was reformed and a wide range of duties and powers empowered as follows:

- (a) promoting public awareness of human rights and efforts to combat all forms of discrimination through the provision of information and education;
- (b) carrying out the following to monitor and promote compliance with international and domestic human rights laws:
 - (i) recommending to the government the international human rights instruments to which Myanmar should become a party;
 - (ii) reviewing existing laws and proposed bills for consistency with the international human rights instruments to which the State is a party and recommending the legislation and additional measures to be adopted for the promotion and protection of human rights to the Pyidaungsu Hluttaw (Union Parliament) through the Government;
 - (iii) assisting the Government in respect of its preparation of reports to be submitted under obligation in accordance with the international human rights instruments to which the State is a party and on the contents of those reports.
- (c) verifying and conducting inquiries in respect of complaints and allegations of human rights violations;
- (d) visiting the scene of human rights violations and conducting inquiries, on receipt of a complaint or allegation or information;

² Section 378 of the Constitution of Myanmar.

³ <http://www.mnhrc.org.mm/en/>

- (e) inspecting the scene of human rights violations and, after notification, prisons, jails, detention centers and public or private places of confinement;
- (f) consulting and engaging the relevant civil society organizations, business organizations, labor organizations, national races organizations, minorities and academic institutions, as appropriate;
- (g) consulting, engaging and cooperating with other national, regional and international human rights mechanisms, including the Universal Periodic Review, as appropriate;
- (h) responding to any matter referred to the Commission by the Pyidaungsu Hluttaw (Union Parliament) or the Pyithu Hluttaw (Lower House) or the Amyotha Hluttaw (Upper House) or the Government;
- (i) responding to the specific matters referred by the President in connection with the promotion and protection of human rights;
- (j) preparing reports in respect of the functions of the Commission and publishing them as appropriate;
- (k) carrying out anything incidental or conducive to the implementation of any function of the Commission;
- (l) submitting to the President and the Pyidaungsu Hluttaw (Union Parliament) an annual report on the situation of human rights in Myanmar, the activities and functions of the Commission, with such recommendations as are appropriate;
- (m) submitting special reports on human rights issues to the President as and when necessary.

II. Legitimate restrictions

A. Model of restrictions

A denial of constitutional rights can be pursued at the Supreme Court as mentioned above with an exception of a time of national emergency. Additionally the application submitted by citizens with regard to the issues of writs for their constitutional rights are suspended during a state of emergency for the public interest and safety required.

Moreover, in section 381, except in the following situations and time, no citizen shall be denied redress by due process of law for grievances entitled under law:

- (a) in time of foreign invasion;
- (b) in time of insurrection;
- (c) in time of emergency.

According to section 354, every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality:

- (a) to express and publish freely their convictions and opinions;
- (b) to assemble peacefully without arms and holding procession;
- (c) to form associations and organizations;
- (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

There are laws and regulations imposing certain constraints with a purpose to prevent possible misuse of the freedom of expression. The right to freedom of expression must be respected, protected and must be defended against any offences or inappropriate activities in manner or purpose resulting in damage to society. It is obligated to exercise self-restraint and avoid action which would undermine law and order. These are the Printing and Publishing Enterprise Law, 2014, the News Media Law, 2014, the Telecommunication Law, 2013, the Electronic Transaction Law, 2004, the Peaceful Assembly and Peaceful Procession Law, 2016, the Penal Code, 1860 and the Law Protecting the Personal Liberty and Security of Citizens, 2017.

For example, in section 8 of the Printing and Publishing Enterprise Law, the printer or publisher shall not print or publish the publications contained in any of the following matters:

- (a) expressing the matters to be affected the ethnic groups or the citizens racially, religiously or culturally;
- (b) expressing the matters to be affected national security, rule of law, community peace and tranquility, or equality, freedom, justice and rights of every citizen;
- (c) expressing obscene words;
- (d) encouraging and inciting crimes, brutality, violence, gambling, and the offence of narcotic drugs and psychotropic substances.

