



Assistance Association for Political Prisoners (Burma)

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The use of section 18 to continue human rights abuses in Burma.

Section 18 of the Peaceful Assembly and Peaceful Procession Law is being frequently utilized to arrest and imprison political activists for undertaking human rights activism in Burma. AAPP (B) wishes to highlight the ongoing human rights abuses section 18 permits and to make the international community aware of the dangers this poses to the political freedom in Burma.

AAPP (B) is greatly concerned that the wide ranging use of section 18 allows political activists to be imprisoned for terms far out of proportion with their alleged offence. This paper will highlight the way in which other countries permit and regulate public freedoms and how they manage public assemblies. It will show the huge divide between the way the government of Burma controls these situations and the way in which the majority of democratic countries do so. The use of section 18 as a tool to punish and restrict activists highlights the lack of rule of law in Burma, reiterating the urgent need for judicial reform.

Since section 18 was adopted on 5th July 2012, at least 29 people have been sentenced under it. Of those 29, 15 remain incarcerated. Section 18 carries with it a sentence of 1 year imprisonment and fines ranging between 10,000 and 30,000 kyat, a punishment greatly disproportionate to the severity of the alleged offence. The law allows the continued harassment and restriction of human rights activists and is contrary to both international standards on freedom of expression and the standards laid out in Burma's own Constitution. The lack of consistency when applying this law demonstrates how the government are able to use the legal system to their own ends. It can be used to attack protesters and discriminate against political activists, while allowing others to hold assemblies freely.

It is not only the arrest itself that is detrimental to the lives of these activists. The government utilizes this law to create a stranglehold over the movement and activities of people charged with section 18. Alleged offenders are often forced to travel long distances to attend court hearings. The court hearings themselves can be numerous before the activists are charged, causing them to undertake several long journeys before they are sentenced.

This ability to control the movements and activities of human rights activists allows lengthy and unjust control over their daily lives. Section 18 permits the government a legitimate form of harassment to be carried out against whichever political activists they wish.

A recurring theme of this new trend of arrests is that several of the activists have applied for permission to protest prior to organizing an event. Section 18 is being commonly utilized to prevent activists from exercising their right to protest peacefully. This right is not only stated in Burma's Constitution but also is a mainstay of minimum international standards on human rights. This abuse of power by those making and enforcing the law does little to encourage the idea that Burma is close to becoming a free democratic society.

Minimum International Standards

Most countries have adopted policies and conventions that are designed to protect the protesters' right to demonstrate peacefully. Protesters do not need to ask for permission to assemble, they are making authorities aware of their intentions to demonstrate. The use of section 18 in Burma is used to deny permission for a perfectly reasonable peaceful protest and then arrest people who go ahead without permission.

Article 11 of the European Convention on Human Rights determines the responsibility of the state to facilitate peaceful protest.

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.¹

Articles 19 and 20 of The Universal Declaration of Human Rights 1948 confirm the rights to peaceful assembly.

Articles 19 states: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20 also supports this right: (1) Everyone has the right to freedom of peaceful assembly and association and (2) No one may be compelled to belong to an association.²

The International Covenant on Civil and Political Rights (ICCPR) Article 21 states that "the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."³ Despite the fact Burma is not bound by the Covenant as they are not on the 167 states that have ratified it, the importance of the right to peaceful assembly in free democratic society is clearly stated within it.

¹Equality and Human Rights Commission, 2012. *Article 11: Freedom of Assembly and Association* <http://www.equalityhumanrights.com/uploaded_files/humanrights/hrr_article_11.pdf> [Accessed 12 September 2013]

²United Nations General Assembly 1948. *Universal Declaration of Human Rights* <<http://www.un.org/en/documents/udhr/>> [Accessed 15 September 2013]

³OSCE Office for Democratic Institutions and Human Rights, 2007. *Guidelines on Freedom of Peaceful Assembly* <<http://www.osce.org/odihr/24523>> [Accessed 16 September 2013]

All of these international declarations and treaties state this is fundamental to democratic societies and exist to protect the right of the protester. Despite the outward appearances of the Peaceful Protest Law, section 18 exists to punish the protester for attempting to exercise their basic human rights.

If the government of Burma truly wishes themselves to become free democratic society, they must make significant changes to section 18 and to the way it is applied. In truly democratic states, the law should not be used to continue harassment and persecution of those who oppose or challenge the ruling power. By utilizing this law to arrest and imprison activists and denying them their basic freedoms of speech and thought, the government is clearly demonstrating how far they have to go before their people are living freely in a democratic country.

