

# SEPTEMBER CHRONOLOGY 2017

## Summary of the Current Situation:

There are **220** individuals oppressed in Burma due to political activities.

**42** are currently serving prison sentences,

**51** are awaiting trial inside prison,

**127** are awaiting trial outside prison.



Picture from the Irrawaddy  
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**Assistance Association for Political Prisoners (Burma)**

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# MONTH IN REVIEW

In September, three individuals were arrested including one civilian, one land rights activist under Section 294, 392, 440, and 447 of the Penal Code, and one activist under Section 19 of the Peaceful Assembly and Peaceful Procession Act (PAPPL). This month, five people were charged including two National League for Democracy (NLD) representatives and one business man for defamation, and two women under Section 66(d) of the Telecommunications Law. In September, three individuals were sentenced, including one NLD representative under Section 66(d), one activist under Section 19 of the PAPPL, and one All Burma Students Democratic Front (ABSDF) member under Section 17/1 of the Unlawful Associations Act. This month 11 people were released, one ABSDF member, and ten individuals who had their cases unexpectedly dropped by the Military.

On September 25, a ceremony was held at the Dhamma Piya monastery in Thingangyun Township, Rangoon, in commemoration of the tenth anniversary of the Saffron Revolution. Monks at the commemorative ceremony called on the Government to implement constitutional reform, echoing one of the main goals of the Saffron Revolution - to end Military involvement in politics, a demand that remains unfulfilled. The series of protests, led by students, political activists, and Buddhist monks, that took place during the months of August, September, and October in 2007, marked a pivotal moment in Burma's struggle for democracy and the fulfillment of human rights. In late September of 2007, thousands of protesters were arrested and detained, and dozens lost their lives, when the Military Government, began violently opposing the protests. AAPP stands in solidarity with, and honors those who were affected because of the violence during the Saffron Revolution protests.

In September, one charge was filed against Su Su Kyi Swe and one sentence was delivered against San Shwe under Section 66(d) of the 2013 Telecommunications Law. The continued use of Section 66(d), which criminalizes individuals' freedom of expression, suggests that the minor amendments to the law enacted by Parliament in August are insufficient and do not safeguard individuals' human rights. Since the Bill to amend Section 66(d) was enacted, criticism has largely been deflected away from the law, despite the risks that the law poses remaining as relevant as before. Charges under the law remain criminal, which continues to restrict one's right to freedom of expression. Offenses under Section 66(d), including 'defaming', 'disturbing,' and 'causing undue influence', remain inadequately defined


and will continue to allow the law to be too liberally used, leaving all individuals vulnerable to criminal prosecution.

AAPP continues to stress that defamation, the clause most individuals have been charged for under Section 66(d), should not be considered a criminal offense because defamation is not significant enough to merit the deprivation of one's liberty. True defamation, that falls within specified criteria, should instead be considered civil misconduct, settled through civil proceedings, and not be considered a crime punishable by a criminal sentence. AAPP urges the Government to repeal Section 66(d) or significantly amend the provision by removing the law's criminal character and more precisely defining its charges. The maximum two-year criminal sentence, that Section 66(d) currently stipulates, is overly punitive allowing for the abuse of human rights and placing further unnecessary burdens on prisons, which have significant issues regarding conditions, not least overcrowding.

Since the sentence prescribed by Section 66(d) was lowered to two years imprisonment, permitting offenses under the law to become bailable, several individuals were released on bail in September, including Special Representative of Inspection Border Entrance of the Shan State Government, Min Aung, *Mizzima* Reporter, Naing Kyaw Swar Myo (A.K.A Daung Lu), and *Democratic Voice of Burma (DVB)* Reporter, Ba Oo. Despite these individuals were released on bail following the amendment, it is important to realize that although the law now states that bail may be granted to defendants, bail is not guaranteed to defendants and remains at the discretion of judges. In cases that AAPP has tracked since 2015, there has been no standard criteria for the granting of bail in cases where individuals have been charged under Section 66(d).