According to section 10 of the Peaceful Assembly and Peaceful Procession Law, the persons who hold peaceful assembly and peaceful procession shall not:

- (a) speak or conduct that may cause disturbance, obstruction, nuisance, danger, injury or forced persuasion to the public;
- (b) conduct that may cause environmental pollution at the place of assembly or along the route of procession;
- (c) obstruct with intent to disturb vehicles, pedestrians and the public;
- (d) speak or conduct which may affect the State and Union, race or religion or human dignity and morality;
- (e) give a talk providing false information or false data;
- (f) hold or show other flags, posters and signboards other than the notified flags, posters and signboards in holding peaceful assembly and peaceful procession;
- (g) use other loud speakers other than loud hailer or chant and shout other slogans other than the notified slogans in holding peaceful assembly;
- (h) conduct or speak intended to discriminate and degrade treatment and denigrate due to distinction among human beings;
- (i) induce any person by giving money or something to hold peaceful assembly and peaceful procession dishonestly;
- (j) act of threat to, force to, coercion, undue influence on any person in holding peaceful assembly and peaceful procession;
- (k) breach conditions in this Law and violate agreements in respect of conditions predetermined by authorized persons or organizations according to the local requirement.

B. Content of restrictions

There are laws and regulations imposing certain constraint with a purpose to prevent possible misuse of the freedom of expression. Under this circumstances, section 3 of the Law Protecting the Personal Liberty and Security of Citizens, 2017 provided that every citizen has the right to the full independence and personal security of the citizens of the constitution. Additionally, the section 8(f)

of that law provided that no person shall intervene in family affairs or in any way hurt or damage one's reputation or reputation without permission, permit or warrant, in accordance with the existing laws, without the permission of the President or the Union Government without the permission of a citizen.

The above-mentioned constraints on freedom of expression are adopted under specific laws to ensure respect of rights, reputation of other and to protect national security, public order, public health and morals. The main substance of imposing constraints is to give protection without prejudice to the legitimate interests of others.

Strict censorship of print media, motion pictures, private newspapers, etc. is enforced under previous laws. However, it was liberalized in 2018 under a new democratic system, sole exception being censorship for post publication as required for the public interests, law and order of the State.

C. Standards of review

Under section 378 of the Constitution, the Supreme Court has the mandate to issue various types of writs for citizens whose fundamental rights have been violated.

The suspension of constitutional rights of citizens is not permitted in times of war, foreign invasion and in times of insurrection as stipulated by the Constitution and the Law of the Supreme Court.

Under the Law Relating to the Application of Writ, 2014, the Supreme Court is mandated to issue five types of writs and detailed procedure for the submission is described. The applicant shall, after presenting the detailed facts of the case and cause of damage, file the application in accord with the prescribed rules and procedures. The Supreme Court hears the application after required documents and affidavits are completed.

Despite Myanmar is not a state party to the International Covenant on Civil and Political Rights (ICCPR), the right to freedom of expression is well protected by the national law. The concerned authorities give serious consideration to enter into the ICCPR Convention.

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III. Impact of the Internet

A. Relevant laws and regulations

Since modern technology plays a vital role in the globalized world, the use of internet in Myanmar has become a huge source of information. Subsequently, Myanmar cyber laws are enacted, focusing on protection of the rights of citizens.

Section 357 of the Constitution states that the Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution. Moreover, section 354 (a) describes the freedom of expression if not contrary to the laws, enacted for Union Security, prevalence of law and order, community peace and tranquility or public order and morality.

The Computer Science Development Law related to the internet was firstly introduced in 1996. This Law contributes not only to the development of computer science, but also supports the internet network, particularly transmission, reception, communication, recording and distribution of the information.

Section 28 of the above mentioned Computer Science Development Law states that a person desirous of setting up a computer network or connecting a link inside the computer network shall apply to the Ministry of Communications, Posts and Telegraphs in accordance with the stipulations to obtain prior sanction.

The other important law, namely Electronic Transactions Law (2004), creates a range of online offences in a broader sense. Section 33 provides that whoever commits any of the following acts by using electronic transactions technology shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine:

- (a) Doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture;
- (b) Receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture.

The offences listed in section 33 of the Electronic Transaction Law are replicated in the Computer Science Development Law, as section 34.

