President’s Welcome

Dear Members of ALSA,

The ALSA Legal Newsletter is a brand new initiative of the Academic Activities Department in Year 2016/17 that seeks to ensure that our members are both academically committed and internationally minded. This quarterly published legal newsletter aims to raise awareness of our members in regard to local legal news that may not be covered by international news but may still be equally as interesting, debatable and controversial for all law students.

Through this legal newsletter, we hope that you will be intrigued or at the very least, interested by the latest legal news that’s now made conveniently available to you. Potentially, the birth of new ideas, creating new goals or even dreams in making a real positive change, through our profession and legal education, to the world.

Being the first ever publication, I would also like to express my deepest appreciation to all National Chapters for their hardwork and cooperation in contributing your respective articles. As we continue to move forward in this new year to achieve greater results for ALSA, your support and hardwork is of paramount importance in ensuring the success of all our projects, events and initiatives.

‘If you want to run fast, you run alone. If you want to run far, you run together’.

ALSA Always Be One!

Chew Jing Hao (Jayden)
Asian Law Students’ Association
International Board: President 2016/17
Dear Readers,

It is with my greatest excitement and pleasure to realize the very first issue of the ALSA Legal Newsletter. So what is the ALSA Legal Newsletter? It is...

“a compendium of 15 pieces of write ups with regard to hot/current/interesting legal issues/news within the respective National Chapters’ countries.”

This initiative is inspired by the fact that local legal news are usually written in local languages and there is a difficulties surrounding anyone trying to gain access to it. Thus, preclusion inadvertently occurs to other nationals towards legal news/issues simply because it is written in different language or the news misses the international headline. The use and technology will aid in the overcoming these barriers and broadening the horizon of ALSA members living in different jurisdictions—giving them easy access to hot legal news from thousand miles away.

As this initiative persists, I envision that this Legal Newsletter will be a compendium of local, hot news that will keep its readers, particularly ALSA members up-to-date with issues all over Asia.

This initiative will never be able to be brewed to life without quality, state-of-the-art write ups from different National Chapters of ALSA. My hat is off to those who dearly contributed to this initiative. Also, no one is more qualified to write about a local news than the person experiencing and living within such country. Hence, the ALSA Legal Newsletter stems from the very perspective of the habitant that is immersed within phenomenon and feeling the ripple of it. This is what gives the ALSA Legal Newsletter a nuance that differentiate ourselves with other similar publications.

Lastly, I wish you a great journey down the Newsletter.
Stay updated, and ALSA always be one!

Prin Laomanutsak
Asian Law Students’ Association
International Board: Vice President of Academic Activities 2016/17
Implementation of Syariah Penal Code Order 2013
By: ALSA Brunei

Background:

Islam was adopted in Brunei during the 15th Century when a Malay Muslim became Head of State and had the responsibility to uphold the Islam as a way of life. Syariah Law is the religious law governing the members of the Islamic faith. It originated from the Quran and the Hadith. On 22nd October 2013, His Majesty the Sultan of Brunei has consented to declare the gazetting of Syariah Penal Code Order, 2013:

“With the blessings of Allah, this legislation will be gazetted today, the 22nd of October, 2013, and will come into force six months hereafter in phases. By the grace of Allah, with the coming into effect of this legislation, our duty to Allah is therefore being fulfilled”.

The Penal Code applies to both Muslims and Non-Muslims, however, many of the specific offences are applicable to Muslims only. The Penal Code will be implemented in phases.

Issues and Argument:

Rupert Colville, the spokesperson for the Office of the UN High Commissioner for Human Rights (OHCHR) adjudged for a comprehensive review ensuring the Penal Code’s compliance with international human rights standards.

Brunei’s Attorney General urged people to stop focusing on the punishments laid out by Syariah, and instead see the due process in the Islamic justice system. A detailed and thorough process will be carried out before any punishment is decided and death penalty in the case of murder is reconsidered before it took place.

