

JULY CHRONOLOGY 2017

Summary of the Current Situation:

There are **225** individuals oppressed in Burma due to political activities.

39 are currently serving prison sentences,

50 are awaiting trial inside prison,

136 are awaiting trial outside prison.



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Assistance Association for Political Prisoners (Burma)

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MONTH IN REVIEW

In July, 31 individuals were arrested, four under Section 66(d) of the Telecommunications Law, 17 under Section 188 of the Penal Code, and ten villagers. This month, 42 were charged, 13 farmers under Sections 294, 341, 447, and 506 of the Penal Code, 15 farmers under Sections 19 and 20 of the Peaceful Assembly and Peaceful Procession Law (PAAPPL), three activists under the PAAPPL, six individuals under Section 66(d) of the Telecommunications Law, two individuals under Section 8 of the Import and Export Law, one individual under Section 500 of the Penal Code, and two individuals under Section 25(b) of the News Media Law. In July, 19 individuals were sentenced, two ethnic Kachin under Section 19 of the PAAPPL, and 17 individuals under Section 188 of the Penal Code. This month ten individuals were released from prison; and four incarcerated political prisoners are reported to be in bad health.

In July, Burma continued to experience an increase in restrictions on media freedom and the further persecution of journalists, through the use of outdated and repressive laws, adding another journalist to a tally of five in the past two months that have been detained. Despite calls both nationally and internationally for their release, journalists Aye Naing, Pyae Phone Aung, and Lawi Weng along with the three civilians Mai Tun Aye, Mai San Nyunt, and Mai Aung Kham were arrested by the Military in June while returning from a Ta'ang National Liberation Army (TNLA) initiated drug destroying ceremony in Shan State, remain detained during their ongoing trial. The three journalists and three civilians were detained by the Military and charged under the Section 17/1 of the Unlawful Associations Act for having “associated” with the TNLA, an ethnic armed group (EAG) the Government deems illegal. The group of six attended three hearings at the Hsipaw Township court in July two of which were unexpectedly rescheduled by the presiding magistrate. Their second court appearance occurred on July 18, when the detainees were spontaneously summoned to the Hsipaw Township Court for an impromptu hearing, without their legal counsel present, three days ahead of their scheduled appointment.

Their detention and trial is not only exemplary of the ongoing persecution of journalists and the explicit use of outdated and repressive laws to suppress the media, but also serves a reminder of the blatant lack of judicial transparency in Burma. Their treatment from arrest to the present day showcases violations of basic human rights and breaches of domestic and international legal protocols. Held incommunicado at an undisclosed location by military forces for more than 48 hours, they were not

remanded before a magistrate within 24 hours of their arrest, breaching Sections 60 and 61 of the Burma's Code of Criminal Procedure, not to mention Articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), enshrining the right not to be subjected to arbitrary arrest and detention and be provided a fair and public hearing by an independent and impartial tribunal. This case which has garnered the attention of the international civil society and human rights institutions, represents the broader systematic persecution of journalists and the stifling of free expression in Burma despite the transition to the civilian Government, and promises made to make significant headway in abolishing human rights abuses. This case further serves as an unfortunate indicator that the behavior of previous regimes regarding media censorship and restrictions on freedom of expression should now also be expected in this allegedly transitioning political climate, and that the promises made a year ago, are unlikely to be upheld.

On July 14, AAPP along with 67 Burmese and international civil society organizations (CSOs) released a [joint statement](#) demanding that charges against six individuals be dropped, which Amnesty International then followed up with another statement on July 27. The European Union also issued a statement condemning the incident and called on the Government to provide protection to journalists for them to carry out their work. Although media censorship laws were lifted in 2012, Section 17/1 of the 1908 Unlawful Associations Act is one law that continues to enable the persecution of journalists, stifling freedom of expression, especially on reports of sensitive issues pertaining to the democratic reform process. Burma is home to one of the longest running civil wars and it is the essential nature of the work of journalists like Aye Naing, Pyae Phone Aung and Lawi Weng to report on these issues to make Burma as well as the international community aware of current events. To prosecute them is an injustice and a mark on media freedom, doubly undermining Burma's transition towards democracy. The value of journalism and media freedom should be recognized, as well as human rights for all.

The recent arrests of journalists not only disregards international human rights laws but also disregards Burma's domestic legislation. According to the Section 354 of the 2008 Constitution of the Republic of the Union of Myanmar, "Every citizen is afforded the right to express and publish their convictions and opinions freely, if not contrary to the laws protecting national security, prevalence of law and order, community peace and tranquility or public order and morality." The journalists did nothing contrary to Section 354 of the Constitution that would warrant the deprivation of their liberty.


