

OCTOBER CHRONOLOGY 2017

Summary of the Current Situation:

There are **221** individuals oppressed in Burma due to political activities.

45 are currently serving prison sentences,

49 are awaiting trial inside prison,

127 are awaiting trial outside prison.



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Assistance Association for Political Prisoners (Burma)
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MONTH IN REVIEW

In October, five people were arrested. Four people were charged, two individuals under Section 8 of the Import and Export Law, one individuals under Sections 17/1 and 17/2 of the Unlawful Associations Act, and one person under Section 505(b) of the Penal Code. Four individuals were sentenced, one Kachin Baptist Convention member was charged under Sections 17/1 of the Unlawful Associations Act, Section 8 of the important and Export Law, and Section 500 of the Penal Code. Another Kachin Baptist Convention member was charged under Sections 17/1 of the Unlawful Associations Act, Section 8 of the important and Export Law. One activist was sentenced under Section 505(b) and (c) of the Penal Code, and one minor was sentenced under section 17/1. Five political prisoners are reported to be in bad health this month.

In October, repressive and outdated legislation that the Government has yet to address continued to be used against numerous individuals, criminalizing people's basic human rights and freedoms in ways that defy international, and contradict domestic laws. Despite steady pleas from domestic and international civil society organizations (CSOs), including AAPP, the Government has yet to abolish or amend legislation that makes all of its citizens vulnerable to persecution. Since the National League for Democracy (NLD) took power in 2016, progress in ensuring people's rights to freedom of speech, opinion, expression, and association as well as media freedom remain oppressed, evident in this month's events.

On October 27, the Lashio District Court in Shan State sentenced Kachin Baptist Convention (KBC) Pastor, Naung Latt, to four years and three months imprisonment with hard labor under Sections 17/1 of the Unlawful Associations Act (2 years), Section 500 of the Penal Code (2 Years), and Section 8 of the Export and Import Act (3 months). KBC youth leader, Gam Seng, was sentenced to two years and three months imprisonment with hard labor under Sections 17/1 of the Unlawful Associations Act (2 years) and Section 8 the Export and Import Act (3 months).

Naung Latt and Gam Seng were arbitrarily taken into custody on December 24, 2016, by Battalion #99 Major Kyaw Myo Min Latt Military, and were detained incommunicado at Kalaya 123 Military Base, Nampaka Township, northern Shan State for almost a month until January 19, when the Military confirmed their arrest and detention, handing the pair over to police along with signed confessions of their support for the Kachin Independence Army (KIA). While in detention, Naung Latt and Gam Seng were repeatedly interrogated and their defence lawyers maintain that their confessions were signed under duress. The pair were arbitrarily arrested and detained shortly after meeting and speaking with reporters from several news sources about the alleged Military occupation, bombing, and subsequent rebuilding of the Mong Ko church, Muse Township in late 2016, which resulted in photos of the destruction being published in the media.

The two pastors were charged under Section 17/1 of the Unlawful Associations Act with providing information, recruiting troops, and transporting fuel to the KIA, an Ethnic Armed Group (EAG) that is currently fighting the Military after a ceasefire agreement broke down in 2011.

Though violent clashes between the Northern Alliance, and the Military did occur in Mong Ko Township, in late 2016, there is no credible evidence to suggest that they had any affiliation with the KIA. Further, as the confessions that they signed during interrogation were done so under duress they are inadmissible in court. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that anyone facing a criminal charge may “Not to be compelled to testify against himself or to confess guilt”. Burmese domestic law also provides similar protection. According to Section 162(1) of the Code of Criminal Procedure and Section 28 of the Evidence Act, though confessions in an “Open court” before a judge are admissible, no statement or record made by any person to authorities concerning the offense under investigation may be used as evidence during a trial. Moreover, Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which AAPP strongly urges the Government to immediately sign and ratify to prohibit torture, specifies that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

