

AUGUST CHRONOLOGY 2017

Summary of the Current Situation:

There are **229** individuals oppressed in Burma due to political activities.

42 are currently serving prison sentences,

56 are awaiting trial inside prison,

131 are awaiting trial outside prison.



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Assistance Association for Political Prisoners (Burma)

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MONTH IN REVIEW

In August, there were 38 arrests including one freelance reported under Section 66(d) of the Telecommunications Law, one former child soldier and one activist under Section 505(b) of the Penal Code, one activist under Section 353 of the Penal Code, seven farmers under Sections 427/447 of the Penal Code, seven farmers under Sections 294, 392, 440, 447, and 506 of the Penal Code, and twenty civilians. This month one former child soldier was charged under Section 505(b) of the Penal Code, and two activists and one labor rights activist was charged under Section 66(d). In August, 11 individuals were sentenced including five farmers under Sections 427 and 447 of the Penal Code, three farmers under Section 447 of the Penal Code, two activists under Section 17/1 of the Unlawful Associations Act, and one activist under Section 353 of the Penal Code. This month 17 individuals were released including three farmers charged under Section 447 of the Penal Code, five farmers charged under Sections 427 and 447 of the Penal Code, and nine civilians.

On August 8, ceremonies were held in front of Rangoon's City Hall and Mahabandoola Park in honor of those who lost their lives participating in the pro-democracy demonstration, known as the 8888 Uprising. The series of marches, protests, and civil unrest in 1988 that culminated in the event on August 8 is a day forever ingrained in the memory of those who fought and continue to fight for a free and democratic society in Burma. On the 29th anniversary of the 8888 Uprising, AAPP Joint Secretary Ko Bo Kyi released a personal statement, in which he thanked those who sacrificed their lives during one of the most pivotal events in modern Burmese history, pledging to continue his efforts in working towards human rights and democracy in Burma in their honor. Like Ko Bo Kyi, many of the student leaders of the 8888 Uprising went on to become life-long activists and human rights leaders, often spending years behind bars as political prisoners. Commemorating the important event, which drew the support of hundreds of thousands of people from across the country in a strong show of the public's wish for democracy, is a reminder that despite the election of a civilian led Government in 2015, democracy and human rights has not been established in Burma.

In August, the trial of the three journalists and three civilians, charged in July under Section 17/1 of the Unlawful Associations Act, continued at the Hsipaw Township Court in Shan State. Journalists Aye Naing

and Pyae Phone Aung, from the Democratic Voice of Burma (DVB), Thein Zaw A.K.A. Lawi Weng, from The Irrawaddy and civilians Mai Tun Aye, Mai San Nyunt, and Mai Aung Kham, were arrested on June 26 near Myothit Village in Namhsan Township, Shan State by the Military, during their return from covering a drug destroying ceremony conducted by the Ta'ang National Liberation Army (TNLA), an Ethnic Armed Group (EAG) that is currently engaged in conflict with the Military and is classified as an "illegal organization" by the Government. Sections 17/1 and 17/2 of the 1908 Unlawful Associations Act have historically been used as a tool against political activists, journalists, and most commonly against members of ethnic minorities in Burma, prohibiting individuals from forming organizations or associating with organizations, such as EAGs, that the Government deem "illegal". Commonly used to persecute individuals involved in, or reporting on Burma's long standing civil war, involving the Military and numerous EAGs, the law directly violates individuals' freedom of assembly and expression.

Journalists, like those detained in Shan State, must be allowed to gather news and operate in all areas of the country in order to make the public aware of important issues, such as Burma's civil war, to keep the Government accountable for their actions. Due to the prevalence of ethnic groups in Burma, travelling in territories controlled by EAGs and having contact with their members is often unavoidable. Sections 17/1 and 17/2, which foster the violation of basic human rights, stifling opposition to Burmese authorities, has no place in Burma's new era of civilian governance, and if democratic transition is going to occur this law, along with others, requires urgent amendment.