Moreover, the rights of journalists in Burma are also codified under the News Media Law, referred to as the 'Media Law'. Section 4 states that news media workers "Shall have the right to freely criticize the

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legislative, the executive, and judiciary in conformity with the constitution" and according to Section 7(a), "While a news worker is trying to report on news in areas where wars break out, and where conflicts or riots and demonstrations take place, he/she shall be exempt by a certain security related authority[...]." The arbitrary arrest and detention of these journalists violates their rights as enshrined in Burma's own domestic legislation as well as international law. AAPP thus recommends that all charges against them be dropped immediately and they are released unconditionally.

On July 21, new charges under Section 25(b) of the Media Law were filed against Chief Editor and Columnist of The Voice Daily, Kyaw Min Swe and Kyaw Zaw Naing A.K.A. British Ko Ko Maung over a satirical article that was published in the newspaper questioning Burma's peace process. The original charges filed under Section 66(d) by Lieutenant Colonel Lin Tun were dropped against Kyaw Zaw Naing, but not Kyaw Min Swe who has been denied bail nine times since the start of his trial and remains currently detained. This case illustrates how repressive legislation and vaguely worded laws can be arbitrarily used to silence people's right to free speech. It is the people's right to criticize Government based on citizens' rights to free speech, codified in Section 354 of the 2008 Constitution. Amid criticism of her Government's lack of progress and failure to protect press freedom, State Counsellor Daw Aung San Suu Kyi personally stated in late July that the Government must be tolerant of criticisms that citizens have a right to profess.

The recent increase in arrests of journalist's casts doubt on the Burma Press Council's ability to foster a free press in Burma. As an independent media adjudication body tasked with mediating disputes involving media, it has failed to protect journalists from persecution. The Council should provide better mediating assistance where complaints are launched against members of the media. Given the numerous cases of members of the media being arrested and detained arbitrarily, a great deal is at stake. The media continue to have their rights violated for 'crimes' which they are innocent of. Further, the Protecting Committee for Myanmar Journalists (PCMJ), established in early June of this year by Burmese journalists to advocate for journalists' rights amid recent restrictions on press freedom, filed a lawsuit against Corporal Soe Myint Aung of the Rangoon Military Command. The soldier was caught spying on



journalists in attendance at Kyaw Min Swe's fifth court hearing in late June. The PCMJ's lawsuit was subsequently rejected by police on July 5 without sufficient scrutiny. The alarming event is reminiscent of tactics used by previous Military regimes when the extent of the secret police's monitoring of civilians was prevalent.

On July 30, Myanmar Now Chief Editor Swe Win [pictured on the cover] was arrested at the Airport in Rangoon by police in relation to defamation charges filed against him under Section 66(d) of the Telecommunications Law. On July 31, he was released on bail, set at five million kyat (about USD\$3,700), and is scheduled to begin trial on August 7. The lawsuit against Swe Win was originally filed in March by Kyaw Myo Shwe, a Mandalay resident and follower of Buddhist nationalist group - The Association for the Protection of Race and Religion (A.K.A. Ma Ba Tha), regarding a Facebook post Swe Win had published condemning leader of the Ma Ba Tha group, U Wirathu, for lauding the death of legal advocate and NLD advisor U Ko Ni who was murdered in January. He is the fifth journalist in the past two months to be detained. His case is a reminder of the surge in the number of criminal prosecutions initiated under Section 66(d) by individuals who believe online posts to be untrue, offensive, or otherwise objectionable. Since Section 66(d) allows any individual to press charges against another, it can be used as a tool to accomplish malicious objectives.

In July, National League for Democracy (NLD) Members Kyaw Myo Lwin and Thet Thet Maw were arrested and detained by police for charges under Section 66(d) of the Telecommunications Law. The lawsuit was initiated over a photograph that Thet Thet Maw took and uploaded on Facebook of Da Lant Chun Village Administrator Tin Htay, during his recent trial for misappropriation of public funds in 2015-2016, which Kyaw Myo Lwin later shared on social media. The case is notable as it demonstrates that even members of the Government who refuse to abolish or adequately amend the Law are not immune to being criminally prosecuted and that the disproportionate consequences of Section 66(d) can be felt by anyone.

