

# APRIL CHRONOLOGY 2018

## Summary of the Current Situation:

**215** individuals are oppressed in Burma due to political activity:

**35** political prisoners are serving sentences,

**56** are awaiting trial inside prison,

**124** are awaiting trial outside prison.

Families Reunited Following the Presidential Pardon



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**Assistance Association for Political Prisoners (Burma)**

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## **MONTH IN REVIEW**

### **April in Numbers**

#### **Arrests:**

Min Sai, a Kachin villager, was arrested under Section 17 (1) of the Unlawful Associations Act.

#### **Charges:**

Five people were charged this month. Min Sai was charged under Section 17 (1) of the Unlawful Associations Act. Additionally, four farmers were charged under Section 19 of the Peaceful Assembly and Peaceful Procession Act (PAPPA).

#### **Sentences:**

19 Shan ethnic civilians were sentenced under Section 17 (1) of the Unlawful Associations Act. Eight students were also sentenced under Section 500 of the Penal Code.

#### **Releases:**

A total of 47 people were released this month. These included 36 political prisoners, who were released in April's Presidential pardon. The same eight students who had been sentenced under Section 500 of the Penal Code were also released. Finally, three farmers who had been sentenced under Sections 447, 427, 294 and 506 of the Penal Code were released.

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**"In light of the Presidential pardons, persecuting journalists for seeking the truth and others for speaking the truth leaves a bitter taste in the mouth"**

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#### **Prisoners in Poor Health:**

One detainee, Min Sai, is reported to be in poor health. Lawyer Zaw Win is also in poor health.

#### **Section 66 (d) of the Telecommunications Law:**

One person was charged this month.

#### **Section 68 (a) of the Telecommunications Law:**

One reporter had charges against him under this law dropped this month.

#### **The Presidential Pardon**

### **Putting Faces to the Numbers**

On April 17, U Win Myint released 8,541 prisoners in an annual Presidential pardon. Those released included 36 political prisoners, the majority of whom had been serving sentences under the Unlawful Associations Act (18 people) and various Sections of the Penal Code (17 people). Charges under these laws were often combined with additional charges under other laws, such as the Explosive Act or the Immigration Act, to increase the length of sentences. It is important to note that vague laws relating to drugs and immigration offences have often been used as tools to clamp down on people for their involvement in political activities.

Notable political prisoner releases included:

- Dwal Doag Naung Latt and Gam Sai, two Kachin Pastors. After going missing in December 2016, authorities finally announced almost a month later that they had been detained for alleged ties with the Kachin Independence Army (KIA);
- Seven Shan farmers, who had been imprisoned in April last year for cultivating land on a coffee plantation that the Ministry of Agriculture and Irrigation had seized in 2003;
- Two organizers of a football match, Khine Ni Min and Nanda Thara, who held a football tournament dubbed the “Arakan Army Cup” in commemoration of the eight-year anniversary of the Arakan Army (AA);
- Another six people who were arrested in January 2016 for alleged involvement with the AA;
- Others included Ethnic Armed Organization (EAO) members, farmers, villagers, and two civilians imprisoned for alleged drug trafficking.

### **Why we Advocate for Amnesties**

AAPP welcomes the release of these 36 political prisoners. Since taking office two years ago this month, the National League for Democracy (NLD) has pardoned a total of 208 political prisoners who were serving prison sentences, along with dropping charges against 115 people on April 8, 2016 who were awaiting trial for charges related to political activity.