During a surprise visit to the Brunei Islamic Religious Council (MUIB) on 27th February 2016, His Majesty the Sultan of Brunei lambasted the Ministry of Religious Affairs and Attorney General’s Chambers over the delay in implementing the Syariah Criminal Procedure Code (CPC) in its entirety. The monarch ordered the Minister of Religious Affairs and the Attorney General to address the matter immediately.

There were also inaccurate and misleading rumors circulating in social media concerning several aspects of the Syariah Penal Code Order, 2013. Among the baseless disputes is the claim that women restricting their husbands’ rights to practice polygamy would face a fine of $8,000 or three years of imprisonment, or both, under Section 204. The Ministry of Religious Affairs disproved this rumor and also warned that spreading unverified reports, with the intent of causing panic among the public, is an offence under Section 34 of the Public Order Act, Chapter 148, which could lead to three years of imprisonment or a fine of $3,000.

Citations
Petitioners & Scholars help discover the truth
By: ALSA China

Background:
In 1995, Nie Shubin was sentenced to death and deprivation of political rights for rape and murder by Shijiazhuang Intermediate People's Court (SIPC). However, 10 years later in 2005, the real murderer Wang confessed to the crimes for which Nie was executed, too. On 30 Nov 2016, Nie had his conviction overturned by China's Supreme Court’s on-site review. After 21 years, the case finally came to an end.

Issues and Argument:
In 2007, the real murderer Wang was sentenced to death in the first instance, but he still appealed and says Nie was innocent. But the Higher People's Court of Hebei Province (HPCHP) still avoided to analyze anything concerning Nie and affirmed the original judgement of Wang Case. In the meanwhile, HPCHP refused to accept the application for retrial by Nie’s mother.

Zhang Huanzhi, who was Nie’s mother, has stepped up her bid to have her son acquitted since 1995. Similar to Nie Case, Hu Gejiletu Case also retrialed in 2014 and was declared innocent after he was wronged 18 years, causing the country to face up to the problem of miscarriages of justice.

At the date Hu was acquitted of the sentence, Hu’s mother told Nie’s mother: the truth of your son’s case will finally be revealed, you just have to insist on it.

The overturn of this case also credit to the efforts of legal scholars. He Weifang, a professor in Peking University, wrote over 40 papers concerning Nie Case.

Commentary

Human being’s cognition ability is limited, no matter how clear the facts seem to be, we may still make mistakes. As long as they don’t hesitate to authorize the death penalty, there is still chance to right a wrong. From Shijiazhuang Intermediate People’s Court, to the Higher People’s Court of Hebei Province, and finally after on-site review, the case goes to the second circuit court of the Supreme Court. There is always a huge amount of petitioners in Beijing everyday hoping that some day their cases will be followed again although the judicial procedure has come to an end, they believe that beyond judicial system, they can still get a chance. However, wronged cases like Nie are rare.

The retrial result of Nie case is a gift to the coming of Constitution Day and showed the progress of govern of law and constitution in the past 20 years. In the near future, China will make more progress on human rights protection and governing of law.

Citations
- http://www.infzm.com/content/106350
- http://news.qq.com/a/20161211/004305.htm
- http://www.infzm.com/content/92302
- http://tv.cntv.cn/video/C/9021e3a2f5584a30960345d08340a1ee
Interpretation of Basic Law: National People Congress’s Power affirmed by Court of Appeal

By: ALSA Hong Kong

Background:

Under the notion of “one country, two systems”, Hong Kong, while remaining part of China, continues to exercise its capitalist economy and independent judiciary under the common law doctrine after the 1997 handover. The city’s cherished core value, rule of law, is ensured by the local courts’ power of final adjudication and independence from the Central authorities, with the exception granted by Basic Law Article 158, which states that “the power of interpretation of this Law shall be vested in the Standing Committee of the National People’s Congress (NPCSC)”.