Section 66(d) must be amended or repealed to rectify the risk it poses to citizens' rights. The law does not adequately define the offenses it refers to. This vagueness increases the risk of the law being used to persecute individuals unjustly and has evidently allowed for its abuse. An offense committed under Section 66(d) does not merit criminal prosecution because restrictions on the human right to freedom of expression suggest a serious breach of law and is only acceptable for the narrowly defined purpose

Of protecting the rights and reputation of others, according to the United Nations International Covenant on Civil and Political Rights (ICCPR). The severity of the sentence, which is criminal in nature and provides for up to three years in prison, is completely disproportionate to the offense. Instead of protecting citizens, it has fostered an environment of intolerance, jeopardizing people's right to free speech and preventing people from peacefully expressing their opinions. Section 66(d) must be immediately repealed or significantly amended to precisely define the offenses and to remove the criminal defamation provision.

A Draft Bill (Draft Bill), put forward by the Upper House Bill Committee, containing minimal amendments to Sections 65, 66(a)(b)(c)(d), and 68(a) of the notorious Telecommunications Law was scrutinized in the Upper House of Parliament. Free speech advocates and CSOs criticized the Bill for failing to address concerns voiced by the civil society. AAPP along with other disappointed human rights advocacy organizations have pointed out that the proposed amendments are glaringly inadequate and have the potential to worsen free speech and media freedom. While the terms 'Coercing', 'Restraining wrongfully', and 'Causing undue influence' were removed in the Draft Bill, the law would still allow an individual to be sued for 'Extorting', 'Defaming', 'Disturbing', or 'Threatening' another individual. No clearer description has been provided as to what 'defamation' under the law precisely implies, keeping the provision vague and potentially allowing for its continued and too-liberal application. The amendment states that the accused "may" be granted bail rather than "must" be granted bail, leaving much to the discretion of a judge, not significantly different from the current statute where bail is not mentioned at all. Cases would no longer require the approval of the Ministry of Transport and Communication, and would give the Police Force, which operates under the Ministry of Home Affairs (run by the Military), discretion over cases. Section 80(a) of the law, which states that all offenses under the law are cognizable offenses, has been left unchanged, meaning that police would have the authority to make arrests without warrant and to conduct investigations without permission from a court. Perhaps the only positive change to the law is that third parties will be prohibited from opening cases, unless the third party is granted legal power of attorney by the 'defamed' individual.

A number of trials involving political prisoners took place in July across the country relating to cases that were opened several months ago. On July 10, Central Committee Member of the All Burma Students' Democratic Front (ABSDF), Min Htay, who was arrested on December 28, 2016, at a military checkpoint

on suspicion of helping the Kachin Independence Army (KIA), stood trial on charges under Section 17/1 of the Unlawful Associations Act. Further, On July 14, Baptist Church officials Naung Latt and Gam Seng from Mong Ko Township in Kachin State stood trial at the Lashio Township Court, in Shan State, for charges also under Section 17/1 of the Unlawful Associations Act and Section 8 of the Export and Import Law for allegedly providing information, recruiting troops, and transporting fuel to the Kachin Independence Army (KIA). Moreover, Naung Latt was additionally charged under Section 500 of the Penal Code in March for defaming the military. The pair was originally arrested arbitrarily when they disappeared on December 24, 2016. They were apprehended without judicial remand by Military soldiers and held incommunicado, at an undisclosed location, until January 24, 2017, when they were transferred to the Muse Police Station in Shan State, the Military only confirming their arrest and detention on January 19, 2017. Both cases are typical examples of how the broadly worded Section 17/1 of the Unlawful Associations Act has been used to prosecute individuals suspected of having contact with an EAG. Burma is home to many EAGs that exist across the country and contact with these groups is often inevitable and unavoidable. It is unacceptable that that law continues to be used and that numerous individuals are currently serving sentences for similar convictions. The outdated repressive law, which carries a sentence of up to three years in prison, must immediately be repealed or significantly amended.

On July 17, human rights defender Khaing Myo Htun testified before the Sittwe Township Court for the first time since being arrested on July 25, 2016, on charges under Sections 505(b) and (c) of the Penal Code for sedition and incitement relating to statement made on April 24, 2016 by the Arakan Liberation Party (ALP) accusing the Military of using forced labor and committing other violations against civilians in Arakan State. At the time, Min Htay was the Deputy Information Officer of the ALP. Sections 505(b) and 505(c) of the Penal Code have been used for years to prosecute hundreds of political dissidents. The trials that took place in July serve as a reminder that despite the release of many political prisoners over the past year there are still individuals serving long sentences or awaiting prolonged trials. The continued detention of these individuals remains unacceptable. The Government should immediately adopt AAPP's definition of what constitutes a political prisoner, and address the issue.