***Since April 2016, the NLD has pardoned a total of 208 political prisoners who were serving prison sentences, along with dropping charges against 115 people.***



However, despite these steps forward in releasing political prisoners, there are issues with the pardons that must be addressed. Firstly, the Presidential pardons are often mistakenly reported as amnesties. There is an important distinction between the two. While an *amnesty* effectively absolves those convicted of any crime, a *pardon* both metaphorically and literally implies guilt. Although the political prisoners released in this year’s Presidential pardon will not have to live under the threat of re-incarceration, thanks to the issuing of a decree which nullified the Conditional Release clause stipulated in Article 401 (1) of the Code of Criminal Procedure, they have not been absolved of their ‘crimes’. This means that 36 people, who were imprisoned wrongfully under repressive laws, have been released with a stigmatizing criminal record that will affect them for the rest of their lives. Their employment and education opportunities will be restricted, they will remain under the radar of the authorities, and many in society will continue to view them as criminals, especially because they are still labeled as such. In summary, the *pardon* effectively ensures that despite their release, they are still paying the price for their political activities.

### **“Ongoing Court Proceedings” No Excuse Not to Release Political Prisoners**

Secondly, all the 36 political prisoners who walked free in the Presidential pardon had already been sentenced. An observation of political prisoner numbers in Burma renders this

problematic. While 35 of the political prisoners remaining behind bars have received their sentences, 56 others are still in pre-trial detention. The Government cited [ongoing legal proceedings](#) as the reason why prisoners awaiting sentencing (specifically Wa Lone and Kyaw Soe Oo) were not included in the pardon. However, this comment runs contrary to the fact that only two years ago the same Government released 115 people imprisoned for political activity, even though their trials were ongoing or had not yet begun. This inevitably casts doubt on the political motivations behind the pardons, particularly as the three most prominent political prisoners today - Wa Lone, Kyaw Soe Oo and Aung Ko Htwe - are all currently in the midst of prolonged and unfair trials. The Government has ignored calls for their release from scores of NGOs, Governments, media groups, and the UN, and both cases are plagued with glaring inconsistencies, human rights violations and allegations of corruption.

Aung Ko Htwe, for example, is back in court for charges under the Union Seal Law, which could see him imprisoned for an additional three years simply for exercising his right to protest. Furthermore, the same judge who has already sentenced him for Contempt of Court is now presiding over his current trial. This is both an insult to the objectivity crucial for a court's decision to carry any credibility and a clear violation of Aung Ko Htwe's fundamental right to a fair trial. Additionally, the appalling number of discrepancies in the case of the *Reuters* reporters has only continued to rise. In return for his courage to speak out against Police Brigadier-General Tin Ko Ko, who threatened officers with extrajudicial imprisonment if they failed to arrest the journalists, police officer Moe Yan Naing's family were evicted from police housing less than 24 hours after his testimony, while the prosecution branded Moe Yan Naing himself a hostile witness. He has since received an undisclosed prison sentence of up to one year under the vaguely worded Sections 16 (b) and 22 of [The Myanmar Police Force Maintenance of Discipline Law](#). On the other hand, Tin Ko Ko has been absolved of any implications in the arrest and remains in his post, a brazen example of the legal impunity enjoyed by corrupt state actors.



***The NLD has broken its 2016 promise that it would release all political prisoners when it came to power.***



In light of the Presidential pardons, persecuting journalists for seeking the truth and others for speaking leaves a bitter taste in the mouth, particularly considering NLD's broken promise, made in 2016, that it would [release all political prisoners](#) when it came to power. In addition, Aung Ko Htwe, Moe Yan Naing, Kyaw Soe Oo, and Wa Lone have all been locked up before and during their trial. Justifying the decision to keep them behind bars due to their ongoing court proceedings is a woefully inadequate excuse for the Government's resistance to bringing about real change within the prison system. Although it exists in a number of countries, pre-trial detention is universally recognized as a tool that should only be used as a last resort (see page 23 of AAPP's 2016 [report](#)). As the Government is using it to stifle basic freedoms and access to justice, however, the same excuse effectively becomes a public defence of an outright violation of international human rights law.