Victim's stories

The following highlights several prominent cases of section 18 imprisoning human rights activists.

U Myint Aung was sentenced on 6th June 2012 for organizing a peaceful protest against the controversial Letpadaung Copper Mine. Despite the peaceful nature of the protest he has still been sentenced with one year and hard labor sentence. Two of his fellow activists were also fined 30,000 kyat for their participation.

Daw Naw Ohn Hla was denied permission to hold a public protest against the Letpadaung Copper Mine Project in August 2013. She was denied permission and arrested under both section 18 and section 505 (b) of the penal code. She was violently seized and her clothes torn when police surround the group of women protesters. She has since been sentenced to two years in prison under 505 (b) of the Penal Code and is awaiting trial for section 18.

Ko Moe Thwe was charged with section 18 as he marched on the International Peace Day. He was indicted again under section 18 with Naw Ohn Hla on 27th November 2012. He was arrested on 2nd December 2012, with Ko Aung Soe and released on bail on 11th December 2012. Only to be indicted again on Dec 28, 2012, with De Nyein Lin. He was indicted on 3 counts under section 18.

Ko Htin Kyaw, a leader of Myanmar Development Committee (MDC), staged a solo protest on the 15th December 2012, marching along Sulay Pagoda Road from the Theingyi market to the City Hall, calling for the authorities to resolve issues faced by monks after the crackdown on the Letpadaung protest camps. Consequently, he was indicted under Section 18 in the morning of 17th December, 2012. He and his three fellow activists are currently incarcerated in Insein Prison and he has now been indicted with further charges of section 18 and section 505 (b).

Members of Generation Wave, Generation Youth, Tin Htut Paing, Hlaing Min Oo, Sithu, Kyaw Thu, Nilar Han, Kyaw Nay Lin were detained for protesting without a permit and can be charged under section 18 in each of the seven townships they passed through during their protest. They were protesting against the same provision they were charged under. Also on the same day, two other protesters were charged under the section 18 for leading a march by hundreds to commemorate the anniversary of 1988 student-led prodemocracy protest movement.

On 4th July 2013, U Tun Tun Oo and U Than Win were indicted under section 18 for leading a protest with over 200 participants. The request to carry out the assembly was submitted on 1st June 2013. They were notified of the denial subsequent to the protest being held.

These are but a few examples of activists suffering for attempting to carry out legitimate peaceful protests. There are currently 128 people awaiting trial for charges under section 18 as of September 2013. This increasing use of the legal system to develop and implement oppressive laws signifies the very real need for judicial reform and the establishment of the rule of law in Burma.

“That was rule of law in Burma.”The law only worked for those in power. It was not there to protect the people or protect our democratic rights. Unless there is rule of law, there can be no guarantee of our human rights.”

Aung San Suu Kyi, September 2012.⁴

A major obstacle in implementing minimum standards of human rights is the current perception by the State that the rule of law functions to serve the executive and therefore, its role is not to protect people’s rights, but to enforce the current State policy. Without a fair and independent judicial system to serve and protect the right of the citizens, it will be difficult to establish sustainable change in Burma. Therefore, establishing rule of law, beginning with judicial reform should be high priority for the country. The rule of law must be set in place to protect the democratic rights of the people. As long as unjust laws, such as section 18, continue to permit the government to control the movement and the activities of its people, their citizens will be ruled unjustly. Rule of law should protect the right of the citizens. The rule of law must be established in order to free its citizens from fear of persecution. By separating completely the judiciary from the state, the establishment of the rule of law would be less inhibited by government influence or political bias. Ratification of the aforementioned international treaties and standards would also encourage the idea that Burma can establish a truly just legal system. Even when the old laws were abolished, the laws proposed to replace them are in many ways just as oppressive. With a truly independent judiciary, laws would have more chance of being written with the interests of the people in mind and not those of the government.

Despite the outward positive appearance of a law that allows peaceful protests, the provisions within the law that restrict and punish activists must be removed or amended. The law in its current form allows the continued harassment of human rights activists and is a direct example of how the ongoing reforms in Burma are not doing enough to protect the people and their rights. Changes to section 18 should come as part of the larger necessity of sweeping legal reforms. Installing an independent judiciary and establishing a fair and just rule of law are key to continuing the process of democratization.

⁴Susan Gonzalez, 2012, Yale News, Yale<<http://news.yale.edu/2012/09/27/establishing-rule-law-first-step-toward-democratic-burma-says-nobel-laureate>>[accessed 11 September 2013]