

# FEBRUARY CHRONOLOGY 2018

## Summary of the Current Situation:

There are **240** individuals oppressed in Burma due to political activities.

**44** are currently serving prison sentences,

**75** are awaiting trial inside prison,

**121** are awaiting trial outside prison.



Picture from Naing Naing Tun Facebook © 2018



### Assistance Association for Political Prisoners (Burma)

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# MONTH IN REVIEW

In February 36 people were arrested, 28 by the Kachin Independence Army, while eight civilians were arbitrarily arrested by authorities for alleged bombings in Sittwe City, Arakan State. Nine people were charged in February five under the Peaceful Assembly and Peaceful Procession Act and four under charges related to Section 58 (a) and (i) of the Counterterrorism Law. Nine people were sentenced this month, including former child soldier, Aung Ko Htwe, under Section 228 of the Penal Code, and eight villagers from Shan State. The eight villagers were sentenced under charges relating to unlawful use of a firearm; unlawful use of a walkie-talkie, illegal import of a vehicle; and attacking the military. Three people were released in February one Arkanese man had charges under Section 17/1 and 17/2 of the Unlawful Associations Act dropped, while another, charged under Section 505 (b) and (c) of the Penal Code, finished his sentence. Finally, Lawyer Ko Zaw Win, charged under Section 420 of the Penal Code, was released after time served.

On February 22, Deputy Information Officer for the Arakan Liberation Party (ALP), Khaing Myo Htun, was released after 18 months behind bars, nine of which were due to detention during trial. He was sentenced under charges related to Section 505 (b) and (c) of the Penal Code for releasing an ALP statement accusing the Military of human rights abuses in Arakan State. The statement included allegations of extrajudicial killings, as well as forced labor. While we celebrate his release, we condemn the authorities for his pre-trial detention, as well as the charges under which he was arrested because of the breach to his freedom of expression (protected under ICCPR Article 19). Due to its vague wording and criminally punitive nature, Section 505(b) is frequently used to criminalize peaceful freedom of expression and imprison political dissidents and activists. In February, Arakan State police arrested eight individuals, including Former Political Prisoner, Naing Soe, in connection with an ongoing investigation into the recent bombings in Sittwe, Arakan State. Remotely detonated on February 24, the bombs targeted the home of a State Government official, the local high court, and a land records office. According to Naing Soe's lawyer, police filed charges under Section 50[a] and [i] of the Counter-Terrorism Law, which carries a maximum sentence of 10 years. All eight will remain detained until their March 12 hearing. Due to last month's protests, regional tensions in Arakan State are already very high; it is, therefore, extremely unfortunate for the Government authorities to continue arbitrarily arresting and restricting freedom of expression of ethnic minority groups.

Throughout February, AAPP observed the implementation of much-needed prison reforms. According to prison officials, at least 100 inmates from Hpa-An Prison, Myeik Prison, Insein Prison, and Ohbo Prison will sit for the matriculation exam in March. Since 2006, Insein, Ohbo, and Tharrawaddy Central Prisons have offered educational opportunities to those incarcerated. Starting this academic year, however, all inmates across the country will be eligible to apply for the exam. Further, Ohbo Prison will offer a free accounting certificate course for male and female prisoners who have at least a matriculation-level education.

While these reforms are necessary and encouraging in helping Burma's prisons reach international standards for education requirements, this does not mean these standards have been reached. According to Principle 8 of the Basic Principles for the Treatment of Prisoners (Basic Principles), the Government has the responsibility to create conditions that will enable prisoners to reintegrate back

into society and the country's labor market upon release. Further, Standard Minimum Rules for the Treatment of Prisoners (SMRs) 77 stipulates that provisions must be made to ensure prisoners are able to pursue further education.

In addition to a lack of education standards, Burma's prisons do not meet international standards in other ways due to severe overcrowding. According to AAPP's calculations, the average Burmese prison was overcrowded by 79.3% in 2017, and the numbers have stayed stagnant thus far through 2018. Overcrowding is problematic because it leads to unsanitary living conditions and communicable diseases. SMR 13 calls for adequate bathing and showering installations, while Basic Principle 9 calls for access to adequate healthcare. Overcrowding, however, leads to direct a violation of all these regulations, and according to AAPP and the UN, is a form of torture.