While conducting inspections of jail cells in police stations and courts in Lashio and Hsipaw, as part of a broader mission to inspect prisons in Burma nationwide, members of the Myanmar National Human Rights Commission (MNHRC) interviewed the detainees on August 9 at the Hsipaw Prison to investigate the legality of their detention. Following the interview with the defendants, MNHRC Commissioner Yu Lwin Aung described details of the prisoner's pretrial detention to media as revealed to him by the prisoners. The journalists affirmed that following their arrest they were held incommunicado at a military base in Namhsan Township, Shan State for more than 24 hours, where they were held without food for one day, forced to sleep on a concrete floor for one night, and were not remanded before a magistrate, violating Section 61 of the Code of Criminal Procedure for being detained for longer than 24 hours as well as Articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

In late August, the MNHRC forwarded their findings on the conditions of 14 prisons inspected by the Commission, to the Ministry of Home Affairs (MoHA) and made recommendations to the Ministry of Defense (MoD) regarding the case of the three detained journalists and three detained civilians detained in Shan State. The MNHRC recommended to the MoD that no legal action should be taken against the

journalists who covered the drug burning ceremony, that was also attended by locals as well as public servants. AAPP strongly urges the MoHA and the MoD to accept the findings of the MNHRC's investigation and take action to secure the immediate and unconditional release of the three journalists and their three civilians aides who remain detained in Shan State as victims of arbitrary arrest and arbitrary detention.

The six defendants, who have been detained for more than two months, were denied bail on August 4 and 18 by the presiding Judge at the Hsipaw Township Court, who cited national security concerns and fears that releasing the men on bail might prolong their trial. Seeing as how the defendants did not allegedly commit a violent 'crime,' fears of releasing them on bail due to a matter of concern for national security are baseless. It is an unfortunate irony that the defendants should not be released because of concerns that their trial might be prolonged because their trial has indeed been prolonged by the side of the prosecution. Prosecution witnesses Major Myat Mon Aung and Lieutenant Thaw Zin of the Military were not in attendance at the defendant's' third trial hearing on August 11, meaning the trial will likely be prolonged so that their testimonies can be heard at another date.

The six individuals being convicted of breaking the law pose no risk to society nor national security and therefore should be granted bail immediately. In Burma, it is common for trials to be deliberately

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dragged out, causing agony for those who are kept in detention in often squalid conditions. By way of example, Central Committee Member of the All Burma Students' Democratic Front (ABSDF), Min Htay, who was arrested on December 28, 2016, over charges under Section 17/1 of the Unlawful Associations Act remains detained in Bhamo Prison in Kachin State and is still on trial as of writing, more than six months after his arrest. Further, on August 4, The Voice Daily Editor Kyaw Min Swe, who is on trial for charges under Section 66(d) of the Telecommunications Law and Section 25(b) of the News Media Law, was released on bail, after 9 bail requests were previously denied. He was originally arrested

on June 2 in relation to charges filed against him by Lieutenant Colonel Lin Tun, for allegedly 'defaming' the Military in a satirical article published in a March edition of The Voice Daily that questioned Burma's peace process.

Kyaw Min Swe's case illustrates further serves to demonstrate how the Military continues to make use of repressive legislation like Section 66(d) to stifle criticism and freedom of expression, despite the supposed democratic reforms in Government. This trend has contributed to what members of the media

have termed a return to 'A climate of fear'. Worryingly, cases filed against members of the media under Section 66(d) by Government officials or Military officials have increased significantly since the civilian led Government took office in 2016. According to the New York Times, the Government has filed cases under Section 66(d) 65 times since the law was enacted. Members of the media in Burma worry, as they did under previous Military Regimes, that they may be prosecuted for speaking out against the Government or the Military or reporting on sensitive issues, such as Burma's ongoing civil war.

