

# DECEMBER CHRONOLOGY 2017

## Summary of the Current Situation:

There are **236** individuals oppressed in Burma due to political activities.

**46** are currently serving prison sentences,

**52** are awaiting trial inside prison,

**138** are awaiting trial outside prison.



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### Assistance Association for Political Prisoners (Burma)

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# MONTH IN REVIEW

In December, eight people were arrested, two journalists under Section 3(1) of the 1923 Official Secrets Act, one lawyer under Penal Code sections 302 and 307, and three teachers, one teaching assistant and one villager from Inn Din Village, northern Arakan State. The education assistant and one teacher were subsequently released; however, the rest are still being held under unknown charges. The joint Kachin Independence Army (KIA) and Ta'ang National Liberation Army (TNLA) arrested and released seven civilians for unknown reasons. This month, twelve people were charged; five under Section 19 of the Peaceful Assembly and Peaceful Procession Act, five under Section 66(d) of the Telecommunications Law, and two under Section 3(1) of the State Secrets Act. Five people were sentenced this month, one man under Article 19 of the Peaceful Assembly and Peaceful Procession Act, and four received additional sentencing under the Counter Terrorism Law. In December, five people were released, including all prisoners in the drone case.

In December, AAPP observed repressive laws used to stifle press freedom and criminalize peoples' right to peaceful assembly. Unfortunately, the National League for Democracy (NLD) has been unable to protect, and therefore has perpetuated the cycle of intimidation and arrest journalists and activists have faced since they came to power. In December, civil society organizations (CSOs) around Burma released a statement outlining why there has been little progress on human rights since NLD's rise to power, and called on the Government to improve human rights protection. The statement from the CSOs found the reasons for the challenging human rights situation are due to repressive laws, and the fact that those who violate human rights live in impunity and are protected under the law.

On December 12, Reuters' Journalists, Thet Oo Maung, A.K.A Wa Lone, and Kyaw Soe Oo, were arrested regarding charges under Section 3(1) of the 1923 Official Secrets Act, which carries a maximum of 14-year imprisonment for the unlawful possession of military documents. The pair were detained incommunicado at an unknown location until December 27, where they appeared in court and remanded to another two weeks in custody in Insein Prison, Rangoon. Their arrests and detention have been deemed entrapment by NLD Spokesperson, Win Htein, and are in direct violation of Articles 19(2)

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citing freedom of expression, and 26 citing all individuals are equal before the law of the International Covenant on Civil and Political Rights (ICCPR). Further, their detention is directly against Principle 18 of the Body of Principles for the Protection of All Person under Any Form of Detention or Imprisonment due to the lack of communications to consult with legal counsel. Wa Lone and Kyaw Soe Oo’s case caught the attention of CSOs, international press freedom groups, and foreign governments demanding their immediate release. AAPP reiterate this sentiment and call for their charges to be immediately dropped and for their unconditional release.

Wa Lone and Kyaw Soe Oo were not the only journalists facing challenges this month while carrying out their journalistic duties. Two journalists from Akaran State, a Reporter from *The Irrawaddy*, Moe Myint, and Maungdaw Local Reporter, Kaung Myat Naing, were investigated on December 23 for allegedly taking pictures of Say-Te-Pyin Village, Yethedaung Township, Akaran State. Police released them after five hours, but retained their phones, official identification, and reporter identification cards.

In addition to journalists, editors and publications face increasing pressure for content censorship. This month, police began investigations into *Tanintharyi Journal* due to a satirical piece published in the November 20 issue under a pseudonym that allegedly defames Tanintharyi Region Chief Minister, Lei Lei Maw, and her family. On December 1, police summoned the Executive Director, Myo Aung, who said he would not provide police with information on the identity of the writer. The publication’s editor-in-chief, Han Htet, does not believe the magazine defamed anyone with the content, but regardless, on December 21 the Dawei Court allowed the case to proceed. Han Htet will be summoned by the Court and charged under Section 25(b) of the News Media Law. This is the second lawsuit filed this year in response to a satirical media article, the first was filed by the military against *The Voice Daily* in May 2017, which were ultimately dropped.