The Myanmar National Human Rights Commission (MNHRC) has taken notice of this epidemic and issued an open letter to the president to lobby on behalf of prisoners in an effort to ease the extreme overcrowding. According to MNHRC Commissioner, Yu Lwin Aung, 46 percent of prisoners are incarcerated under unduly long drug charges and should be released. The letter also mentions releasing female prisoners, the elderly, and prisoners with disabilities. Political prisoners were not among those listed due to the lack of an accepted definition on the Ministry of Home Affairs' part of what constitutes a political prisoner. Although it is good that the MNHRC has lobbied on behalf of prisoners it is extremely unsatisfactory that the Commission failed to mention the release of all political prisoners or call on the Ministry to accept a definition for these individuals. AAPP, therefore, demands the Ministry of Home Affairs swiftly accepts AAPP's definition of political prisoners, and release the 24 individuals who are currently repressed due to political activity. In an additional finding, according to the MNHRC, prison authorities beat more than 20 prisoners at Min Gone Prison, Hlegu Township, Rangoon Division when they attempt to flee during arrest, as well as when they get into fights amongst themselves while incarcerated. Injuries for prisoners included broken teeth and head injuries. Authorities demanded prisoners to work with an outside brick-making business; however, the MNHRC said the prisoners should do agriculture work and not the outside work. MNHRC additionally reported on the poor sanitary conditions found throughout Burmese prisons.

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*“Poor prison conditions have led to chronic diseases and ongoing illnesses for many former prisoners. Advocacy groups, AAPP included, call on the Government to bring prisons up to international standards.”*  
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Unsafe and unclean prisons conditions have led to chronic diseases, ongoing illnesses, and many mental health issues for many former prisoners. For this reason, many advocacy groups, AAPP included, continue to call on the Government to bring prisons up to international standards. On February 3, 88 Generation students, 96 Generation students, and former political prisoners opened the Healthcare Centre Political Prisoners at Kar Taw Mi Road, Dagon Myothit 6 Ward, Rangoon to help those seeking treatment for diseases induced by the poor prison standards. Although former political prisoners have called on the Government, there is not enough political will in the current administration to bring a full prison reform overhaul at this time. While piecemeal reforms are good, AAPP reminds the Government of their international obligations as a United Nations (UN) member state to ensure all peoples within their borders live with dignity and respect, an obligation that has not been upheld in

the prison system.

In February, the National League for Democracy (NLD) Government announced they will uphold promises to amend the 2008 Constitution before this term is over. In late 2016, the current Government promised to prioritize amending the 2008 Constitution, and, according to NLD Party Central Committee Member, Aung Soe, is continuing to work toward this goal. Despite this promise, demonstrations continue across the country. On February 3, Pyay Township, Bago Division residents gathered to call for the Constitution's abolishment and rewriting because, according to protest leaders, it was written in secret without consultation from citizens. Following these protests, 100 protesters gathered in Paungde Township, Bago Division to again call for the abolishment of the Constitution. Protesters said they will hold another demonstration in the western Bago soon.

On February 1, Naung Naung and Lay Lay (A.K.A San San Win) attended their first court hearing. Charged under Sections 505(b) and 153 of the Penal Code, they were arrested in January for allegedly standing on a piece of cardboard made to look like a copy of the 2008 Constitution during a protest. They have been detained at Insein Prison, while the other four are evading arrest. Arresting individuals involved in peaceful protest is a violation of Article 21 in the International Convention on Civil and Political Rights (ICCPR). In addition, pre-trial detention, a commonplace mechanism used in the Burmese penal system, should only be used as a last resort, as it arbitrarily takes away an individual's freedom (contravening ICCPR Article 9), and leads to issues such as overcrowding when used too frequently. Further, the arbitrary arrest and detention of these individuals reveals that the Government has little intention of working with individuals who call for the abolishment of the Constitution and use peaceful means to communicate their beliefs.

In February, mental health practitioners urged the Government to address the need for a national comprehensive mental health care plan. According to psychiatrists, the current system, enacted in 1912, does not address the needs of the country. Although a new bill has been discussed since 2013, it has not yet made it to Parliament; however, there is little political will to change the current system. As a country that has inherited trauma from past colonial and Military rule, mental health must be paramount in the peace and reconciliation process for Burma. As former political prisoners and their families are frequently victims of trauma, depression, post-traumatic stress disorder (PTSD), and anxiety, AAPP began its mental health program to fill a gap in the rehabilitation schemes for prisoners upon release. Now, AAPP's Mental Health Assistance Program (MHAP) has expanded to address the needs of former political prisoners, migrants, refugees, trafficked persons, and domestic violence survivors through professional counseling. To adequately help these groups of people, AAPP urges the Government to update outdated mental health laws and work closely with civil society organizations who have expertise in these issues. Updating mental health policies, and ending the stigma surrounding mental illness, will help Burma move toward upholding its responsibilities under the International Convention on Economic, Social, and Cultural Rights (citing Article 12), a document the Government ratified November 2017.

