

## CASE STUDY

# MYANMAR MEDIA LAWYERS' NETWORK



**Name of the Organisation:** Myanmar Media Lawyers' Network

**Location:** Myanmar (prior to the 2021 coup)

**Case Study Provided By:** Toby Mendel, Executive Director, Centre for Law and Democracy

## About This Case Study

*This case study is published by the Centre for Law and Democracy as part of our project Supporting the Establishment of Networks of Media Lawyers Globally, funded by the Global Media Defence Fund run by UNESCO. This project aims to foster the development of national-level networks of media lawyers. These networks bring legal professionals together to advocate for media freedom and freedom of expression in their countries, and to serve as a forum for professional collaboration and knowledge-sharing. To learn more about this project, visit <https://www.law-democracy.org/live/projects/media-lawyers-networks/>. The case studies provide examples of the work of national level media networks, along with successes and lessons learned.*

## Background Information

Formally, the Myanmar Media Lawyers' Network (MMLN) was founded at its first General Assembly meeting in Yangon in April 2015. However, its roots go back to a couple of years before that. The Centre for Law and Democracy (CLD) had started working in Myanmar in 2012, just as opportunities for democratic work started to open up. It quickly became clear to CLD that it would be useful to work with lawyers to improve their understanding of international standards as part of our wider work to support law reform in line with these standards. Working with local partners and experts, as well as our main international partner, International Media Support (IMS), CLD hosted a first workshop for lawyers in May 2013, focusing on defamation law standards under international law.

At subsequent workshops with lawyers, the idea of creating a media lawyers' network gradually started to emerge. Indeed, local lawyers were very enthused indeed about the idea. CLD prepared a background note providing an overview of the potential benefits of a network, outlining the scope of activities it might engage in and looking at some key steps towards actually creating such a network. We were careful, from the beginning, to focus on a range of different possible activities, beyond just providing legal support for media and journalists, although everyone agreed that that was important. In particular, we highlighted the importance of the network providing support for law reform work and making available legal expertise to other civil society groups in the country working

in related areas. For their part, the local lawyers stressed from the beginning the importance of the network being truly national in nature. To ensure this, they made efforts to reach out to lawyers from other parts of the country.

Leading up to the April 2015 General Assembly, CLD prepared a sort of model constitution to help kick off the constitutional discussion for the local lawyers. This was translated into Burmese and a core group of local lawyers then worked together to adapt and refine it. As such, by the time of the General Assembly meeting, participating lawyers had a working document to discuss. At the General Assembly, the draft constitution was discussed, some final amendments were made and the final version was voted on and adopted. An election was then held for the various positions on the Executive Committee which had been established by the constitution, such as chair, deputy chair and so on. An independent person had been brought in to oversee the election (not a member of the Network) and candidates all gave short speeches on why they should be elected. Following the vote, the members held a discussion on activities and priorities to guide the newly elected Executive Committee.

The formal creation of the MMLN was followed, almost immediately, by a number of consolidation activities. First, there was a membership drive. This included a mission to Mandalay to host a workshop there for interested lawyers, as well as active recruitment around the country by MMLN members (see below). It also included various branding efforts such as the development of an MMLN logo and producing various products using it, such as a lapel pin that was worn ubiquitously by MMLN members at events.

## Examples of MMLN's Work and Successes

### *Example 1: Advocacy for Reform of Article 66(d) of the Telecommunications Act*

Article 66(d) of the 2013 Myanmar Telecommunications Act had become infamous in Myanmar as the tool of choice for officials to limit online speech, including where media posted stories online. It was a typically broad and flexible online content restriction, duplicating and expanding provisions in the Penal Code and providing for harsh sanctions. Article 66(d) made it a crime, punishable by up to three years' imprisonment, to commit the following acts:

*Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network.*

Adding to these other problems, prosecutions under Article 66(d) could be brought without engaging the victim and obtaining his or her consent.

Civil society groups, and especially the very active digital rights community in Myanmar, launched the so-called 66(d) Campaign to lobby parliament to repeal this provision. In February 2017, MMLN hosted a very high-profile workshop in Nay Pyi Taw, the capital of Myanmar, with the aims of raising awareness among MPs about the problems with Article 66(d) and of securing their support for repealing the provision. The workshop involved speakers from CLD, senior members of MMLN and also some of the leaders of the digital rights campaign. The high-profile nature of the workshop, as well as the active debate around the issue, led to the participation of some 23 MPs from different political parties. There was a robust debate during the workshop, with MPs asking quite a lot of very specific questions about the problems with Article 66(d), why it should be repealed, whether other options would protect freedom of expression and so on.

The workshop had two very different positive impacts. First, and most importantly, it provided a significant boost to the 66(d) Campaign which saw amendments to Article 66(d) in August 2017, just a few months later (on which see below). Second, it very effectively launched MMLN as an able and progressive partner on media law reform issues, in particular among local civil society groups working on these issues. Indeed, following that workshop, MMLN members were almost always invited as speakers to civil society events on media freedom issues, including not only those focusing on media law reform but also wider events.

Although Article 66(d) was reformed, the Campaign did not achieve its full objective of getting it repealed in full. Instead, three changes were introduced. First, the maximum penalty was reduced from three years' imprisonment to two. While this was a victory of sorts, two years' imprisonment is still a very harsh sanction for the actions covered by the provision. Second, a provision was added requiring the consent of the victim to bring a case for defaming under the Act. This represents a significant bar on bringing cases, and so is an important reform, although it only applies to some of the offences under the Act. Third, the scope of Article 66(d) was narrowed to cover only the following acts:

*Extorting, defaming, disturbing or threatening to any person by using any telecommunications network.*

This is significantly narrower than the earlier provision but still includes broad and flexible prohibitions. Despite these shortcomings, the 66(d) Campaign was a success at least insofar as civil society had advocated successfully for a progressive law reform.