## **The Systemic Abuse of Pre-trial Detention**

Unfortunately, these cases are only two high-profile examples of what is a chronic overuse and misuse of pre-trial detention for political activists. Arbitrarily incarcerating individuals, delaying their trials, and then dragging them out is common practice in Burma, enabling the State to keep people in prison for so long that they have often served their sentence by the time they are finally convicted. A multitude of international safeguards are in place to protect individuals from pre-trial detention, namely the UN Standard Minimum Rules for Non-custodial Measures/the Tokyo Rules, the International Covenant on Civil and Political Rights (ICCPR), and the Principles for the Protection of all Persons under Detention. Burma is yet to sign or ratify any of these. Instead, domestic legislation directly contravenes these standards, establishing pre-trial detention as the norm rather than the exception. Article 220 of the Code of Criminal Procedure obligates magistrates to commit those awaiting trial to custody, while chapter XXXIX does not require the Court to grant bail for any individual. The absence of mechanisms in place to prevent pre-trial detention, along with lengthy legal procedures, large numbers of detainees, judicial inefficiency, and staff shortages, have led to pre-trial detainees constituting a disproportionately high percentage of the prison population in Burma. Although outdated, the [latest accessible figures](#) (2009) show that one in ten prisoners falls under the category of “pre-trial detainee”.



***AAPP, along with the MNHRC, argues that severe overcrowding in prisons is a form of torture.***



The high prevalence and misuse of pre-trial detention in the country is linked to a plethora of human rights abuses. One of the most pressing issues is that pre-trial detention directly exacerbates overcrowding in prisons, due to the fact that it leads to a great deal of people being imprisoned who should instead be walking free or be placed on bail. Only this month, Kyaw Myo Thu, a pre-trial detainee in Obo Prison, died from a fatal beating dealt by five of his fellow inmates. It was [reported](#) that the overcrowded conditions were a significant factor in the build-up to the fight. In addition, despite the releases in the Presidential pardon this month, the MNHRC [reported](#) that 26 prisons are still over capacity by a total of more than 20,000 prisoners. In its most severe form, overcrowding can lead to prison conditions that constitute inhuman and degrading treatment. AAPP, along with the MNHRC, [argues](#) that severe overcrowding in prisons is a form of torture.

Pre-trial detention should never be used as a tool to repress those who fall afoul of the Government. AAPP demands the complete overhaul of domestic legislation to prevent wrongful imprisonment without trial or sentencing. Further, we call on the Government to sign and ratify the relevant international safeguards, particularly the ICCPR, to ensure that pre-trial detention is not used to infringe on an individual's human rights. Without these legal reforms and a wider, overarching strategy to overhaul the current prison system, changes for which AAPP has been [advocating](#) for years, not only will pre-trial detention continue to be used arbitrarily, but Presidential pardons will ultimately fail to bring about any real change. This is because underlying institutional problems, along with the unjust and undemocratic judicial practices that stem from them, will still be in place to enable the criminalization and persecution of political activists. Although it is a step in the right direction, the 36 releases granted as part of this year's Presidential pardon will therefore not resolve the root causes that led to these political prisoners, and many others, being wrongfully detained in the first



place. Likewise, it will not bring about the change necessary to prevent human rights abuses, including those linked to pre-trial detention, occurring after arrest. Indeed, this month's chronology provides numerous examples of how, despite the pardons, the usual practice of targeting and incarcerating political activists continues unabated in Burma. Until serious attention is paid to addressing these underlying issues, it is difficult to view such pardons as being much more than a handy public relations strategy while systematic human rights abuses are quietly brushed under the carpet.



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### **Amnesties: An Alternative to Selective Pardons**

Along with rectifying its legal framework and complying with international law, the Government must also immediately release all those who remain incarcerated for political activity, sentenced or otherwise. These releases should not be selective and scattered over the years, but part of a committed reconciliation strategy which acknowledges, apologizes to, and compensates each of the 180 individuals currently awaiting trial inside and outside prison along with the 35 who are serving prison sentences. Additionally, all charges against these individuals must be dropped, and criminal records removed, in an *amnesty* rather than a *pardon*. Unlike the conditions attached to the Presidential pardons, an amnesty which does not discriminate on the basis of sentencing would at least reflect a symbolic shift towards a Government stance which acknowledges the rights to personal liberty and a fair trial instead of one which incriminates people who defend them.