At a February 13 Parliament meeting, MPs voted on reforms to the current drug law. On February 15, the President signed and released the law to the public. According to the reforms, drug users will not go to jail, but will instead carry out community service hours. AAPP is encouraged that the Government has started to reform the current drug law and will no longer send users to jail but urges the Government to release the extremely high number of drug users who continue to carry out

unreasonably long sentences in prisons across the country. The unreasonably long sentences drug users are faced with exacerbates already existing issues within Burma's prison system. Overcrowding remains a main issue and incarcerating drug users worsens this because, as mentioned in a recent MNHRC report, the largest numbers of inmates are serving time due to drug related cases. Overcrowding leads to health issues, poor and unsafe living conditions, and, as mentioned above, is a human rights abuse. Less punitive sentencing with a focus on rehabilitation and community service efforts is not only in line with international standards, but also will address the overcrowding issues.

In February, AAPP tracked the continued crackdown on protests from authorities. Further, this month the Government has taken steps toward making peaceful assembly even more difficult for politically active individuals. According to a proposed amendment to the Peaceful Assembly and Peaceful Procession Act (PAPPA), protesters may soon be required to inform authorities of the projected cost, and funders of protests before being allowed to demonstrate. An additional proposed amendment would include a prison sentence of up to three years for "provoking or exhorting others to organize or participate in demonstrations" through bribes with the intention of disrupting the peace and rule of law of the community. If passed, these will be the third round of amendments for the act.

These proposed amendments are extremely alarming, completely contradictory to international standards, and is a step backwards for the democratically-elected Government. Peaceful assembly is protected under Article 21 of both the Universal Declaration on Human Rights and the ICCPR and should under no circumstances be a criminal offense. Further, the strict stipulations for protesting that are included in this round of amendments, as well as the existing restrictions, such as requiring permission to hold a protest, contravene basic international standards. As a UN member state, Burma is obligated to comply with these international standards. AAPP, as it has in the past, urges the Government to work with civil society groups to amend this flawed piece of legislation to protect the fundamental rights of citizens.

Section 19 of the PAPPA continued to be used throughout February to silence political activists. Police opened a case against five protesters under Section 19 of the Act in Salingyi Township, Sagaing Division for holding a protest without permission. Residents were protesting two companies for previous land confiscation and compensation issues. AAPP urges authorities to stop arresting and charging individuals under Section 19 of the PAPPA due to its vague wording and, as mentioned above, urges the Government to re-evaluate the Act as it continues to lead to countless arrests, and only allows protests after permission is granted. To move toward a new era in Burma's democracy, the PAPPA must be rewritten to ensure civil and political rights are able to be realized throughout the country without fear of prosecution.

In addition to restricting freedom of assembly through Section 19, in February, trial continued for a demonstrator and lawyer associated with the 2014 National Education Law protests, with charges brought under the Penal Code. Although the NLD closed the student protesters' case when they came to power, Lawyer Khin Kyaw Kyaw and student protester Than Htike are still being prosecuted by Tharrawaddy Township, Bago Region for insulting a public officer on duty, under Penal Code Section 228. Punishment under Section 228 calls for a maximum six months' imprisonment, a maximum fine of K100,000 (US\$75), or both. Further, Khin Kyaw Kyaw's license will be revoked if she is found guilty. Since September 2015, they have appeared in court 52 times. The two have been subject to an unduly long trial, contravening Article 9(3) of the ICCPR, and AAPP calls for the immediate end of their trial

and that the case be closed.

In addition to a crackdown on protests and peaceful assembly, authorities continued to close the space for freedom of expression by targeting journalists and the media. The two arrested Reuters Journalists, Wa Lone and Kyaw Soe Oo, were denied bail at their hearing earlier this month, and continue to be remanded in Insein Prison. Arrested under the Official Secrets Act, their ongoing trial has revealed contradictory details. AAPP reminds the Government of its obligations to protect freedom of expression, as required by Article 19 of the ICCPR. Journalism and the pursuit of information in a free society is never a crime; however, Wa Lone and Kyaw Soe Oo have been treated like criminals before their trial has even finished. Their pre-trial detention is not in line with international standards, and their trial has revealed the arbitrary nature of their arrest, which violates ICCPR Article 9. We again call for their immediate and unconditional release.