The charges under Section 17/1 of the Unlawful Association Act against the Naung Latt and Gam Seng are a clear attempt to punish them for speaking out and helping journalists seek the truth behind alleged violations of human rights and war crimes committed in Kachin State. Throughout the eras of successive Military regimes, countless individuals who stood in opposition and demanded democratic change and the fulfillment of human rights by pointing out rights abuses were systematically silenced. Though fewer political prisoners exist today, the total number sits at well over 7000. Despite supposed democratic reforms, this case is a bleak reminder that human rights activists, who seek to shed light on the Military’s monopoly on power and the human rights violations it commits with impunity, are still extremely vulnerable to persecution.

The deliberate persecution of Naung Latt and Gam Seng goes against a number of international and domestic laws. Trumped up charges against them, designed to punish them for revealing information to media, violate their rights to freedom of expression and opinion, enshrined in Articles 19 and 20 of the Universal Declaration of Human Rights and Section 354 of Burma’s own Constitution, which affords every citizen the liberty to exercise their right to express convictions and opinions freely. Naung Latt and Gam Seng did nothing contrary to the laws which safeguard the security of the country that would merit their deprivation of liberty. Their arbitrary arrest and incommunicado detention, which lasted 26 days, is a violation of their right to a fair trial, enshrined in

Articles 9 and 10 of the Universal Declaration of Human Rights and unlawful according to domestic laws as well that were not respected. According to Sections 60 and 61 of the Code of Criminal Procedure, individuals arrested without an arrest warrant must be taken to an officer in charge of a police station without unnecessary delay and all detainees must be remanded before a magistrate within 24 hours. Section 376 of the 2008 Constitution reinforces this rule and also states that “No person shall, except in matters on precautionary measures taken for the security of the Union[...]be held in custody for more than 24 hours without the remand of a competent magistrate”.

Violence against civilian non-combatants and the destruction of civilian objects, defined as war crimes in Article 8 of the Rome Statute, is illegal under International Humanitarian Law (IHL). Inquiries rightfully should be made in such cases to hold actors accountable. The media, which plays an essential role in disseminating information to the national and international community, requires unfettered access to all members of the public, including witnesses who must be protected from retributive persecution, like we see in the case of Naung Latt and Gam Seng.

Naung Latt was additionally charged for defamation under Section 500 of the Penal Code by the Military regarding an interview he gave to *Voice of America* on December 1, 2016, about alleged Military airstrikes in civilian areas in Shan State. Under the guise of defamation, which remains a vaguely worded criminal offense in the Penal Code, Section 500 was clearly used against him as another repressive instrument to punish him for speaking out. It is also just as evident that the charges under Section 8 of the Export and Import Act against both Naung Latt and Gam Seng for operating an unlicensed motorcycle were a way to inflate their sentences.

Amid widespread opposition to the sentencing from CSOs including Human Rights Watch, Fortify Rights, Christian Solidarity Worldwide, and others, and concerns raised by the US Embassy in a statement issued on October 27, AAPP urges the Government to secure the unconditional and immediate release of Naung Latt and Gam Seng.

On October 15, Arakanese activist and Chairman of the Thingaha Kann Latt Rakhita group from Mrauk-U Township, Arakan State, Ann Thar Gyi (A.K.A. Than Shwe), was arrested under Sections 17/1 and 17/2 of the Unlawful Associations Act at the Mya Tansaung Monastery by Mrauk-U Myoma Police. On October 16, he was formally charged during a remand court hearing at the Mrauk-U Township Court and was taken to Sittwe Prison the same day where he remains remanded in custody awaiting trial. An arrest warrant was issued against him in May for delivering a speech commemorating the founding of the Arakan Army (AA) on April 10. Although authorities banned the event, Ann Thar Gyi held lectures nonetheless. A case was filed against him by Light Infantry Battalion #540 under the Unlawful Associations Act in May. This case follows the sentencing in August

of Abbot Nanda Thara and Khine Ni Min, who were arrested under Section 17/1 of the Unlawful Associations Act in April for organizing a football match marking the 8th anniversary of the founding of the AA.