Issues and Argument:

Last October, during their oath-taking, two popularly elected localist legislative councilors pledged allegiance to “the Hong Kong nation” and pronounced China as “Chee-na” (a variation of the derogatory Shina used by Japan during the second world war), while displaying a banner worded “Hong Kong is not China”. Such had triggered the NPCSC to make the 5th interpretation, which supplemented Basic Law Article 104 regarding oath-taking requirements.

The Court of Appeal dismissed the duo’s appeal and affirmed NPCSC’s power of interpretation of Hong Kong Basic Law on, in particular, two aspects:

1. Nature of Interpretation

The court, citing the Court of Final Appeal in 1999, confirmed that an interpretation of the relevant provisions would set out the true and proper meaning “from day one”, that is, 1st July 1997.

2. Binding Effect of an Interpretation

With the support from another landmark case involving NPCSC’s interpretation, the court affirmed the binding effect of an interpretation on Hong Kong courts which either clarify or supplement the laws.

On the issue whether the present interpretation was merely an amendment of the Basic Law under the disguise of interpretation, the court simply rejected such submission on the ground that without evidence, a local lawyer was not in the position to determine the permissible scope of an interpretation made under the Mainland’s civil law system.

Lastly, in considering whether Hong Kong courts can declare interpretations invalid if they go against the Basic Law, the court reserves the jurisdiction of the issue to higher courts.

Citations

Illegal Fishing Reviewed Based on Indonesian National Law of the Sea
By: ALSA Indonesia

Background:

Indonesia is an archipelagic state with 17,506 scattered islands throughout the Nusantara. As an archipelago country, Indonesia has a lot of natural wealth that comes from the ocean that surrounds the country. Biota-sea life found it to be one of the positive things that support the process of exploration, in order to cultivate the richness of nature. The exploration process, purely is just can be done by the people of Indonesia itself, and foreign companies that did have permission as well as the contract of cooperation with the Government of Indonesia. The vastness of the sea area of Indonesia with their natural resources contained in them has led to a gap, particularly in terms of Indonesia maritime security. Number of foreign ships to easily enter the territorial waters of Indonesia. It's not just up there alone, foreign ships sailing also has committed an act which is extremely detrimental to the parties in Indonesia, namely by making theft of fish without having a permit, and other administrative requirements already specified by the Government of Indonesia. Based on the foregoing, it can be seen that the act has been violated the provisions that have been regulated in the regulation that have been made by the Government of Indonesia, and has also violated the provisions regarding the authority and sovereignty of the territorial waters of a country that has been set in the United Nations Convention on Law of The Sea.

Issues and Argument:

The Republic of Indonesia is an archipelago country, which most of the territory is composed of a very large territorial waters (sea), very large fisheries potential and variety. The potential for fisheries is owned the economic potential that can be harnessed for the nation's future, as the backbone of national development.

Among the many economic problems is illegal, the practice of stealing fish or IUU (Illegal, Unregulated and Unreported fishing practices) by fishermen-fishing using a flotilla of foreign fish are the most detrimental to the State.

Illegal Fishing activity by foreign fishermen as well wrecking the marine fish stock sustainability Indonesia, because they usually catch fish with technologies which are not environmentally friendly. Very important diceramti is in continue to allow the occurrence of illegal fishing, then the region's sovereignty can terongrong, therefore, there must be a strategic and significant efforts in order to cope with the activity of the theft of fish illegally in the territory of the Republic of Indonesia waters.