In connection with the Reuters case, authorities have continued to target media who report on matters sensitive to the State by filing charges against *7Day Daily* due to a recent article claiming the Vice-President ordered lawsuits against Wa Lone and Kyaw Soe Oo. In accordance with Article 21 of the News Media Law, Rangoon Division Police sent a complaint letter to the Myanmar Press Council. The above-mentioned Article states that parties can lodge complaints with the council if “any member of the news media violates the law’s ethics.”

According to the police’s leaked letter, *7Day Daily* published misleading information about the reason for the suits, added subjective commentary to their article, and failed to accurately report the testimony of the plaintiff, Lieutenant Colonel Yu Naing. While it is prudent for authorities to have policies in place to protect against ethics violations, much of the time charges have been lodged against individuals reporting matters sensitive to the state, or contradictory to state interests. Freedom of expression and free press ensure that all views and opinions are protected from prosecution, which has not been the case in Burma. Although the country is now under democratically-elected leadership, many of the policies are reminiscent of the long military dictatorship. For Burma to move forward in its democratic journey policies legislation must be updated and must be applied in a democratic way.

According to MNHRC member Yu Lwin Aung, a quarter of the complaint letters the Commission received in 2017 regarded Government and Military confiscated lands. Original owners filed complaint letters by demanding the return of their lands from the Township Management Committee, Land Department, and Village Land Department as these groups received the land, but they have not returned it. Yu Lwin Aung also stated that land disputes between landowners were among the most complaints.

This month, the Upper House attempted to help landless citizens by confirming an amendment to Section 5 (A) of a law that allows landless citizens the right to work on a small amount of land that are vacant, fallow and virgin for agriculture and husbandry. Farmers can apply directly to related departments. Although farmers in Sagaing Division, Irrawaddy Division, and Karen State all reported land compensation given this month for previously confiscated lands, many more have not fared the same.

## **Sagaing Division**

On February 2, the Sagaing Division Government Group gave compensation to 18 farmers for the first time after permission was granted from the National Government in Monywa Township. 20 years ago, the Electric Implement Department and Sub-Investigate Department had confiscated land from farmers for the Tan Men Ti hydroelectric project at Alon Taung, Kwan Village, Monywa Township. There are now only 70 cases left to solve from the original 1000 cases. According to the Central Land Investigate Group, the rest of land issues will be resolved by August 2018. While it is good that the Government has given, and will continue to give, compensation for confiscated land, the decades-long wait for recourse is now unreasonable under the Government's new obligations as a ratifying member of the International Covenant on Social, Economic and Cultural Rights (ICSECR). Article 6 of the Convention protects the right to work for all citizens in a manner of their choosing. This Article, however, has been breached by the Government as farmers lost land, and their livelihoods of choice, 20 years ago, and have only recently received proper compensation.

Farmers in Laungmin Village, Homelin Township are dealing with destroyed lands due to waste from illegal gold mining operations near the township. When farmers reached out to local township authorities in December 2017, there was no response. Due to destroyed land, farmers have had to take agricultural loans from the Government of up to K150,000 (US\$112.50), but have been having trouble repaying them due to lack of work. 108 of the 120 farmers in the township have had land destroyed since the operations started. The Government has a positive obligation to protect the right to work and the livelihoods of all citizens, which has not happened in Laungmin Village. Although Governmental loans are helpful to help farmers stay afloat, it has now caused difficult stress on farmers. AAPP calls on the Government to ensure there are reasonable work opportunities for all farmers.

## **Mandalay Division**

On February 10, Pathein Gyi Township, residents held a press conference urging compensation and return of extra land taken for a golf club project. They also asked for compensation for crops. In 1997, the Mandalay City Development Committee confiscated more than 547.80 acres of land from 82 farmers to build a golf club. The project only used 300 acres for the golf club. According to the residents, the City Development Committee will be being production on another project with the rest of the land; this is the main objection of the farmers. The City Development Committee's treatment of resident's land violates the UN Basic Principles and Guidelines on Development Based Evictions and Displacement. AAPP strongly urges the regional Government to listen to the complaints of farmers and ensure that their livelihoods and homes are not confiscated for City projects as this would unduly harm their livelihood and further breach the right to work found in the ICESCR, which Burma ratified in 2017.

## **Bago Division**

In 1999, the Than Shwe Export Company confiscated more than 6,000 acres of land from farmers in Dhan Pin Kown Village, Kaung Net Village, Pa Day Thar Village, Moe Thisa Village, Sin Tae Village in Minhla Township, Tharrawaddy District. On February 12, farmers submitted a letter asking for the return of the land but have not yet received a response. This follows a letter sent in 2017 that had 684 signatures. In November 2017, the Central Committee for Scrutinizing Confiscated Farmland and Other Land Committee sent a letter to related Departments to review the cases, but nothing happened. AAPP urges the Government to communicate openly with farmers, and ensure they are

able to have recourse for land confiscated years ago.