Section 34 of the Electronic Transactions Law states that whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extent to 5 years or with fine or both:

- (a) Sending, hacking, modifying, altering, destroying, stealing, or causing loss and damage to the electronic record, electronic data message, or the whole or part of the computer programme dishonestly;
- (b) Intercepting of any communication within the computer network, using or giving access to any person of any fact in any communication without permission of the originator and the addressee’;
- (c) Communicating to any other person directly or indirectly with a security number, password or electronic signature of any person without permission or consent of such person;
- (d) Crating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.

According to section 33 and 34 of the Electronic Transactions Law, above restrictions concern the issues of blocking, filtering or regulating specific content on the internet.

Briefly, the Telecommunication Law gives more opportunities to the general public, utilize most telecommunications service by expanding the telecommunication network which coverages the whole country.

Section 66 (d) of the Telecommunication Law provides that whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine

or to both; extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any telecommunications network.

In section 68 of the Telecommunication Law state that whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding one years or to a fine or to both.

- (a) Communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation;
- (b) Prohibiting, obstructing or interfering the transmission, reception, communication, conveyance or distribution of transformation without permission;
- (c) Entering without the permission into the place restricted with the approval of the Department where Telecommunication Service are provided;
- (d) Prohibiting, obstructing or disturbing any person who has been assigned duty on any Telecommunications Service by a licensee from serving his duty.

Despite some private sectors expressing their concern and criticism, the right to freedom of expression is improving in a fast-flowing stream.

Among the many Union Laws, the Media Law of 2014 is well known and stipulates the code of conduct for media sector as follows:

- (a) Evaluation shall be performed to ensure accuracy and reliability of every bit of information and their completeness.
- (b) When incorrect news has been published and amendment / revision is necessary, and this takes place in the Print Media, this revision shall have to be printed in an eye-catching position of the page or, if in other media, this should be published immediately.
- (c) While news regarding some cases for which litigation is being run is published, the person prosecuted shall be considered innocent until the court has passed its judgment and any news related criticism which means disregard to the court shall be avoided.
- (d) While news photos, voices and picture are published, improper ways of modifying them with the help of certain technologies shall have to be avoided.
- (e) Apart from criticisms, opinions and features, no other views and opinions of journalist or reporter shall be comprised of.
- (f) Intellectual properties which belong to others shall not be plagiarized or published without asking for their permission.
- (g) Writing news which related to the interests of the public, a writing style which deliberately affects the reputation of a specific person or an organization or generates negative impacts to human rights shall be avoided.
- (h) Ways of writing which may inflame conflict regarding nationality, religion and race shall be avoided.
- (i) Ethics and regulations which are published by the Myanmar News Media Council shall be obeyed.

The Printing and Publishing Law regulates certain conditions for publishers to comply as stated below:

- (a) reveals a subject that aggrieves, other similar national races or other different national races and similar or other religion.
- (b) instigates for violence or jeopardizes the tranquility of community; and prevalence of law and order
- (c) portrays obscene language, pictures, photos and paintings.

- (d) abets and instigates any criminal case, cruelty, violence, gambling, committing Narcotics Drugs and Psychotropic substances crimes.

B. Judicial interpretation

The Constitutional Tribunal is empowered to interpret the Constitution, to scrutinize Laws of Parliaments, to decide constitutional disputes between State institutions and other judicial power. According to section 323 of the Constitution, in hearing a case by an ordinary Court, if there arises a dispute questioning the provisions contained in any law contradict to the Constitution, and if no resolution has been made by the Constitutional Tribunal of the Union on the said dispute, the said Court shall stay the trial and submit its opinion to the Constitutional Tribunal of the Union in accord with the prescribed procedures. In respect of the said dispute, the resolution of the Constitutional Tribunal of the Union shall be applied to all cases. The Constitutional Tribunal can decide the case regarding constitutional rights only upon the reference of the Supreme Court with the recommendation of the Chief Justice. To date, reference cases of individual rights have not yet appeared.

Two significant cases of individual rights decided by the Township Courts in recent years concerning section 66(d) of the Telecommunication Law is quoted below-

In the first case, *Lt.Col Kyaw Htin vs Ma Chaw Sandi Htun (2015)*, on her Facebook page, Ma Chaw Sandi Htun posted a satirical graffiti of a military officer wearing a women's longyi (skirt). On December 28, 2015, she was sentenced to six months of imprisonment under section 66 (d) of Myanmar's Telecommunications Law on the ground that her action amounted to harm the integrity and reputation of the armed forces particularly to the Commander in Chief of the Armed Forces. It was also found that the theme of displaying a woman's attire on the head or upper parts of a man's body was deemed to be offences in Myanmar society.