Press freedom has been a topic long hindering Burma’s journalist. Although according to Freedom House’s 2017 World Press Freedom Index Burma has raised 12 places this year (previously from 143 to 131/180 countries), journalists still fear arbitrary arrest under outdated or vague laws, leading them to self-censorship. Due to the arrest of Wa Lone and Kyaw Soe Oo, the Myanmar Press Council called on the Government to amend repressive media laws in order to protect journalists. The organization has

reached out to media members across the 14 states and regions to collect their suggested amendments to the laws, and have presented their findings to the Ministry of Information. On December 22, We Support Journalists Group released a statement citing a total of 19 cases where journalists were charged under the new administration. Thirteen out of 19 cases took place in 2017, and a majority of journalists were charged under the Telecommunications Law. Due to these cases, 33 journalists have faced trial. This further shows that press freedom in Burma is under attack. The new administration has not protected the rights of those sharing information, and in some cases has sought out ways to silence them.

ANP Central Committee Member Hnin Tun Toe faced charges under Section 66(d) of the Telecommunications Law when he posted a letter on Facebook criticizing the building process of Higher-Market in Sittwe, Kyauk Taw, Taung Gok, Yann Bye, Gwa by Arakan State Development Committee. When Hnin Tun Toe went to submit his open tender application, he found that the application process had closed prior to the advertised date. When he criticised this process on his Facebook, he was investigated and charged under Section 66(d) of the Telecommunication Law. The police then confiscated his mobile phone. This case violates Hnin Tun Toe's right to freedom of expression, and reveals an increased need to pressure the Government to review this law. Individuals cannot be penalized for their opinions and calling out the Government for unfair practices. The Government must be willing to answer to the people when issues arise with public space development, instead of charging them and confiscating personal belongings.

On December 11, Free Expression Myanmar (FEM) published a report analyzing complaints filed under Section 66(d) of the Telecommunications Law between the period of November 2015 - November 2017. They recorded 106 filed complaints during this time, with nine complaints since the August 2017 amendments. This shows the failure of the August 2017 amendments to change the way the law is being used. The report identified that the majority of complaints throughout the research period were filed by those in positions of power, with 51% related to the state (public officials, political party leaders, and military). 61% of defendants are those whose profession is to hold the Government and those in power accountable (political party members, journalists, religious group members, human rights defenders, and artists). Finally, FEM found that 55% of complaints included a power differential, where officials attempted to punish weaker defendants. Despite the August amendments, this law has been abused by people in power, and those seeking to silence people who are critical of the Government. Freedom of expression cannot be mistaken for defamation if those in power do not like what is being said. Freedom of expression is protected in Article 19 of the Universal Declaration of Human Rights

(UDHR), and Article 19(3) of the ICCPR. The way Section 66(d) has been applied over the past year makes it clear that the law is too vague, and is being inappropriately applied. AAPP calls on the Government to repeal the law swiftly so that no one else will be arbitrarily charged.

Five more people also faced charges in December, all under Section 19 of the 2012 Peaceful Assembly and Peaceful Procession Act. Loikaw Police Force filed a suit against Karenni State Student Union Members Ye Min Kyaw, Myo Hlaing Win, and John Paul, Karrenni State Farmers Union Member, Dee De, and Karrenni State Youth Union Member, Khun Bo Bo, for organizing a protest in Loikaw City on December 22. In December, solo protester, Moe Thu, charged in November, was sentenced to one-month imprisonment under charges related to Article 19 of the Peaceful Assembly and Peaceful Procession Act. Moe Thu's protest called on the Government to dissolve the 2008 constitution as soon as possible.