That in the application of Act No. 31 of 2004 as amended by Act No. 45 of 2009 about Criminal Acts of Fisheries, that the provisions of the law have been set up for some criminal limitatif and specialized in the Act of Fisheries Criminal Offence and a few things that have not been regulated specifically in the Act of Crime, remain subject to the Fisheries provisions of Law No. 8 of 1981 on Criminal Procedure Code (KUHP : Kitab Undang-Undang Hukum Pidana).
Japanese civil code was enforced in 1898. This law consists five parts: General Provisions, Real Rights, Claims, Relatives and Inheritance. Civil Code was amended in 1947 to harmonize the Constitution of Japan which was enforced in the year, but at that time, the Diet only made amendment to Relatives and Inheritance part. From 2009 to 2015, Legislative Council of the Ministry of Justice have discussed to amend Civil Code, mainly Claims part drastically because there are many precedents to be stipulated. Though the Council already have made the draft, the Diet did not discuss it soon and the deliberation at length started on November 16, 2016.

The amendment will be influenced to corporate law because there are many reformation of the system. Contracting party able to cancel without error (Article 541). The regulation of adhesive terms and conditions will be added (Article 548-2, 548-3, 548-4). Furthermore, the abolition of short-term extinctive prescription, the reduction of legal rate of interest and introduction of variable interest rate (Article 404), invalidity of individual bond for business loan were determined. The manager have to learn these drastic reformation well. Otherwise some confusion may be occurred.

Citations
Candlelight Vigils: Rights & Restrictions
By: ALSA Korea

Background:
It has been discovered that Choi Soon-sil, who was a close friend of 18th President of South Korea, Park Geun-hye, was closely involved in various political decisions, personnel selection processes and majority of presidential actions. Overwhelming evidence that the Blue House of Korea and President’s close associates were already aware of Choi Soon-sil’s power over political decisions fueled the anger of Koreans. As a result, candlelight vigils were held in various cities, the biggest protest being held in Gwanghwamun Plaza every week. With more than 2 million people participating in the protest, the National Assembly voted 234 to 56 in favor of impeaching President Park on December 9th.

Issues and Argument:
With candlelight vigils being held every week, there has been debates on methods and scales of the protest as well as the bounds and limits of police actions upon these demonstrations. Among these issues, the most controversial topic was that of the police line. Article 21 of ‘Constitution of the Republic of Korea’ goes as follows: ‘All citizens shall enjoy freedom of speech and the press, and freedom of assembly and associations’.

The article clearly states that the citizens’ right to assemble and demonstrate are guaranteed by constitutional rights. Article 3 of ‘Assembly and Demonstration Act’ also states: ‘(1) No one shall interfere with a peaceful assembly or demonstration or disrupt its order by means of violence or threat or by any other means’.

However, there exists restrictions on the protests in certain areas according to Article 11 of ‘Assembly and Demonstration Act’: ‘No person may hold any outdoor assembly or stage any demonstration anywhere within a 100-meter radius from the boundary of the following office buildings or residences: 1. The National Assembly building, all levels of courts, and the Constitutional Court; 2. The Presidential residence and the official residences of the Speaker of the National Assembly, the Chief Justice of the Supreme Court, and the Chief of the Constitutional Court’.

Therefore, while it is in people’s freedom and right to protest against corrupted government, it should be within the boundaries set by the court and within the police line. As long as this rule is kept, the protest is legal and therefore should not be restricted by any means other than the police line.

Citations

Law Amendments to Enhance live stock industry & food hygiene

By: ALSA Laos

Background:

Amendments to the Law on Animal Husbandry and Veterinary are set to give a significant boost to livestock businesses, ensure environmentally friendly operations and provide hygienic food for consumers.

Issues and Argument:

The law drafting committee told the National Assembly that the amendments are in line with the Party and government’s policies and hygienic standards of the World Organization for Animal Heath (OIE) and the world Trade Organization. The changes will promote animal husbandry in Laos in a sustainable and environmentally friendly manner to ensure food security towards production on a commercial basis, while ensuring safety for consumers.

The amendments highlight policies to facilitate the upgrade of currently nature-based animal husbandry industry.

In another word, the Ministry of Agriculture and Forestry is mandated to develop technical standards and train professional researchers to carry out animal feed analysis to facilitate growth of the animal husbandry industry.