Though the civilian led Government that took power last year was elected based on its pledge to defend human rights and foster the democratic change that citizens of the country had long awaited, the promise largely remains unfulfilled. Human rights, which are supposed to be protected in a democracy, are far from being guaranteed, especially for members of the media who remain at an even higher risk, under repressive legislation like Section 66(d), due to the nature of their work.

On August 29, Parliament passed a Bill making minor amendments to Section 66 of the Telecommunications Law, leaving however, the most controversial and criticized components of the law intact. As amended, an offense under Section 66(d) will now carry a maximum sentence of two years, rather than three years in accordance with the Code of Criminal Procedure, which stipulates that bail shall not be issued for offenses that carry sentence of three years or longer. An offence under Section 66(d) will now be 'bailable,' however, the amendment does not guarantee the issuance of bail, which is notable because there is still no apparent standard criterion for the granting of bail in Burma's judicial system. Therefore, the amendment falls short of securing bail for defendants, an important factor for defendants' due to the fact that trials are often prolonged.

Third parties will now be prohibited from filing cases under Section 66(d) unless they are acting with the legal permission of the 'defamed' individual. From 2015 until the amendment recently took effect, AAPP estimates that of the cases we have been tracking since October 2015, 70% of cases filed under Section 66(d) were done so by third parties. The rampant use of Section 66(d) in the past was attributable to this provision that allowed any individual finding content posted online to be offensive, untrue or objectionable, who was not necessarily the subject/target of the post, to file a criminal lawsuit against the author of the content.

The term "defaming" has been preserved, which is what the vast majority of individuals are charged under. Since the term 'defamation' has not been precisely defined in the Telecommunications Law, the clause is left open to interpretation, which unduly results in its continued

overuse. Since the defamation clause remains a vague offence under the law, the amendment's impact on how the law will be used in the future is likely negligible. Section 80 of the law, which recognizes offences under the law as cognizable, remains unchanged. This means that an individual convicted of online 'defamation' may still be arrested and detained without warrant at any time and be criminally prosecuted under Section 66(d), which remains overly vague.

Though legitimate cases of defamation no doubt occur, they should be dealt with through civil procedures, rather than criminal procedures. The threat that criminal defamation poses on an individual's freedom of expression, as enshrined in the Burma's own 2008 Constitution, is significant. The UN Human Rights Committee has urged states to consider the decriminalization of defamation and has stated that imprisonment is never a suitable penalty for legitimate cases of defamation.

In August, CSO's were outspoken on social media in their opposition to the amendments to Section 66(d) and the law in general. For months, Section 66(d) has been the target of criticism and in June AAPP, along with 60 other international and domestic human rights organizations, released a joint calling for the law to be repealed or significantly amended, to clarify its vagueness, and ensure that defamation not be considered a criminal offense since it does not warrant the deprivation of one's liberty.

Days after the amendments were passed in parliament, Mandalay-based freelance journalist Zaw Moe Htet was arrested on August 28 in relation to charges filed against him under Section 66(d) of the Telecommunications Law for posting 'defamatory' comments on Facebook about Kachin State Chief Minister Dr. Khet Aung. This most recent case is evidence that the minor amendments made to the Telecommunications Law are insufficient and that individuals are no safer now that they were before the law amended.

If the Government is genuine about executing democratic reform and seeks to distance itself from the repressive Military regimes of the past it must critically review repressive legislation like the Telecommunications Law to address laws that have the potential to violate individuals' rights. The Government must again significantly amend or repeal Section 66(d) of the Telecommunications Law to protect individuals' freedom of expression and opinion, enshrined in Article 19 of the Universal Declaration of Human Rights, the amendments made are far from adequate and still allow for the violation of freedom of expression, the cornerstones of democracy, which is sustained by the free exchange of ideas among citizens about how individuals should live together and how they should be governed.