Civilians living in ethnic areas are often doubly punished as they live in constant fear of renewed violence between the Military and EAGs, as well as fear that they may be persecuted for exposing human rights abuses, or for unavoidably associating with EAGs, under legislation like the Unlawful Associations Act. The Burmese population, the NLD, and international community must remain informed about the situation to hold actors accountable to their actions. If the Government wishes to foster further democratic change, basic human rights to freedom of expression, opinion, assembly, and association must be fulfilled and information must be allowed to flow freely out of ethnic areas.

A third case of Section 17/1 of the Unlawful Associations Act being used to sentence an individual with alleged affiliation to an EAG surfaced at the end of the month. On October 30, 14-year-old student from Htan Ma Sai Village in Nant Hsam Township, Northern Shan State, Maing Cho Min Htwe (A.K.A Aik Yann), was sentenced by Judge, Zaw Zaw Oo, to two years detention at the Mandalay Youth Training Center and a 1,000 kyat fine (about USD\$0.73) under Section 17/1 of the Unlawful Associations Act at the Nant Hsam Township Court. On the same day that he was formally charged by LIB #77 Major Myint Maung Maung Soe, the Judge, Zaw Zaw Oo, delivered Maing Cho Min Htwe's sentence without examining prosecution and defense witnesses. He ruled that Maing Cho Min Htwe had been recruited by the Ta'ang National Liberation Army and trained to become a soldier, which Maing Cho Min Htwe allegedly confessed to at the court hearing. The only civilian allowed to attend the court hearing was Maing Cho Min Htwe's mother. On October 25, a filed a lawsuit against Maing Cho Min Htwe under Section 17/1 of the Unlawful Associations Act at the Nant Hsam Police Station. Maing Cho Min Htwe was originally arrested by a group of soldiers led by Light Infantry Battalion (LIB) #105 Captain Thura Tun from, on October 5 at around 5pm at a Military checkpoint while returning to Nant Hsam City from his village on suspicion of affiliation with the Ta'ang National Liberation Army (TNLA) based on a picture found on his mobile phone showing him wearing a TNLA uniform. He was detained at the Nant Hsam Military Base for 20 days.

Maing Cho Min Htwe was arbitrarily detained incommunicado, deprived of a fair trial and sentenced to detention as a forcibly recruited child soldier by an EAG. Burma's courts must recognize that Maing Cho Min Htwe has a right to be protected from recruitment as a child soldier under IHL. Article 38 of the Convention on the Rights of the Child, which Burma ratified in 1991, prohibits recruitment under the age of 15 while Burma's domestic Child Law more strictly prohibits recruitment under the age of 18. Burma's courts must also realize that Maing Cho

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“He is the ultimate victim of Burma’s ongoing civil war. All charges should be immediately and unconditionally dropped.”

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Min Htwe is already a victim of human rights abuses as a forcibly recruited child soldier and that his unlawful detention and prosecution, according to international and domestic legislation, compound the level of injustice. Caught up in Burma’s ongoing civil war as a forcibly recruited child soldier on one side and sentenced to detention on another for what already amounts to war crimes, he is the ultimate victim of Burma’s ongoing civil war. All charges should be immediately and unconditionally dropped against Maing Cho Min Htwe and he should be returned to his family and community.

The 1908 Unlawful Associations Act, enacted during colonial times to repress opposition to colonial rule, has commonly been used to arbitrarily arrest, detain, and imprison journalists, activists, and civilians working or living in areas controlled by EAGs, which are embroiled in Burma’s civil war.