The draft amendments to the law require the ministry of Agriculture and Forestry to put in place the necessary technologies, facilities and personnel capable of diagnosing animal diseases. The amendments identify stricter measures to inspect animal products before they are imported into Laos so as to prevent products containing a pathogen as well as contaminated food from entering Laos. Stricter inspection is also required to be carried out in slaughterhouses before meat is sent to markets. The amendments also define the considerate treatment of animals.

Parties found to be violating this amended Law will be penalised under measures outlined in the Law and other relevant regulation and Laws.

Citations


The Ministry of Agriculture and Forestry is encouraging every province and district in the country to make sure livestock are vaccinated against common diseases.
New Policy for Non-Resident Workers
By: ALSA Macau

Background:
The MSAR government has decreased the number of days given to non-residents once they leave their job. Previously, local immigration authority granted 10-days visas to these employees who leave their employment or whose jobs are terminated, but have now shortened their length to eight days. Furthermore, if non-residents have been working in Macau for less than half a year, they will only be able to remain in the territory for two days after their employment is terminated.

Issues and Argument:
“It would be problematic for them. They may go back to their hometown. Somehow the government policy intends to not let them look for another job,” Paul Pun, Secretary General of Caritas Macau, has criticize the MSAR government for decreasing the number of days given to non-residents once they leave their job.

Some challenges that these domestic workers may face under the new visas, such as difficulty in finding affordable plane tickets. If it’s just a short time, the price of the ticket is more expensive. Two days could make big difference. Although employers are responsible for purchasing a one-way plane ticket for employees, the employer might refuse to provide additional allowance to compensate employees for costly tickets. The visa expires in just eight days; they don’t even have time to adjust before going home. This is also difficult. Ten days is [already] not enough. The move is probably a crackdown to limit the region’s growing number of domestic workers.


Citations
- CHINA DAILY  Macau Daily Times
**Bersih — Unsung heroes or deviant anarchists?**

By: ALSA Malaysia

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**Background:**

BERSIH was formed in 2006 by various NGOs, political activists and political leaders in order to raise awareness on the alleged gerrymandering by the Prime Minsters department in past elections. On 10 November 2007, Bersih organized the first rally with 10,000 to 40,000 turnout and held a public demonstration at Dataran Merdeka, Kuala Lumpur. The rally was credited as the catalyst of the resurgence of the Peoples Coalition to deny the National Front its customary 2/3rd majority in parliament. Over the years, BERSIH has held rallies that have grown in numbers peaking at 500000 in 2015.

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**Issues and Argument:**

In 2016, Coalition for Clean and Fair Elections also known as BERSIH launched their 5th iteration of their march for free and fair elections in downtown Kuala Lumpur. Their call to eradicate corruption and the temporary plaguing the government of Malaysia due to decades of mismanagement. To a certain extent, they represent the voices of the people who are crying out for the rule of law and justice to be returned as the governing forces in Malaysia, others have called them anarchist, hell-bent on toppling a democratically elected government.

This begs the question, who are BERSIH and is their campaign to drain the swamp really echoing the wishes of the people?

10 years on, how far have BERSIH succeeded in their goal to end corruption and gerrymandering? Responses have been mixed. Government controlled news outlets frequently paint BERSIH as a terrorist organization aiming to topple the government. Members of the National Front term BERSIH as a coalition of fickle minded vigilantes trying to implement their own views on how Malaysia should be governed. There have been major crackdowns especially in the advent of BERSIH 4 and BERSIH 5 where hundreds were arrested for illegal assembly. BERSIH chairperson Maria Chin Abdullah was also recently incarcerated under the controversial Security Offences (Special Measures) Act 2012 which provides arbitrary detention powers to the state without a trial. All these measures have seen the converse of their objective happen however, with an increase in vociferous support for BERSIH.