Regarding other legislative developments, on August 16 the Narcotic Drug and Psychotropic Substances Law (NDPSL) was amended, reducing the penalties associated with minor drug-related offences from lengthy prison sentences to community service. The amendment is the result of consultations held in 2015 by the MoHA with the Government's Central Committee for Drug Abuse Control and the United Nations Office on Drugs and Crime (UNODC) to reform the NDPSL, Burma's primary law on illicit drugs.

The development represents a positive step in criminal law reform, which is especially important due to the high prevalence of drug related charges in Burma, which disproportionately burden the prison system, contributing significantly to the deterioration of prison conditions due to overcrowding. There is however no mention of whether the law will act retroactively on those already serving sentences for minor related drug offenses and it is at present unclear whether rehabilitation and the social services needed in prison and outside of prison upon prisoners' release to aid in reintegration, will be initiated to properly address the issues which come with drug abuse and addiction.

On August 5, five adult student inmates from Obo Prison in Mandalay and two adult student inmates from Insein Prison, Rangoon who passed Burma's matriculation with distinction in June were released from prison under presidential amnesty. AAPP commends President U Htin Kyaw for pardoning these students, who will now get the opportunity to attend university, providing them with a second chance to pursue life outside of prison. The case of 19-year-old inmate Shun Lae Wai Kyaw, who was serving a ten-year sentence for a drug related crime she claims she did not commit, before earning triple distinction on the exam and receiving the pardon, is a reminder of the many other individuals serving overly punitive sentences in prisons in Burma for drug related charges, for which over half of all convictions are related to. This was the first year that student inmates were permitted to study and take the matriculation exam at Obo Prison and it was announced in July that the construction of a school for adult prisoners at Obo Prison is scheduled to be completed within two years. AAPP applauds the Government's initiative to recognize and reward the extraordinary achievement of inmates as part of the Government's new initiative to allow prisoners to study and take the annual matriculation exam.

In August, it was also announced by Spokesman of the Prisons Department Min Tun Soe that three new prisons in Kachin State, Mon State, and Bago Division, would open by the end of this year, adding that these new facilities would help ease problems of overcrowding that plague the prison system. It is interesting that according to the Prisons Department, seemingly the solution to the issues of overcrowding in Burmese prisons is to just build new ones, rather than addressing the systemic issues present within existing institutions. While the construction of new prisons gives the Government the

opportunity to ensure that the new prisons structurally serve to secure human rights, the primary focus should be on the reform of current prisons. Burma's flawed judicial system, which is directly linked to the problems of the prison system, must also be reformed. Burma's outdated, overly repressive, and punitive legislation significantly inflates the number of prisoners, including political prisoners, putting a burden on the country's prison system.

Regarding direct prison reform, the priority should be focused on guaranteeing prisoners' human rights and providing inmates with adequate services, in line with international standards and the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs). AAPP has long documented the conditions of prisons in Burma based on the testimonies of former political prisoners and has previously highlighted the dire need for prison reform. Despite recent improvements that began under the U Thein Sein Government in 2015, poor prison conditions that amount to violations of human rights exist in nearly all penitentiaries in Burma. Among the most serious and pressing issues, aside from overcrowding, is the use of torture, lack of access to healthcare, and lack of access to educational or vocational training. Not only do these issues represent violations of human rights, they also hinder the ability of prisoners to reintegrate into society upon their release.

Two cases in August demonstrate that the Military continues to stifle opposition and criticism through the use of repressive laws, such as Section 505(b) of the Penal Code, putting limitations on freedom of expression and opinion. On August 1, former member of the Taungoo Student Union - Bago Division, Aung Htet was arrested and detained without possibility of bail subsequent to a case filed in June by Lieutenant Colonel Tun Min Aung. The plaintiff accused Aung Htet and fellow former member of the Taungoo Student Union - Bago Division, Victor, under Section 505(b) of the Penal Code of inciting unrest for singing songs about constitutional amendments during the Thingyan water festival in Taungoo in April. A warrant is still out for Victor's arrest.