On October 23, Michael Kyaw Myint was arrested and detained by police on charges of sedition under Section 505(b) of the Penal Code while he was preparing to leave for a self-organized protest, for which he had obtained permission on October 21 from authorities. It is believed that the complaint filed against Michael Kyaw Myint, by Yangon Regional Government Secretary, U Moe Hein, was in relation to his announcement on Facebook on October 23 about his intention to hold the protest. Following a remand court hearing on October 24 at the Tamwe Township court he was taken to Insein Prison where, at the time of writing, he remains awaiting trial. Michael Kyaw Myint’s arbitrary arrest, occurred prior to any ‘illegal’ activity and the charges being brought against him are an attempt to silence him from speaking out which violates his rights to freedom of speech, opinion, and expression. Public criticism is an integral part of a democratic system where government representatives are elected by the people and held accountable by their constituents. Government at all levels must be tolerant of criticism and respect the values of an open and democratic society that include respecting individual’s including, but not limited to, freedom of speech, opinion, and expression.

Failing to act to address repressive legislation continues to allow critics and activists to be punished with criminal imprisonment and has a larger impact of suppressing the voices of the civilian population, contrary to the progress the civilian-led Government allegedly sought to achieve. AAPP urges the Government to repeal or significantly amend Section 505(b) of the Penal Code, which criminalizes defamation. In its current state, the law’s lack of specific criteria to define what defamation precisely is enables it to be often used as a tool for repression. As in other democratic States, defamation should be settled through civil proceedings, since true defamation that falls within specified criteria is not a significant enough act to merit the deprivation of one’s liberty.

Former child soldier Aung Ko Htway, who 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 experience as a forcibly recruited child soldier in the Military, who spent ten years in prison as a convicted deserter, made three court appearances in October at the Dagon Seikan Township Court in Rangoon. The main judge responsible for the case was absent from the court on all three occasions and were conducted by an assistant judge who did not have the power to make a ruling on Aung Ko Htway's bail request. The failure of the court to provide Aung Ko Htway with a fair trial, that must include necessary personnel to produce rulings on crucial aspects of justice, such as the provision of bail, paints a worrying picture about the state of Burma's judicial system.

Coincidentally in October, legal support group Justice Base published a report entitled "Monitoring in Myanmar: An Analysis of Myanmar's Compliance with Fair Trial Rights" on Burma's judicial system, exploring Burma's compliance with international fair trials rights. The research, based on courtroom observations in Rangoon's District and Township Courts, carried out from June 12, 2013 to April 30, 2014, and January, 11, 2015 to December, 28 2016, revealed numerous violations of human rights being committed with regards to defendants' trials. Specifically, the report evaluated whether defendants in 155 observed cases were afforded the right to a defence, the right to adequate time and facilities to prepare a defence, the right to a hearing by a competent, independent and impartial tribunal, the right to be tried without undue delay, and the right to a public hearing. Breaches of all five rights were found to be consistent throughout observed cases. Pertinent to Aung Ko Htway's case, Justice Base found that scheduled court hearings were frequently adjourned, most commonly because witnesses, especially police officers, were absent from hearings, resulting in trials being prolonged. Observers in the study reported a judge speaking with third parties unassociated with the hearing in one case, judges talking on their phones in five cases, judges appearing inattentive in eight cases, a judge sleeping during a hearing in one case, judges not being present during the entire hearing in at least ten observations, a judge holding three separate hearings simultaneously in one case, and judges not being impartial in 35 cases.

Based on the cases AAPP has been tracking, the recent Justice Base report confirms the accounts collected from current and former political prisoners about the inadequacies and flaws of Burma's judicial system to provide defendants with fair trials, especially in the cases of political prisoners. Since the Judicial Department was abolished under the 1974 Constitution, Burma has not had an independent judiciary. AAPP urges the Government to establish a separation of powers between the executive and judicial branches of Government to further Burma's democratic transition, which would help ensure defendant's rights to a fair trial, especially in the cases of political prisoners whose sentencing verdicts have historically been heavily influenced by the executive branch of Government.