BERSIH has succeeded uniting Malaysians across various backgrounds through the pursuit of democracy and liberties. Although there has been opposition from ethnocentric groups intent on stymieing this, the rise of social media as a major source of unbiased news has seen BERSIH appeal to a whole new youth audience that advocates free elections.

10 years on, the momentum persists. BERSIH remains committed to pursuing institutional reforms. In exercising their freedom of speech and assembly, they have catalyzed sweeping ideological changes towards Malaysian politics. Many regard BERSIH as unsung heroes, perhaps not the ones we need but the ones they deserve.

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**Citations**

- http://www.mysinchew.com/node/116163
Proposed Bill for Absolute Divorce

By: ALSA Philippines

Background:

Divorce laws have been available in every country with the exception of the Vatican City and the Philippines. It is to be noted that there is similarity between the Vatican and the Philippines, which is religion. Vatican City is a Catholic State same with Philippines with an average of 86% Roman Catholics. The other part of the pie are other Christian denominations with very few Muslims. Even Muslims have divorce under the Code of Muslim Personal Laws of the Philippines.

To date, the available legal remedies in case of a failed marriage for Filipinos are the following: legal separation, annulment, declaration of nullity and divorce under Art. 26 2nd paragraph of the Family Code in case of marriage between a Filipino and a foreigner. Former Filipinos who were later on naturalized in a foreign country are considered foreigners.

Issues and Argument:

Gabriela, women’s right advocate, refiles divorce bill for the fifth time around since 2005 or the 13th Congress. According to the Women’s group, legal separation and annulment are not sufficient legal remedies.

Further the explanatory note of the bill states that, according to the Department of Justice, petitions for nullity and annulment have significantly risen in the last ten years, from 4520 in 2001 to 10528 in 2011. The salient features of H.B. No. 2380 are grounds for divorce and eliminating some of the grounds for the denial of legal separation or divorce.

In addition to Article 36 or Psychological Incapacity as a ground for divorce. The bill proposes other grounds for divorce such as:

1. The petitioner has been separated de facto from his or her spouse for at least five years at the time of filing of the petition and reconciliation is highly improbable.
2. The petitioner has been legally separated from his or her spouse for at least two years at the time of filing of the petition and reconciliation is highly improbable.
3. When any of the grounds for legal separation under paragraph (A) of this article has caused the irreparable breakdown of the marriage.

Article 56 or the grounds for denial of legal separation was proposed to be also the grounds for the denial of divorce. The proposed bill seeks to delete condonation, consent, when both parties have given ground for legal separation and prescription.

Article 63 seeks to be amended to give the aggrieved spouse actual, moral and exemplary damages.

Article 26 paragraph 2 is amended to also be available to both Filipino spouses, and one of the Filipino spouse had validly obtained divorce decree abroad. It shall also be given effect in the Philippines if the ground used falls under the grounds allowed in the proposed bill.

Citations

PD1083, art. 13
Pranksters Hate this one simple trick! What you find out will Blow your mind!

By: ALSA Singapore

**Background:**

In this age of technology, clicking a link often means you will be generating some revenue for the creator of the link. In the same vein, false news have been known to drive up web traffic and profit the creator, especially when the news have been deliberately and misleadingly sensationalized to attract the attention of netizens. The balance between attributing liability for false news and freedom of expression is a tough one to strike.

Generation of false news in Singapore is not an offence per se, but there are many instances in which Singapore controls the propagation of false news via various legal means. In doing so, it uses a roundabout manner to attribute liability to anyone responsible for creating the false news.

**Issues and Argument:**

Under s.45 of the Telecommunications Act, it is a crime for anyone to transmit a message which he knows to be false. It seems to be the case that this provision takes into account the severity of the transmission. For instance, a false message regarding terrorism would carry more severe penalties as compared to a false message about merely the weather.