Arrests related to protests go against international standards; the right to peaceful assembly is protected in Article 20 of the UDHR and Article 21 of the ICCPR. AAPP has in the the past urged the Government to reevaluate the Peaceful Assembly and Peaceful Procession Act as it only allows protests after permission is granted, and has led to countless arrests since its enactment. In light of December events, AAPP calls on the Government to repeal the Act as it is being used to harm those who are carrying out their fundamental rights. The Peaceful Assembly and Peaceful Procession Act allows the Government to legally deny rights found in international instruments. In addition to the flawed Peaceful Assembly and Peaceful Procession Act, demonstrators also face challenges under the penal code when attempting to carry out their rights.

On December 28, Michael Kyaw Myint appeared before the Tamwe Township Court, Rangoon for charges under Section 505(b) of the Penal Code. Although he had obtained permission from authorities to hold a peaceful protest on October 23, he was arrested while preparing to drive to the protest and is currently being detained at Insein Prison. Section 505(b) refers to punishment for those with the intent to cause or are likely to cause an offence against public tranquility. The vague wording of this law allows it to be used against activists and demonstrators, even after they have obtained permission for their protests and registered with the Government. The presumptive wording allows the Government to arrest people arbitrarily who have not done anything wrong because there is a threat that their actions may be disruptive in the future. This is in violation of Articles 9 and 21 of the ICCPR, and allows the law to be used repressively to stifle opposition.

Throughout December, the Corrections Department announced reforms to prisons across Burma. According to a Member of the Commission for the Assessment of Legal Affairs and Special Issues, Kyaw Sein, a prison draft law in line with international standards will be submitted to Parliament within three months. The Union Parliamentary Prisons Draft Law, written in 2015, however, does little to protect Burma's prisoners and does not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR). The Draft Law leaves Burmese prisons under the control of the Ministry of Home Affairs, and does not give the judiciary or independent departments outside the prison system a role in monitoring the treatment of prisoners. This goes against SMR 46(3), which requires prison personnel to have civil service status. One change that is necessary to adequately reform Burma's prison system is the create a Ministry of Justice to run the prisons in an impartial and fair manner. Further, this law does not mention any oversight mechanisms to monitor guards and staff in close contact with prisoners. This is crucial to ensure prisoners are treated with dignity, as outlined in Article 10 of the ICCPR. The law also fails to mention how prisoners are able to bring complaints should their rights be violated, a right protected in SMR 36. Finally, as torture is used as a tool of control and punishment in Burmese prisons, it is disheartening that the Draft Law makes little mention of how any reformed system will address this as the UN Convention Against Torture (UNCAT) is clear in stating torture is never permitted, regardless of a person's state of liberty. According to Kyaw Sein, the purpose of this bill is to bring Burma's prison system up to international standards, however, without a mechanism to actively prevent torture, this bill falls short again. AAPP, therefore, urges party members to write a bill that will actually be in line with international standards in accordance with the expert civil society organisations, including AAPP, who have and continue to be able to inform on adequate alterations to the Draft Law.

Two new 1,000-person capacity prisons began accepting inmates to address the overcrowding problems found in Insein Prison. The new prisons will be Kyaikmayaw Prison in Mawlamyine, and Daik-U Prison in Bago. Currently, Kyaikmayaw prison is 85 percent finished. Overcrowding not only creates a public health issue due to low living standards, lack of cleanliness, and infection rate, but is in violation of SMR 9 and 13, citing adequate bedding and bathing facilities and is, according to the UN Human Rights Council, a form of torture. Further, overcrowding is an unnecessary by-product of Burma's penal system. Much of the overcrowding is due to the number of prisoners in pre-trial detention and in jail on disproportionate drug charges. AAPP urges the Government to release as many pre-trial detainees as possible on bail to ease the burden of overcrowding, and to ensure pre-trial detention is an exception, not the rule, in accordance with Principles 11 and 13 of the Principles for the Protection of All Persons Under Detention. AAPP further recommends the urgent review of all drug cases to ensure no one is

being held with unnecessarily lengthy drug sentences. In order to break the cycle of overcrowding, AAPP also recommends the Government treat drug use and abuse as a public health issue, which will afford those suffering the health services necessary to recover. Further, AAPP recommends amending the current drug laws so citizens are not serving disproportionate and unfair sentences to their crime.