Bail is a fundamental function of a criminal justice system as defendants should be presumed innocent until proven guilty. Defendants should continue to be viewed in this way until conviction or the dropping of charges. Until a verdict is reached, defendants should enjoy the same liberties as other members of society. It is vital for defendants to be able to tend to their daily lives or work to support their families. It is also important to be granted bail because of the amount of time trials can take, which are notorious in Burma for often being deliberately prolonged to coerce a defendant to provide a confession or to limit a defendant's access to legal counsel. Pre-trial detentions also put a burden on the prison system and contribute to the problem of prison overcrowding.

There is no clear mention or criteria for the provision or denial of bail in Burma's Code of Criminal Procedure or Courts Manual, except for offenses which are explicitly specified as non-bailable, meaning that the provision or denial of bail is in large part left to the discretion of judges. Burma should reform



its penal legislation and adopt more clear bail conditions and restrictions that are similar to other nations'. By way of example, Section 4 of the 1976 Bail Act in the United Kingdom stipulates that defendants must be granted bail, without conditions, if none of the specified exclusions or exceptions to bail apply. Exclusions to the right to bail in the Bail Act are clearly defined and apply to cases of murder (excluding cases of attempted murder or conspiracy to murder), cases of manslaughter, serious sexual offences and Class A Drug users. Moreover, exceptions to the right to bail apply if there is 'Substantial grounds for believing that the defendant, if released on bail would: fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice'. Adopting more precise bail legislation in Burma would ensure individual's right to a fair trial, enshrined in Article 11 of Universal Declaration of Human Rights (UDHR), which includes the fundamental human right - to be presumed innocent until proven guilty during a criminal trial.

Former child soldier Aung Ko Htway [pictured above] is currently standing trial for charges of sedition under Section 505(b) of the Penal Code, regarding an interview he gave to *Radio Free Asia* (RFA) in August about his traumatic experience as a forcibly recruited child soldier in the Military.

The current charges against him infringe upon his right to freedom of expression, enshrined in Article 19 of the UDHR.

Aung Ko Htway's abduction and recruitment into the Military, his forced underage service, and the physical labor he was forced to perform amount to violations of, including but not limited to, Articles 32 (right to protection from economic exploitation), 35 (right not to be abducted or trafficked), 36 (right to protection from exploitation), and 37 (right not to be recruited or take part in hostilities under the age of 15 years old) of the United Nations Convention of the Rights of the Child (CRC), which Burma signed and ratified in 1991. The treatment he endured also violates the United Nations International Covenant on Civil and Political Rights (ICCPR), including but not limited to Articles 7 (right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, 8 (right not to be held in servitude or required to perform forced or compulsory labor), and 24 (right to protection as a minor on the part of one's family, society and the State).

He was not given a proper trial violating Article 10 of the UDHR, which stipulates that criminally convicted defendants are entitled to a fair and impartial trial as well as Article 14 of the ICCPR, which goes a step further and states that defendants have a right not "To be compelled to testify against himself or to confess guilt".

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Burma has not implemented the Burma-UN Joint Action Plan to end the recruitment of child soldiers, thus allowing children to continue to be recruited. Until a time where there are no longer reports of child soldiers in Burma, AAPP recommends that Burma is immediately placed back on the Child Soldiers Prevention Act List, and that Burma abide by the rules stipulated in the Convention on the Rights of the Child that they ratified in 1991. To foster national reconciliation, it is essential that the Government initiate a process of reparations, not further repression, to make amends to victims based on their needs, including former political prisoners, who have suffered human rights violations under previous Government regimes.

This month the Military dropped the charges against the following individuals:

- DVB Journalists Aye Naing and Pyae Phone Aung, *Irrawaddy* Journalist Thein Zaw A.K.A. Lawi Weng, as well as civilians, Mai Tun Aye, Mai San Nyunt, and Mai Aung Kham who were facing charges under Section 17/1 of the Unlawful Associations Act until the charges against them were officially withdrawn on September 15 at the Hsipaw Township Court. They were detained on June 26 when they were arrested 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), in commemoration of the International Day Against Drug Abuse and Illicit Trafficking. The three journalists and civilian Mai Tun Aye were released from prison, but civilians Mai San Nyunt and Mai Aung Kham remain incarcerated facing charges under Section 8 of the Import and Export Law for driving an illegally imported vehicle.
- On September 14, *The Voice Daily* Editor-in-Chief, Kyaw Min Swe, who was on trial for charges under Section 66(d) of the Telecommunications Law as well as Section 25(b) of the Media Law, and *The Voice Daily* satirist Kyaw Zwa Naing A.K.A. British Ko Ko Maung, who was facing trial under Section 25(b) of the Media Law, had their charges under the Media Law dropped by Lieutenant-Colonel Lin Tun. Kyaw Min Swe's remaining charges under Section 66(d) were dropped at a court hearing at the Bahan Township Court on September 29.
- Charges were also dropped against *Eleven Media* Editor-in-Chief, Wai Phyto, who was prosecuted for defamation under Section 502 of the Penal Code in relation to a news story published in April 2015 on fighting between the Military and Ethnic Armed Groups (EAGs) in the Kokang Self-Administered Zone.
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- Charges under Section 505(a) of the Penal Code were dropped against leader of the grassroots Movement for Democratic Current Forces (MDCF), Htin Kyaw, who was arrested on October 26, 2016, for his criticism of the Myanmar justice system. He was released from Insein Prison on September 4.
- On September 12, charges under Section 505(b) of the Penal Code against former members of the Taungoo Student Union - Bago Division, Aung Htet, and Wai Yan Thein A.K.A. Victor, who are members of the performance group known as “Kaytu Oh-Wai”, were dropped at the Taungoo Township Court. The pair were charged for sedition for singing songs about constitutional amendments during the Thingyan water festival in Taungoo, Bago Division, in April.

AAPP welcomes this news but stresses that the initial arrests, detentions, and charges were arbitrary and that these individuals were unjustly prosecuted for peacefully exercising their human rights. The repressive legislation used to prosecute these individuals still exists and continues to be used as a tool of repression and thus AAPP encourages the Government to repeal or amend all forms of repressive legislation in line with human rights standards, to end the perpetual cycle of imprisonment of individuals who peacefully exercise their human rights.

Repressive legislation, such as Section 17/1 of the Unlawful Associations Act, Section 66(d) of the Telecommunications Law, Section 25(b) of the Media Law and Sections 502, 505(a), and 505(b) of the Penal Code, which were used against the 12 individuals who were released this month, requires immediate attention and corrective action from lawmakers in Burma. These laws, as well as others, infringe on individuals’ basic human rights to freedom of opinion, expression, assembly and association, enshrined in Articles 19 and 20 of the UDHR as well as Section 354 of Burma’s own Constitution.

Section 17/1 of the Unlawful Associations Act, which has historically been used to persecute activists, journalists, and members of ethnic minorities, criminalizes membership, as well as association with organizations the Government deems to be ‘unlawful’, of which there are many in Burma due to the country’s ongoing civil war, infringing upon individuals’ rights to freedom of association and expression.

As previously mentioned above, though Section 66(d) of the Telecommunications Law has been recently amended, it continues to unjustly criminalize what is vaguely referred to as defamation. Section 66(d) has, and can still be used as a tool to suppress members of the media and political



dissidents. Like Section 66(d), Section 502 of the Penal Code prohibits the sale of objects containing defamatory matter. Individuals prosecuted under the law, which also does not accurately define defamation, may receive a sentence of up to two years imprisonment.

Section 25(b) of the Media Law specifies a penalty of 300,000 kyat to 1,000,000 kyat (about USD\$220 to USD\$735) for breaching Sections 9(d), (f), and (g) of the same law. Section 25(b) (referring to Section 9(g)), which has been used as an alternative to Section 66(d) of the Telecommunications Law to persecute and silence journalists as well as other members of the media, prohibits members of the media from 'Deliberately affecting the reputation of a person or organization in a negative way', restricting journalistic freedom and limiting members of media from writing critically.

Sections 505(a) and 505(b), specify a penalty of two years imprisonment for acts that may incite rebellion among public servants or unrest among the public. The vaguely worded laws, which give broad power to authorities to criminalize freedom of expression, opinion, and assembly under the guise of sedition, have commonly been used to imprison protesters and political dissidents who express views that the Government or Military oppose.