## **Tanintharyi Region**

According to a report by the Conservation Alliance of Tanawthari (CAT), conservation plans for two parks in the Tanintharyi Region could displace 16,000 people living in the area. The report, published February 21, stated that the Government's "protected status" designation of area forests, as well as conservations efforts of international conservation groups could damage the livelihoods of local ethnic populations, and these groups must be consulted before further restrictions are put in place. According to the ICESCR, everyone has the right to adequate housing, a right that would be threatened with forced eviction. Further, under the UN Basic Principles and Guidelines on Development Based Evictions and Displacement, States must refrain from confiscating land to the maximum extent possible when such action does not contribute to the enjoyment of human rights, and when it targets ethnic minority groups. While environmental sustainability is a necessity, it does not reach the threshold of land confiscation, especially if there is no plan for recourse for all of those displaced. AAPP calls on the Government to remove the protected status designation for these areas as it will force the displacement of wide swaths of the population.

## **Updates by State**

In February, ethnic minority groups continued to be oppressed.

## **Shan State Updates**

Multiple rights continue to be restricted in Shan State by the local authorities. Ethnic Wa people have been barred from traveling to major cities in the eastern part of the state, such as Kyaingtong, and the border city Tachilek. In the past, Wa people have travelled to these cities for medical treatment and trade. According to a United Wa State Army spokesman, the Government has failed to give a reason on why travel is being restricted, and there are concerns the Government views the minority group as foreigners. There are currently 900,000 ethnic Wa living in the area in question. In the past they have been able to move freely around the state.

The Muse Township Administrator in Northern Shan State has banned members of ethnic armed groups (EAGs) from receiving medical treatment in his district. In a letter addressed to the police force and general hospital, the Administrator asked that relevant parties "immediately inform the local military battalion" if they become aware of situations where wounded EAG members are seeking medical treatment locally. There has, however, been pushback from the general hospital, as well as the police force on this new policy. Currently, the Kachin Independence Army, Ta'ang National Liberation Army, and Myanmar National Democratic Alliance Army all have a strong presence in the township.

After a seven-month trial, the Hopong Township Court has sentenced eight villagers for associating with and supporting the Restoration Council of Shan State (RCSS). All eight men were charged with the following: unlawful use of a firearm; unlawful use of a walkie-talkie, illegal import of a vehicle; and attacking the military. The sentences range from one to 10 years.

These developments are all very distressing due to the fundamental rights that have been withheld from individuals. Freedom of movement is protected by Article 12 of the ICCPR. Further, states are prohibited from arbitrary restricting freedom of movement without an explanation, and cannot deny rights based on ethnicity, citing ICCPR Article 2. Under the ICESCR States have a positive obligation to

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ensure all have the right to adequate healthcare and medical service. AAPP calls on authorities to uphold ICESCR articles, as Burma signed and ratified the document in November 2017. In terms of sentencing individuals for association with the RCSS, AAPP reminds authorities that association with ethnic armed groups is an unfortunate reality for many living within EAG-controlled areas, and that punishing individuals associating with them further erodes the peace process.

### **Kachin State Updates**

In February, the whereabouts of two Kachin civilians detained by the Military on January 31 continues to be unknown. Hpaugan Yaw and Nhkum Naw San were reportedly arrested while doing farm work near Khet Para Village in Mansi Township, Kachin State and are IDPs in Mai Hkawng Village. They have not communicated with anyone since their arrest. Two others were taken with Hpaugan Yaw and Nhkum Naw San but were released a few hours later. Arbitrary arrest and detention contravenes ICCPR Article 9, and holding detainees incommunicado violates SMR 92.

### **Arakan State Updates**

In Arakan State, authorities and civilians are still dealing with the aftermath of last month's violent protests. On February 20, the Government charged 13 Arakanese under Section 6(1) of the Public Property Protection Act and Section 6(1) of the Public Property Protection Act at the Mrauk-U Township Court, Arakan State for involvement in the Mrauk-U Conflict. The 13 charged were all injured in the conflict when police opened fire at crowds in Mrauk-U Township on January 16. Five out of 13 were treated at the Mrauk-U Hospital and have been evading arrest. The other eight were sent to Sittwe Prison on February 2 while they were being treated at the Sittwe People's Hospital in the prisoners' ward. The Arakan State probe into the January 16 violence has been suspended due to regional instability. While the Government is fully within its rights to protect public property from discretion, these arrests were not carried out according to international standards.

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.

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