Starting in January 2018, positive progress has been made as inmates across the country will receive meat four times a week and bean soup every day. Lack of adequate nutrition not only leads to ongoing health issues, but is also a violation of SMR 20, and must continuously be addressed to ensure prisoners are afforded proper care while incarcerated. Health issues are a major concern for prisoners across Burma. In order to address this, Insein Central Prison, Rangoon, Obo Central Prison, Mandalay Division, and Tharyarwaddy Central Prison, Bago Division all received 5,000,000 kyats (US\$3,700) each to address mental health needs and treatment for chronic health issues made worse by poor prison conditions. According to the UN's Basic Principles for the Treatment of Prisoners, Principle 9, prisoners should be granted access to adequate health services regardless of legal situation, a stipulation echoed in the universal health care provisions of Burma's own Constitution. Many of those incarcerated in the Burmese prison system suffer from malaria, HIV/AIDS, and tuberculosis. Further, due to overcrowding and poor sanitary conditions, many begin to suffer from new problems associated with the poor living conditions, such as asthma, diabetes, and infections. Overcrowding, poor sanitary conditions, and lack of health care have been synonymous with Burmese prisons, which creates a double punishment for inmates who must overcome these challenges throughout their prison terms. Though these piecemeal reforms have started to tackle some of these issues, any reform bill must explicitly address these issues before being sent to Parliament. The Government must realize that simply constructing new prisons and moving prisoners around does not automatically ensure that their rights are being protected.

As of January, male inmates in Obo Central Prison will have access to a two-story school building, which helps bring this prison closer to international standards. Rather than punishment, the international standards emphasize a focus on rehabilitation for prisoners while carrying out their sentences. SMR 61 cites the need to emphasize prisoner's continuation in society, not their exclusion. Further, SMR 75(2) directly addresses the need for time for education throughout the week. According to Principle 10 of Basic Principles for the Treatment of Prisoners, favourable conditions shall be created for reintegration into society. Access to a school, and the opportunity to sit for entrance exams is, therefore, another reform that simply brings the prison system closer to international standards. In order to ensure all prisoners are afforded this same opportunity, AAPP urges the Government to give inmates incarcerated across Burma access to education facilities that will help their social rehabilitation and job prospects

after their terms have finished. The above reforms must be immediately initiated to bring existing prisons in line with international standards.

In December, farmers and landowners continued to demand the rightful return of their land; however, although the regional and national Governments have proved to be allies in some cases, in other instances authorities have failed. The Sagaing Regional Government are set to file charges against farmers in Myay Mon Village, Kanbalu Township, for trespassing on a Government-owned seed farms. Between 1980 and 1981 the Government seized more than 4000 acres of farmland without compensating owners. Residents identified vacant lots, and received permission to hold planting events on the land in April 2017, but are now being sued for trespassing. It is wrong for farmers to be sued for trespassing on land that had been confiscated from them with no compensation. Land confiscation took away the livelihood of this community; however, in an effort to work with the regional Government, farmers asked permission to use the land in April 2017. After granting permission, the regional Government cannot file suits against farmers when the land is rightfully theirs. AAPP calls on the Sagaing Regional Government to drop the suit and return all land taken from farmers in Myay Mon Village, Kanbalu Township. AAPP further urges the regional governments and central Government to return confiscated land or provide full compensation as swiftly as possible to those who have lost it under the Military regime in accordance with UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.