The second case, on October, 2015, the activist Patrick Lun Jaa Lee was arrested for sharing a picture on his Facebook page of a person stepping on a photograph of the Commander in Chief of the Armed Forces, following a request by an unidentified individual with a caption "if you share this picture, action will be taken against you and also warn that sharing this picture is dangerous". He was charged pursuant to section 66 (d) of the Telecommunications Law. The Court had opined that, the picture and caption posted on Facebook is "against the culture and customary context" of Myanmar society. On January 22, 2016, the Court found Patrick Lun Jaa Lee was guilty of "online defamation" and sentenced him to six months of imprisonment.

The two sections of the Telecommunication Law was amended in 2017 that "shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine or to both". The previous section describes that "shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both". Moreover, section 80 is amended that

- (a) the offences under this law shall be deemed as cognizable offence.
- (b) in prosecution under this law, prior sanction of the Ministry shall be obtained.
- (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.

Moreover, the penalty section on the Electronic Transactions Law was amended in 2014.

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C. Other relevant issues

The Law Protecting the Personal Liberty and Security of Citizens, 2017 was proclaimed in 2017, after significant priority was given to the importance of an individual's privacy and personal data.

Section 8 of the Law Protecting the Personal Liberty and Security of Citizens, 2017 prescribes that 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:

- (a) No one shall enter into a citizen's private residence or a room used as a residence, or a building, compound or building in a compound, for the purpose of purpose of search, seizure, or arrest.
- (b) No citizen shall be surveilled, spied upon, or investigated in a manner which could disturb their privacy and security or affect their dignity.
- (c) No person shall have their communication with another person or communications equipment intercepted or disturbed with in any way.
- (d) No one shall demand or obtain personal telephonic and electronic communications data from telecommunication operators.
- (e) No one shall open, search, seize or destroy another person's private correspondence, envelope, package or parcel.
- (f) No one shall unlawfully interfere with a citizen's personal or family matters or act in any way to slander or harm their reputation.
- (g) No one shall unlawfully seize the lawfully-owned movable or immoveable property of a citizen, or intentionally destroy either directly or by indirect means.

Section 10 of this law imposed the penalty that whosoever 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, shall also pay a fine of between three hundred thousand (300,000) and fifteen hundred thousand (1,500,000) kyats.

In conclusion, Myanmar affirms its commitment and fulfils its aspiration to protect the fundamental right to freedom of expression, enshrined in the Constitution, and other related laws so as to ensure these rights and freedom will become a reality in public life. Myanmar, a new democratic State in the transition process of federal democracy, also obliged to comply and to take all appropriate steps to prevent any violation on the freedom of expression by all Governments' sectors and Institutions.

Despite the above, there is a pressing need to exercise freedom of expression fully in Myanmar society, it is imperative that these rights are to be performed in a context of mutual respect for others' rights. Adverse effect caused to others or implication of other is not favoured and it is strictly prohibited. Attention has been given to the important fact that every citizen should be duty bound by law. It should not lead to circumstances prejudicial to the public interest and good order of the State.

The right to freedom of expression must be respected, protected and must be defended against any offences or inappropriate activities in manner or purpose resulting in damage to society. The constraints on freedom of expression are adopted under specific laws to ensure respect of others' rights, reputation of others and to protect national security, public order, public health and morals. Nowadays, internet access has significantly and widely expanded among individuals, groups and legal entities, and is growing into a distinguishable element of the freedom of expression.

Myanmar is obliged to comply and to take all necessary steps to prevent any violation on the freedom of expression as stipulated by the Constitution.

It is important for both sides to strike careful balance and judge between freedom of expression and to respect the individual's right to privacy.