While the unexpected and sudden release of these 12 individuals was excellent news, viewed very favorably by AAPP, and was lauded by the media, Civil Society Organizations (CSOs), and human rights advocates, the event coincides with accounts of other human rights violations and should therefore be interpreted with caution. Previous regimes throughout past decades have released political prisoners as a tactic to counter mounting international pressure and criticism. For example, the release of seven prisoners of conscience in 2008, including prominent dissident and senior official in the NLD, U Win Tin, was seen by critics, such as Amnesty International as a strategy "To ease mounting international pressure over the trial of opposition leader Aung San Suu Kyi", AAPP stresses that political prisoners should never be used as bargaining chips in order to gain favorable press or goodwill. Only the release of all remaining political prisoners as defined by AAPP would demonstrate a commitment to genuine democratic political reform, and not merely the Military dropping charges, and the release of 12 high profile cases during a time of increased international attention. An essential step in this process, which previous Governments have been reluctant to undertake, would be the adoption of a definition of what constitutes a political prisoner. AAPP encourages the Government, currently staffed by numerous former political prisoners, to adopt our political prisoner definition or a similar version in consultation with AAPP and other relevant stakeholders, which would serve to prevent individuals from being


imprisoned for their political views, beliefs or actions, because true democracy in Burma may only exist when there are no longer any political prisoners.

Within the group of individuals who were recently released, members of the media are over-represented, raising alarming doubts about the state of media freedom in Burma. Due to the nature of the work of journalists and members of the media, who work to share information and make the public aware of current pertinent issues, they remain at an even higher risk to repressive legislation that exists in the country. Members of the media in Burma still do not enjoy the freedom they deserve and continue to be persecuted, predominantly by the Military, which has been enabled through various pieces of repressive legislation. The Committee to Protect Journalists (CPJ) ranks Burma as having the ninth most censored media in the world and Reporters Without Borders (RSF) ranked Burma 131st in the 2017 World Press Freedom Index. Further legislation to protect the rights of members of the media must be enacted. Moreover, constitutional and domestic legislation that already exists must be adhered to, such as Section 354, of the Constitution, which states that “Every citizen is afforded the right to express and publish their convictions and opinions freely”, as well as Sections 4(a), (b), and (c) of the Media Law, which state that media workers “Shall have the right to criticize legislative, executive and judicial procedures, to investigate, publish and broadcast information and opinions and to reveal issues relating to the rights and privileges lost by citizens.”

In September, during a five-day inspection trip of State-run prison facilities in Mandalay Region, the Myanmar National Human Rights Commission (MNHRC) became aware of serious human rights violations occurring at Obo Prison, Mandalay. Testimonies from 32 prisoners during the inspection revealed widespread breaches of prison laws, the occurrence of violence between inmates, beatings of inmates by prison staff, a lack of medical care at the facility, and severe overcrowding. Obo Prison, which has an actual capacity of 3,000 inmates was found to be holding 7,922 inmates, running at a capacity of a staggering 264%. According to MNHRC Commissioner, Yu Lwin Aung, the MNHRC submitted its recommendations to the Ministry of Home Affairs on September 20, which included solutions to resolve overcrowding, which remains the most pressing issue in prisons and serious threat to prisoners in Burma.

The latest findings in the MNHRC investigation of prison facilities confirm that prison conditions remain inadequate, to the point where inmates’ human rights are being violated, highlighting the dire need for prison reform in Burma. Overcrowding remains an endemic problem in Burma’s prisons, which must be remedied immediately. It is unacceptable that Obo Prison is operating at more than twice its capacity (264%), yet overcrowding is an all too common phenomenon in Burma. Overcrowding in prisons poses





the biggest threat to the safety and wellbeing of prisoners, of which there are currently more than 70,000 serving sentences in prison and in labor camps, as it is the cause of numerous other problems, including but not limited to, violence between prisoners, health, and lack of access to medical care.

Releasing prisoners who are being unnecessarily detained during pre-trial detention is one of the most immediate ways to alleviate the burden on the prison system. Based on a review of legislation, all those found to be serving overly punitive criminal sentences under repressive sections of law that restrict basic human rights, including all remaining political prisoners and prisoners of conscience, should also be immediately released.