According to local farmers from Khay Kham Village, Hue Mon Village Tract, Lashio Township, Shan State, #7005 armoured battalion, controlled by Eastern North Division Headquarter, is preparing to confiscate more land to expand the Sin Taung Golf Course. In 2008, the battalion confiscated 200 out of 400 acres of lands from Khay Kham Village to build the course. Local farmers currently grow corn and paddy on the remaining 200 acres of land. On December 6, #7005 armoured battalion started preparing to fence the 200 acres of lands to expand the golf course. Local farmers did not receive any compensation or substitute lands and the farmers do not have any ownership titles to the land. Under the civilian Government, land confiscation should not continue to happen. AAPP urges the Government follow outlines based in the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, which obligates States to refrain from confiscating land if the action does not contribute to the enjoyment of human rights. AAPP, therefore, calls on the Shan State Government to protect the lands of those living there from military confiscation to ensure the livelihoods of its citizens. Land confiscation is directly against the rights to work, housing and food found in Articles 23 and 25 of the UDHR and Articles 6 and 11 of the International Covenant on Economic, Social, and Cultural Rights

(ICESCR), the latter of which Burma ratified October 6. Authorities cannot arbitrarily take away people's land, and certainly without full compensation and proper notification.

To facilitate a quicker return of land in Ayeyarwady Region, the regional Government will monitor the progress of returning land to owners previously confiscated by Ayeyarwady ministries and companies. According to Ayeyarwady Division Parliament Member of Parliament (MP), Aung Tun, the groups that confiscated the land returned it to the Government throughout the past two years, but the original owners have not received it yet. The Central Committee for Re-scrutinizing Confiscated Farmlands and Other Land has started to return land, but are still investigating who the rightful owners are. Moreover, although vacant, virgin lands have been returned to the Regional Government, they have not been able to create a system to adequately distribute this land to farmers who do not have any. AAPP hopes the Government will prioritize a system to return land to farmers and distribute it to those who do not have any in accordance with obligations under the UN Guiding Principles on Business and Human Rights. Should the livelihood of farmers depend on land ownership, the Government is obliged to protect their rights to land use and ownership.

On December 28, local farmers from Pyin Oo Lwin Township protested at Nyan Taw field in an effort to reclaim confiscated farmland and solve the land issues in Pyi Oo Lwin Township, Mandalay Division. According to protest leader Ko Ko, even though Pyin Oo Lwin Township has one of the largest land confiscation problems, the Government departments are weak in this area, so farmers called a protest to resolve the issues peacefully and immediately. It is disheartening that the Government has not made it a priority to fix the land confiscation problems in Mandalay. AAPP calls on the Government to remember its obligations under the ICESCR to ensure the right to food, housing, and work. Many in Pyin Oo Lwin Township face issues related to lack of adequate livelihood that would be solved if the Government took swift action to solve the land issues farmers face here.

This month in Rangoon there were negotiations between the Rangoon Divisional Government and landowners to give back 20 percent of substituted lands per acre for farmers who wish to own city-land because of trouble cultivating farmland. Privately owned land, however, cannot be classified as city-land, and constructing buildings is illegal on farmlands. According to officials, the Government will take action against anyone who does build on this land, and those who do will likely be sentenced. Farmers, therefore, must give their farmland to the Government, who will then define it as city-land. If these farmlands are reclassified as city-land, farmers will receive 20 percent substituted lands per acre. AAPP calls on the Government to reform land classification laws to ensure landowners are able to use

and cultivate their land as they see fit. Further, AAPP calls on the Government to ensure farmers will swiftly receive a fair exchange and compensation for their land.

Finally, according to data from the State Agricultural Land Management Project and Statistics Department released this month, Government ministries and organizations gave back more than 16,834 acres of land from February 2016 to December 2017 in Mon State. However, according to a State Land Management and Statistics Department Officer, the Department will only continue to return non-disputed land. AAPP calls on the Government to continue to return land as swiftly as possible, and to determine rightful landowners to ensure the rights and security of all citizens.

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.