Finally, AAPP stands in solidarity with Burma Campaign UK's [statement](#) that the NLD Government "needs to face international pressure over the detention of political prisoners just as the previous Military dictatorship did". This is particularly relevant considering the faltering international concern regarding political prisoners since the NLD came to power. It is important to remember that the few high-profile cases that do garner attention do not arise from a vacuum, and must be used to shine a light on those farmers, villagers and other civilians whose everyday struggles do not appear in dominant narratives, yet are essential in shaping the nation's fledgling democracy and pushing sidelined issues to the forefront of the Government's agenda.

### **Land Rights**

#### **Charges for Peaceful Protesting an Insult to Democracy**

In April, farmers across Burma continued staging protests due to unresolved land disputes, leading to a number of charges. Despite the fact that the Government does hand out some land compensation for the land it has continuously seized from villagers and farmers over the years, many have not yet received any form of acknowledgement or compensation for their losses. Four protest leaders in Ann Township, Arakan State were charged under Section 19 of the Peaceful Assembly and Peaceful Procession Law for protesting against Myanmar Oil and

Gas Enterprise (MOGE) and China National Petroleum Corporation (CNPC), two companies often criticized for their poor business practices. Further, farmers from Loongnya Village in Hpa-An Township, Karen State were charged under Section 431 of the Penal Code for preventing companies from accessing a public road and transporting goods along it.



***Rather than holding peaceful negotiations, the Government is persecuting farmers who are justly defending their rights to work and adequate housing.***



These charges are inappropriate under a democratically elected Government. Rather than holding peaceful negotiations with them, it is instead persecuting farmers who are justly defending their right to work and right to adequate housing. AAPP calls on the Government to immediately stop charging civilians for protecting their livelihoods, and to consult with farmers in order to resolve land disputes. These cases also clearly illustrate the Government's failure to protect the freedom of expression and personal security of the protesters arrested this month, rights which are enshrined in international law, namely Article 3, Article 19 and Article 23 of the Universal Declaration of Human Rights (UDHR), as well as and Article 19 and Article 21 of the ICCPR. AAPP urges the Government to hold true to its obligations in protecting the rights of all citizens, including those of farmers.

### **Protests Continue Despite Persecution**

While some protesters were charged this month, demonstrations organized by farmers in relation to land confiscation disputes continued across Karen State, Bago Division, Kachin State and Arakan State.

- **Karen State**

Farmers protested for the retrieval of land in Loikaw Township, which was confiscated by the Military in 2007. Some of the land was then sold to Tun Shwe, a retired Military Affairs Security official, while the Land Records Department issued him an ownership title.

- **Bago Division**

Farmers held a press conference due to Bago Division Government's failure to return confiscated land. In 1992, Bago University confiscated 599 acres of land, of which only 160 acres were ever returned.

- **Kachin State**

A solo protest was organized by Tun Tun, a villager from Myitkyina, with regards to land confiscated by companies in Lonekhinn Village, Hpakan Township for jade mining. Despite protests against the confiscations in November, 2017, the Government has still not acknowledged protesters' complaints.

- **Arakan State**

Approximately 2,200 farmers protested against the decision of a Thandwe Township judge, who arbitrarily sentenced farmers involved in a land dispute.