Annex 1: List of cited legal provisions

1. The Constitution of the Republic of the Union of Myanmar, 2008

- Section 295
- Section 323
- Section 345
- Section 346
- Section 347
- Section 348
- Section 354
- Section 357
- Section 365
- Section 377
- Section 378
- Section 379
- Section 381

2. The Penal Code, 1860

- Section 295
- Section 505

3. The Unlawful Associations Act, 1908

- Section 17

4. The Official Secrets Act, 1923

- Section 3
- Section 34

5. The Computer Science Development Law, 1996

- Section 28
- Section 34

5. The Electronics Transactions Law, 2004

- Section 33
- Section 34

6. The Telecommunication Law, 2013

- Section 66
- Section 68

Commented [파리뒤12]: Added by me due to it being mentioned in a footnote earlier in the text. Also see comment regarding changing reference of Section 377 to Section 378 when referring to the writs of the Supreme Court.

Commented [May13R12]: We agree it

7. **The Myanmar National Human Rights Commission Law, 2014**
8. **The Printing and Publishing Enterprise Law, 2014**
 - Section 8
9. **The News Media Law, 2014**
 - Section 9
10. **The Law Relating to the Application of Writ, 2014.**
11. **The Peaceful Assembly and Peaceful Procession Law, 2016**
12. **The Law Protecting the Personal Liberty and Security of Citizens, 2017**
 - Section 3
 - Section 8
 - Section 10

Note on Annex 1: If a law is approved by Parliament, that law is called an Act. Although the parliamentary system is not used, a law enacted by the country's highest legislature, similar to parliament, is called a law. Acts and legislation are enacted by the highest legislative body. In Myanmar, before 1962 the enacted Laws were called Act, and after the Revolutionary Council took over state power, the enacted Laws was called "Law", until now.

Commented [파리뒤14]: I think slightly shortening and rephrasing this would be easier for the reader to understand. How about:

Law is enacted by the highest legislative body. In Myanmar, before 1962 the enacted law was called "Act", and after the Revolutionary Council took over state power, the enacted law was called "Law". Today, the term "Law" continues to be used.

Annex 2: Case statistics

Commented [May15R14]: We agree it.

Since establishment (March 2011 – Dec. 2019)

Commented [파리뒤16]: The following tables seem to be based on the format used by the Constitutional Court of Korea. Generally, it is of course acceptable to use a similar format. However, I would highly recommend you to fully adapt the tables to the needs of your own institution.

In Myanmar's contributions to AACC SRD's annual book in 2018 and 2019, different table formats were used.

For example, readers in this book of 2020 may wonder whether the CTU actually can make decisions of "unconformity", "conditional unconstitutionality" and "conditional constitutionality". These types of decisions were absent in the tables provided in 2018 and 2019 books.

From a comparative perspective on constitutional courts around the world, some are explicitly authorized to make such decisions, others have developed such powers via their own constitutional interpretation, and others may only have the option of (or actually prefer) making decisions that either declare a law or exercise of public power "constitutional" or "unconstitutional".

So I'm just double checking whether it makes sense to keep these three fields (unconformable, conditionally unconstitutional, and conditionally constitutional) in the tables you provided. Of course, if having them is intentional, then please do keep the tables as they are.

Commented [May17R16]: We amend it.

Type		Total	Constitutionality of Statutes	Competence Dispute
Filed		16		
Settled		16		
Decided by Full Bench	Unconstitutional		4	1
	Constitutional		1	1
	Dismissed		4	2
	Withdrawn		-	3

2019

Type	Total	Constitutionality of Statutes	Competence Dispute
Filed	2		
Settled	2		
Decided by Full Bench	Unconstitutional	-	-
	Constitutional	-	-
	Dismissed	1	1
	Withdrawn	-	-
Pending		-	-

General note on the Annex sections: As mentioned in Section III.B. of this Fact File, the Constitutional Tribunal can decide cases regarding constitutional rights only upon the reference of the Supreme Court with the recommendation of the Chief Justice. To date, such reference cases have not yet appeared. As a result, the Constitutional Tribunal has not yet dealt with cases on the constitutional rights of citizens. Therefore, this Fact File’s Annex neither contains a list of cited cases nor a section of case summaries.

Commented [파리뒤18]: I have slightly rephrased this note, and made reference to this issue having been mentioned earlier on in the Fact File. Please confirm whether you accept this edit.

Commented [May19R18]: We agree it.