Regarding land disputes, citizens continue to demand the return of confiscated land and oppose the persecution of land activists and protesters. On June 29, more than 1000 farmers affected by land

seizures under previous Governments gathered near Mandalay and called for confiscated lands to be returned, criticizing the recent lawsuits that have been filed against protesting farmers. 100 farmers from Madaya, Patheingyi, Pyin Oo Lwin, Singu, and Singaing Townships in Mandalay Division staged a sit-in protest in Mandalay City for 20 days, from July 7-27, until police forcibly broke up the protest, charging eight protest leaders and three farmers under Sections 19 and 20 of the Peaceful Assembly and Peaceful Procession Law (PAAPPL). Since the PAAPPL came into force in 2012, it has been used to imprison hundreds of peaceful activists and human rights defenders. In 2016, a draft of the revised Act containing certain amendments was publicly disseminated. CSOs and the international community heavily criticized the draft asserting that the amendments did little to prevent arbitrary arrest and detention. Since these calls were made to the Government to revise the Act and ensure that the amendments protect individuals' freedom of expression and peaceful assembly, no further progress has been made at the legislative level. AAPP would like to call attention to this fact and urge the Government to continue pursuing amendments to the Act and in doing so properly and transparently consult the relevant stakeholders.

The task of properly rendering justice to landowners across the country is immense yet essential in Burma's national reconciliation process and will require Government authorities to ensure that citizens who have been deprived for decades of their lands, which were essential to their livelihoods, are properly consulted and rendered justice based on a bottom up approach rather than the government unilaterally deciding the compensation individuals are to receive.

In July, proposed amendments to the Farmland Act were discussed in Parliament, causing dozens of CSOs to speak out in objection. On July 19, the Land in Our Hand (LIOH) network, consisting of nearly 50 civil society organizations, released a [joint statement](#) about its concerns to the recently drafted bill to amend the Act. The organization believes that the new draft provides neither proper protection for land tenure nor social security for farmers, that it contradicts another piece of legislation known as the National Land Use Policy, and that farmers have not been adequately consulted about how the Act should be amended. On July 28, Global Witness also released a [statement](#) urging the Government to establish a clear vision for land legislation reform before enacting new laws, worrying that the amendments to the Farmland Act may undermine farmers' land rights. Amending land related legislation is crucial in resolving decades-long land disputes and returning confiscated lands for many citizens of Burma, however, reforms must be accomplished with adequate consultation and input from farmers themselves.

In July, the Myanmar National Human Rights Commission (MNHRC) investigated conditions of detention centers in Mon State. It found conditions in prisons to be 'Poor' but did not find evidence of human rights violations. However, during previous investigations it has conducted from January to June, it did find evidence of human rights breaches and overcrowding in other prisons in Burma. AAPP has been long aware of human rights violations happening in prisons based on the testimonies of prisoners. Recent testimonies from former political prisoners Zaw Zaw Latt and Pwin Phyu Latt, who were released in May under presidential amnesty, highlighted the urgent and systemic problem of overcrowding in prisoners. Aside, from the issue of overcrowding in prisons in Burma. AAPP urges the MNHRC to pursue these violations and ensure that all prisoners' rights are guaranteed.

On June 29, during a panel discussion at the Human Rights Defenders Forum in Rangoon, leaders of CSOs urged the Government to sign the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Head of AAPP's Rangoon Office, Ko Aung Myo Kyaw, expressed disappointment that the current government has not yet signed the Convention, despite the majority of parliament supporting it. Former President U Thein Sein committed to signing the UNCAT and recommendations were accepted to sign it during the UN Universal Periodic Reviews in 2011 and 2015, but the agreement still remains unsigned. AAPP are widely aware that the practice has and continues to be systematically used in the country by authorities. Torture has been widely used against detainees in prisons in Burma, and especially on political prisoners during interrogations and throughout detention, as well as against members of the general population. According to AAPP research, 72% of political prisoners in Burma reported physical torture whereas 75% reported psychological torture, between 1962 and 2013. Thus, AAPP urges the Government to immediately sign and ratify the UNCAT to end the use of torture in the country, provide greater protection for all individuals, adopt preventative measures, and open themselves up to UN monitoring systems.

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