Farmers' struggles for their livelihoods are made even more difficult by the fact that their lands have been, and continue to be, confiscated not only by the Government and the Military, but also by powerful companies. The repression of farmers, whose work is essential to the functioning of the Burmese agricultural sector, and seizing their lands for various projects and business ventures, will ultimately cause significant economic setbacks for the industry. AAPP therefore urges the Government to respect the Guidelines on Development-Based Evictions and Displacement, which require States to refrain from confiscating land if it does not contribute to the enjoyment of human rights and the right to work, as stipulated in Article 6 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

### **Ethnic Civilians Targeted in Human Rights Abuses**

While the media focused on the Presidential pardons this month, an array of extrajudicial killings, forced disappearances, and arbitrary arrests unfolded in ethnic areas, serving as a sobering reminder of the reality of the incessant human rights abuses that continue across the country. In April, the majority of such cases occurred in Kachin State. Min Sai, a Kachin civilian who works with the CSO Nang Shani, has been arrested and charged for allegedly working as a KIA informant back in 2013. Concerns have been raised as to his deteriorating health in detention.

AAPP emphasizes that Min Sai's alleged affiliation with the KIA is no excuse for arresting him under a repressive and outdated law five years after the offence supposedly occurred. Further, AAPP calls on the Government to guarantee Min Sai's right to a fair and just judicial process, which includes unrestricted access to bail and legal consultations as well as a trial conducted in a timely manner.

### **Forced Disappearances on the Rise**

In addition to the above cases, a worrying trend of extrajudicial killings and forced disappearances is emerging in Kachin State. Most recently, Kachin villager Wadu Hkun Awng was forcibly disappeared by the Military. He was last seen being arrested by soldiers in March after a visit to Sumpyi Yang Village with a friend. Wadu Hkun Awng's fellow villagers have been unable to locate his body, and have presumed that he is dead. This case is worryingly reminiscent of the two Kachin IDPs who were seen being arrested by the Military in January, and whose bodies were found last month (see pages 10/11 of AAPP's [March 2018 Chronology](#)). The parallels between these two cases are extremely troubling, and mean that three Kachin civilians have now been forcibly disappeared or murdered by the Military within three months of each other. Given the dangers and difficulties involved in reporting from ethnic areas, it is also very possible that these cases only represent the tip of the iceberg when it comes to the disappearances, arrests and killings left to fester in media blind spots.

Furthermore, Kaw Awng, the daughter-in-law of one of the murdered IDPs, has now been forced to flee the camp where she lives and go into hiding. The Military has charged her for allegedly hiding information that the two victims were members of the KIA. The authorities' persecution of a grieving family member in an attempt to cover the killing of her relative and justify their actions is nothing short of repulsive.





***AAPP condemns the abhorrent, and seemingly methodical, practice of arresting and disappearing ethnic civilians.***



AAPP condemns the abhorrent, and seemingly methodical, practice of arresting and disappearing ethnic civilians. Typical of dictatorships, forced disappearances commonly target human rights defenders, political opponents and vulnerable communities, including ethnic minorities. Victims' whereabouts are often never discovered, leaving loved ones in limbo, unable to mourn and with no avenues for legal recourse or justice. The repercussions of forced disappearances reach much further than just those close to the victim, and creates up a climate of fear and insecurity that affects the whole of society.

It has been widely documented that one of the decisive elements in the success of a nation's transition to democracy is its ability to acknowledge past human rights abuses, publicly apologize to all victims, and make amends for their losses. The fact that forced disappearances and extrajudicial killings are still prevalent in a country that calls itself democratic is therefore a strong indicator of a stalled reconciliation process in Burma; not only is the Government failing to address past wrongs, but it is also unable to prevent them from continuing into the present. Additionally, denying any wrongdoing and instead looking to place the blame on victims and their relatives represents a clear refusal to hold any form of open, honest discussion with a view to curbing these abuses. This flagrant rejection of the facts makes it incredibly difficult to foster a relationship of trust between ethnic communities and the Government, which will only hold back the possibilities for moving forward in the democratic transition. AAPP therefore calls on the relevant authorities to carry out objective and independent investigations into all cases of forced disappearances, arbitrary arrests, and extrajudicial killings, as well as moving to end the impunity enjoyed by the perpetrators of these crimes. Before this happens, the peace process can only truly be window dressing for a Government failing to live up to its democratic ideals.

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