Nearly half of all sentences being served in Burma are for drug-related charges, representing the biggest source of burden on the prison system. Drug laws should be reviewed and overly punitive sentences should be amended to make them more fair and reasonable. Amendments to drug laws should be enacted retroactively so that those serving overly punitive sentences may be released or have their sentences reduced, thereby alleviating the burden on the prison system. The Prisons Department continues to strive to tackle the issue of overcrowding by building more prisons as 1000+ inmates from Myitkyina Prison in Kachin State were moved to the newly completed Mohnyin Prison in Mohnyin Township, Kachin State. Though prison facilities need to be structurally updated to meet human rights requirements, building more prisons is not a sustainable solution to tackling prison condition issues. Reform of the prison system, judicial system, and the amendment of repressive legislation is the only sustainable solution to ending human rights abuses for individuals who find themselves in judicial and prison proceedings.

Further, a long term sustainable solution to alleviate the burden on the prison system is to establish programs that prevent prisoners who are released from reoffending. Without access to educational and vocational training opportunities recidivism rates are high. The focus of the prison system should be on rehabilitation so prisoners may successfully reintegrate back into society and not on punishment of past actions.

To resolve other problems of human rights violations that mar the prison system in Burma, legislation establishing more rigorous prison standards must be enacted. The Union Parliament Draft Prisons Law (Draft Law), designed to replace the 1894 Prisons Act, 1900 Prisoners Act, and The Identification of the Prisoners Act 1920, was tabled by Parliament in 2016, following widespread criticism by CSOs, as the Draft law fell short of international law. AAPP urges the Government to accept changes and additions made by various human rights organisations, and pass the amended Draft Law, which would bring it in

line with international standards, by incorporating the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs).

In September, farmers and villagers continued to protest over unresolved land confiscation issues, risking prosecution under repressive legislation that still exists, which has been used in the past to charge land confiscation protesters and individuals seeking proper compensation for their seized lands. On September 3, approximately 80 farmers from the villages of Thabyaykone, Natmar, and Kuntaw in Tatkon Township, Naypyidaw, protested over land that was confiscated from them by the Military for the construction of a defence industrial zone and other projects. Some farmers who have continued tending their confiscated lands, out of necessity to their livelihood, have been criminally prosecuted. There was a tense standoff between #28 Regiment Security Police Force and villagers from Ohn Tone Pin Village in Yinmabin Township, Sagaing Division, when the Security Police Regiment was clearing 30 acres of land with an excavator to install fencing. Farmers were not consulted and were not offered compensation for the 30 acres of land that was cleared, which farmers were using to cultivate crops.

On September 27, the International Federation for Human Rights (FIDH) released a report on land confiscation that occurred in Ngazun Township, Mandalay Division, for the development of the Myotha Industrial Park, operated by Mandalay Myotha Industrial Development Public Co., Ltd., which began in January 2013. The report, based on research conducted from 2014 to 2017, highlighted that 1,000 families from 14 villages had their lands taken away for the development of the park, which spans 10,353 acres. According to the report, local farmers, and villagers were not adequately consulted about the project and the majority were compensated well below market value for their lands. It also noted that “At least 55 local farmers and villagers were arrested, detained, or faced criminal charges for attempting to oppose land confiscation and land clearance”. This included ten farmers from Than Bo Village who were arrested on September 23, 2017, and charged under Sections 143 (unlawful assembly), 147 (rioting), 427 (mischief causing damage), 447 (criminal trespass), and 505(b) (disturbing public tranquility) of the Penal Code; as well as 23 farmers from Let Pa Kyin, Pyawbwe, Than Bo, and Ywar Zite Villages who were charged in October 2014 under the same sections of the Penal Code.

Though the Government has made efforts in recent months to return land that was confiscated under previous regimes, land confiscation continues to occur under the current Government, as the case in Yinmabin Township, Sagaing Division, this month demonstrates. While the Government plans to return more confiscated land back to original landowners, AAPP continues to stress that the process must be



carried out in consultation with these original landowners, who must be able to determine their own terms of compensation to best suit their 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.