Under s.4 of the Sedition Act, it is a crime for anyone to promote animosity between the different races or classes in Singapore. It has been used to indirectly attribute liability to individuals who have propagated false news and this can be seen when the founders of The Real Singapore, a socio-political website, have been charged under the Sedition Act for circulating false articles. This is particularly important for Singapore due to the demographic nature of the island-state and the proximity of the different groups of people. Through the use of such provisions, Singapore aims to clamp down on individuals who spread racial hatred irresponsibly.

Notwithstanding these measures, there is an inherent problem with being too strict with false news – it might lead to an inevitable restriction on the freedom of speech. Singapore is already ranked 154th on the 2016 World Press Freedom Index. With increased regulation of false news, there might be instances whereby reporters write defensively such that they avoid being litigated.

Furthermore, the dynamic nature of journalism is such that a fact may change drastically within a matter of time. This presents problems when individuals wish to report the facts as they are yet they must meticulously ensure that they are not overly-embellished at the time of writing. It may even open individuals up to increased litigation because it is hard for the courts and individuals to assess ever-evolving facts with the lens of hindsight.

It is this author’s opinion that Singapore has impressively adopted a multi-faceted approach to deal with the propagation of false news. Each facet is appropriate in its own unique scenario. However, it is hoped that the strictness of this approach should be confined to false news which threaten national security so as to ensure a balance between freedom of speech and clamping down on false news. For the other instances whereby false news only affect an individual, it is up to that individual to use existing legal frameworks such as the tort of defamation to seek redress and the court should be slow to criminalize such behaviour.
The New Constitution in Sri Lanka
By: ALSA Sri Lanka

Background:

The Constitution of the Democratic Socialist Republic of Sri Lanka was enacted in the year 1978 and was subjected to 20 amendments throughout the history. Some of these amendments, such as the 13th amendment to the Constitution of Sri Lanka in 1989, attempted to address long existing issues in Sri Lanka such as the separation of powers and as a result was subjected to judicial scrutiny and criticism of many jurists and social activists. The ability of the aforesaid constitution of 1978 to address the existing and possible future issues that the country could come across, is doubted despite the numerous amendments introduced from time to time. A new draft constitution was made during the year 2005 which unfortunately did not see the day light. Due to the long felt necessity for a new constitution, Sri Lanka has taken steps recently to draft a new constitution. A 20 member Public Representations Committee (PRC) on Constitutional Reforms was appointed for the purpose of obtaining proposals from the public for the proposed constitutional reforms. Committee members were nominated by political parties while some were appointed to represent civil society. The Committee has been mandated to seek oral and written submissions from the public on constitutional reforms.

Any citizen or an organization were given the opportunity to make representation on constitutional reforms and these written and oral submissions were recorded and analyzed by the PRC. The ultimate goal was to submit a detailed report to the parliamentary committee on constitutional reforms and subsequently make the report accessible to the public as well.

Issues and Argument:

The lack of public awareness was a concerning issue since the involvement of the public is essential in this regard and the purpose of the appointment of the PRC will not be achieved if the public participation is inadequate. According to a field research conducted by the Centre for Policy Alternatives (CPA) in Sri Lanka, only 1.1 percent of Sri Lankans are extremely aware that such a process is taking place and 21.9 percent are somewhat aware. Furthermore, approximately 25 percent of respondents didn’t know that a constitutional reform process had been undertaken. 70 percent of the respondents were not aware that an entity called the PRC has been established for the purpose of public views and ideas in drafting a new constitution for the country. Therefore it is of utmost importance that general public is made more aware through public relation campaigns to accomplish the objectives. Furthermore the necessity was highly felt that easy accessibility to make representations should be provided to the public during such a process.

Citations

- http://www.yourconstitution.lk/
Taiwan-the New Safe-Haven for Same Sex Marriages?
By: ALSA Taiwan

Background:

March 13th, 2001: Ministry of Justice of Taiwan built a draft called “Basic law: protect for human rights.” At its article 24th, contend a concept that we should respect homosexuals’ basic right.