On August 18, Aung Ko Htway, former child soldier abducted at the age of 14, who served in the Burma Military, was arrested by police for alleged 'sedition' under Section 505(b) of the Penal Code in an interview he gave to Radio Free Asia (RFA) earlier in the month about his experiences as a child soldier. In the interview, he recounted the horrific treatment he endured for years and cited examples of how his human rights had been violated on numerous occasions. For there to be reconciliation, there must be reparations to those who have suffered state sanctioned abuses, and unconditionally cease persecuting

individuals for the peaceful exercise of their human rights.

Farmers whose lands were confiscated under previous Military Governments continue to be criminally prosecuted for defending claims to their lands. Farmers are still frequently charged for criminal trespass if they continue to use their confiscated lands and charged under other repressive legislation that suppresses individuals' rights to assembly and expression. In August, 12 farmers were charged, 67 farmers and 2 land activists stood trial, and 3 farmers were sentenced in relation to protests over land confiscation. On August 2, farmers in the Irrawaddy Division held a press conference and spoke to media about how they have been affected by land seizures under former Government regimes. One farmer from Shwekyuntha Village, Labutta Township, Irrawaddy Division, estimated that approximately 8,000 acres of land were seized from 1983 to 1984. Another speaker alleged that over 100 fellow farmers in the area were currently facing lawsuits under the Forestry Law for attempting to continue using their lands in the same area. On August 13, between 150 and 200 farmers from Katha and Htigyaing Townships, Sagaing Division, staged a protest demanding the return of their confiscated lands. It is estimated that over 16,000 acres of land from 17 village tracts in Katha and Htigyaing Townships were confiscated between 2005 and 2008.

Agriculture is the largest industry in Burma and is vital to millions of people. Farmers' livelihoods depend on tending lands that have often remained in the same families for generations. Widespread land confiscation conducted by the Government officials, militia leaders, and private businesses for decades under previous Government regimes. Farmers and landowners were rarely ever consulted or properly compensated throughout this process. Now, even though many confiscated land projects have been abandoned, farmers are often still prohibited from having access to their seized lands. The Government must uphold farmers' rights to assembly and expression in order for them to seek redress for their lands and assist farmers in resolving land confiscation disputes. It is essential that farmers are properly educated on how they may undertake the correct procedure to receive compensation or the return of their lands and that they receive either action or reparations based on their self-determined needs.

Incidents in this month's chronology were reported in a broader context of conflict between the military and ethnic armed groups, continued abuse of farmers' land rights and restrictions on civilians' freedom of expression and other civil and political rights. In light of this report, AAPP urges the government to prioritize the review and amendment of repressive legislation in order to secure civil and political rights for its citizens and therefore achieve national peace and reconciliation. Moreover, AAPP appeals to the government to immediately and unconditionally release all remaining political prisoners.

Please note, due to unforeseen circumstances, AAPP's August Chronology was delayed in its publication. While the information in this document is factually correct for the month of August, there were significant development regarding political prisoners in the first half of September. The following individuals were informed that their charges had been dropped by the military and are no longer incarcerated or facing prosecution

- 1) Chief Editor of Eleven Daily, Wai Phyo,
- 2) Chief Editor of the Voice Daily, Kyaw Min Swe.
- 3) Voice Daily Satirist, Kyaw Zwa Naing A.K.A British Ko Ko Maung,
- 4) DVB Reporter, Aye Naing,
- 5) DVB Reporter, Pyae Phone Aung,
- 6) Irrawaddy Reporter, Thein Zaw A.K.A Lawi Weng,
- 7) Civilian, Mai Tun Aye,
- 8) Civilian, Mai San Nyunt,
- 9) Civilian Mai Aung Kham,
- 10) Activist, Htin Kyaw A.K.A Kyaw Htin,
- 11) Former ABFSU member, Aung Htet, and
- 12) Former ABFSU member, Victor.