## Example 2: Efforts to Expand the Network

For understandable practical reasons, the initial creation of the MMLN was largely dominated by Yangon-based lawyers. A few lawyers from Mandalay and one or two other cities did also attend the initial General Assembly and sign up as MMLN members. While Yangon-based lawyers represent by far the largest part of the overall bar association in the country, given Yangon's dominance as a commercial capital (as in many countries), the importance of expanding the Network was immediately identified as a priority by the Executive Committee.

A few activities were undertaken with a view to expanding the Network, of which the most important was hosting a workshop in December 2017 in Mandalay for lawyers who were potentially interested in joining. The workshop had two different aims. The first was to provide participants with an overview of the MMLN, the work it was doing and why they may want to consider joining. This part was largely led by the members of the MMLN Executive Committee who attended the meeting. The second was to take advantage of the event to raise awareness among participants about key international law standards in the area of freedom of expression, with a focus on the nature and scope of freedom of expression and limitations on any restrictions on it.

Unlike Yangon, which was at the time characterised by a constant flow of activities, including by international actors, there were relatively few higher-level and especially international workshops and activities in Mandalay. For this reason, as well as the unique nature of the event and its inherent attractions, the event was attended by a very healthy number of nearly 40 locally-practising lawyers. The event itself was very lively with strong local participation and engagement and we understand that approximately one-half of those attending joined the MMLN (we do not, unfortunately, have precise figures on this).

In addition to this banner expansion event, the individual members of the MMLN, and especially those on the Executive Committee, reached out through their personal networks to lawyers working in different parts of the country to encourage them to join the MMLN. By the time of the second General Assembly in January 2018, the approximately 45 people who attended came from at least eight different parts of the country.

### *Example 3: Providing Pro Bono and Externally Supported Legal Assistance*

From the beginning, it was understood that a key objective of the MMLN would be for it to serve as a key place for those who needed legal assistance in media-related cases to turn to. Given that it had included among its members from the very beginning many of the leading media lawyers in the country (largely meaning criminal defence lawyers who defended media outlets and journalists), it was natural that many media clients who were able to pay for legal defence continued to look to its

members for that service. We believe that the existence of the MMLN and its reasonably high profile among media actors likely drove more of this business to members, although it is difficult to track this and we do not have concrete evidence of it.

However, anecdotally, when Reuters journalists Wa Lone and Kyaw Soe Oo were arrested and charged with breach of the Official Secrets Act in December 2017, Reuters hired one of the leading MMLN lawyers to head their legal defence team. They also reached out to CLD to discuss the case and who might best serve as defence council. The two journalists were convicted in September 2018 and sentenced to seven years' imprisonment, and were then ultimately released in May 2019 following a presidential pardon.

Alongside these more commercial representation activities, MMLN members offered some *pro bono* media defence services to clients who needed them. In addition, CLD, working with IMS, provided some resources to MMLN members to provide legal defence in worthy cases, while MMLN also raised funding from other donors to provide such defence services. The need for such defence increased dramatically following the 1 February 2021 coup in Myanmar, during which the military deposed the democratically elected government and started to rule by military fiat. This initially led to massive social resistance, including active demonstrations against the regime, which then responded with a brutal both physical and legal crackdown, thereby generating a significant need for legal defence. MMLN stepped up, organising *pro bono* services on location (i.e. at the jails where demonstrators and others were being detained). As time went on, the possibility of providing effective legal services declined rapidly, although MMLN continued to offer such services and, even today, individual MMLN lawyers are doing so. Although the rule of law no longer applies, even formally, in Myanmar, there are still benefits to having proper legal defence, such as a reduced risk of abuse and somewhat greater access to accused persons.

Taken together, this area of activity arguably had two external benefits. First, it expanded the scope of legal services that were available to media outlets and lawyers, including those who would not otherwise be able to afford them. This was of inherent value both before and after the coup. Second, inasmuch as MMLN lawyers tended to be better informed about international standards relating to freedom of expression, the defence offered by them may have been stronger than that of lawyers who were outside of the Network. It also helped boost the profile and image of the MMLN.

## Postscript

Unfortunately, the promising story of MMLN does not have a happy ending. The military coup put extreme pressure on many civil society organisations operating in Myanmar and especially those undertaking human rights or advocacy activities. As at the time of writing, most of these groups have

either ceased to exist entirely or have reconstituted themselves in a new form outside of the country. MMLN belongs to the former group. Most of its leading members did not want to leave the country and, in any case, their role within MMLN was not sufficiently expansive to sustain them if they did leave (i.e. they mostly contributed on a voluntary basis to MMLN). Many, however, have continued to offer legal services to media outlets and journalists.

## Advice for Other Lawyers Starting a Media Lawyers' Network:

1. It is important to ensure that the network is both open to and makes an effort to reach out to lawyers from all over the country and also some lawyers who are not the “usual suspects” (i.e. who do not work for civil society organisations or media outlets).
2. Building relations and credibility with the wider civil society community working on media freedom is very important to ensure that your work is complementary and that you provide mutual support to each other.
3. While providing legal services to media outlets and journalists is important, there is a lot more that a media lawyers' network can do. Think carefully about the range of activities that your network should consider undertaking.
4. Sustainability is key to the ongoing success of a media lawyers' network. This applies both to volunteer and other engagement by members, as well as fundraising. It is not easy to start a new organisation, but you do have the advantage in this area of bringing often much-needed expertise to these issues, as well as alternative project ideas (i.e. as compared to what others may be offering). It is important to undertake one or two higher-profile activities in the early days, along the lines of the MMLN 66(d) Campaign workshop.