November 10th, 2006: A lawmaker of Democracy Progress Party eager to promote the legalization of “Same sex marriage”, but it end in failed.

October 27th, 2012: Taiwanese homosexuals held a big parade, and call for the same rights as heterossexuals to having a marriage.

October 8th, 2013: Taiwan Alliance to promote Civil Partnership Right sent a draft to legislature yuan, which called “Diversified family structures protocol”

Since November, 2016, the rights about same sex marriage have been formally discussed in Legislature yuan, and may have a chance to be legalized.

Issues and Argument:

Although the promotion on same sex marriage had run for decades, Taiwanese society still have some voice that against this plead to be legalize due to several reasons—they’re afraid that children may be not pure anymore, the traditional value of family will collapse if our civil law allow homosexuals can build their own marriage and families. However, the draft about same sex marriage had proceed to the middle of legislative procedure, so the issue came to another war field—we should directly amend our Civil Law or create a special chapter of marriage and family membership for homosexual? Some people think that the latter isn’t appropriate, because why we can’t let both homosexuals and heterosexuals use the “same Civil Law” but have to build another chapter? Will it be a sign that our society and Law system still have discrimination on homosexual?

At December 26th, 2016, the draft will come to the last three parts of legislature procedure; if we pass it in the end, Taiwan may be the first country who legalize same sex marriage in Asia. But on the other hand, it can foresee that those parades and protestation of the two opposite will keep striking Taiwanese society in these days; and we still have to take lots of time to find a moderate viewpoint or solution that can be accepted by each side in case the society getting more divided and full of conflict.

Information and Cases

Article 972th, Civil Law “…marriage should be built by women and man”—the used one

Article 972th, Civil law”…marriage should be built by two people…”—Draft version 1

October, 2016: Taiwanese homosexual held an parade, and lots of people came to support them

November 24th, 2016: The first public hearing about same sex marriage

November 28th, 2016: The second public hearing about same sex marriage

Citations

- https://www.twreporter.org/a/marriage-equality-legislation
- https://tappcr.wordpress.com/
Problematic Section 66(d) of Telecommunication Law of Myanmar

By: DULSA

Background:

Section 66(D) of the telecommunications law which was enacted in 2013 stated that whoever commits extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both.

Back in the past, this has been a law promulgated for the purpose of increasing the interest of foreign investors into the country but it is now being used to arrest those individuals for their free expressions that could sometimes be in disapproval to certain government officials on the social media. Now, when Myanmar has become a country where human rights and liberty become accountable to the society, and therefore this section has become problematic.

Issues and Argument:

There have been altogether 41 cases that have proceeded to the court under Section 66(d) of the Telecommunications law and 38 of them were filed in this new government within this one year period and the number of cases continues to rise.

It is found that many of those who faced legal action under Section 66(d) are due to their Facebook posts that criticized the former president or the Military chief.

Actually, criminal defamation issues have been in Myanmar since from the very beginning. Section 499 of the Penal Code, which was introduced in 1861, makes it an offence to defame anyone by words either spoken or intended to be read, or by signs or by visible representations. However, it also contains 10 exceptions, including for a true statement that is in the public interest.

It is known that arrests, prosecutions and long prison sentences were common methods of repression under the former military regime, and such practices continued under the former civilian government elected in 2010. The practice has not ceased and laws of dubious standing continue to be wielded against social media satirists, activists and journalists.

Particularly on the part of the law’s dubious standing, bail has been granted only in 20 of the 45 cases under Section 66(d). It is said that the 20 cases where bail was granted all involved civilians who allegedly defamed another civilian. The 25 cases in which bail was denied involved military, government or NLD officials, including the State Counselor Daw Aung San Suu Kyi.

This section also appears to contradict section 354 of the constitution of Myanmar, which protects the free expression of opinion if it doesn’t found to undermine “law and order, community peace and tranquility or public order and morality”.

Citations

- http://www.elevenmyanmar.com/local/7045