In October, AAPP observed a slight increase in mobilization from farmers and villagers across the country who have yet to be compensated for lands that were confiscated from them under previous Government regimes. Compared to September, more land protests took place where farmers and villagers demanded their lands be returned or that they alternatively receive monetary compensation or substitute lands.

- Local villagers and farmers whose lands were confiscated for the development of the Letpadaung Copper Mine, co-operated by Wanbao Mining Limited and Union of Myanmar Economic Holdings Limited, held at least three protests demanding the redistribution of 1,900 acres of substitute farmland, as per the Letpadaung Taung Investigation Commission Report published in March 2013.
- On October 8, 26 farmers from Kalay Township, Sagaing Division, submitted a letter to the Central Review Committee on the Confiscated Farmlands and Other Lands (CRCCF) asking to receive compensation for their confiscated lands. In 1990, 73.45 acres of land in Kalay Township were confiscated from the farmers to build Kalay University, for which they did not receive any compensation.
- On October 11, farmers from Kyaukpyar Village, Kyaukse Township, Mandalay Division, held a press conference at the Mandalay Media Center demanding fair compensation for more than 400 acres of land, belonging to 93 farmers, that had been confiscated in 2004 by the Government for the development of three cement plants. Farmers attested that those who were not satisfied with the monetary compensation offers were threatened at the Kyaukse General Administration Office to accept the compensation offers or face legal prosecution. 12 out of 93 farmers turned down the companies' offers for compensation, citing that they were well below the market price for land.
- On October 18, approximately 200 demonstrators in Tenasserim Division, who were planning to protest against three ministers of the Tenasserim Regional Government were dispersed by police who deemed the demonstrators' placards and slogans contrary to the Peaceful Assembly and Peaceful Procession Law (PAPPL). Protesters sought to denounce failure of the ministers to secure compensation for seven farmers who had not yet been compensated for lands that were confiscated as part of the Dawei Urban Development Project, for which a total of 350 acres were confiscated in 1990. According to the protest leader, Ma Yi Yi Htwe, nearly 20 farmers have been sued during the land confiscation disputes that remain ongoing.
- On October 23, over 300 farmers from over 20 villages in Pyin Oo Lwin Township, Mandalay Division, held a protest demanding the immediate release of incarcerated farmers and the return of confiscated land. A farmer from Saytalone Village, Pyin Oo Lwin Township, Myint Naing, stated to reporters that approximately 100 farmers from his village were facing legal charges, in some cases because of protests and because some farmers have tried to use vacant land the Government confiscated but never utilized.

The events this month regarding land protests clearly demonstrate that issues of compensation for confiscated land remain unresolved on an unacceptable scale, as hundreds of farmers and villagers who have been displaced

and have experienced unjust economic hardship as a result of being stripped of their lands continue to seek justice. The NLD-led Government must immediately take action to rectify issues of compensation for confiscated lands and secure the release of all individuals who have been incarcerated in connection with protests over confiscated lands and fulfill its 2015 campaign promise to compensate farmers for “Illegally lost” land.

Though less land confiscation now occurs, compared to under previous government regimes, land confiscation continues to occur under the current Government. To ensure that this practice is finally, fully abolished, the Government should amend Section 37 of the 2008 Constitution, which states that the Government “Is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union”.

Accounts of prisoner abuse and inadequate prison conditions surfaced again this month, illustrating the grave need for prison reform in Burma to prevent human rights abuses from happening in prisons. Inmates desperately need to be protected from rights abuses that occur in Burma’s prisons, which are often hidden from the public eye, by stricter and more clear rules on the treatment of prisoners in line with international legislation and guidelines. Myanmar National Human Rights Commission (MNHRC) Commissioner, Yu Lwin Aung, stated that overcrowding was one of the main human rights problems besetting Burma’s prisons, along with the lack of basic services provided to prisoners. According to the Commission’s assessment, most prisons in Burma are overcrowded. The MNHRC revealed that Myingyan Prison, Mandalay Division, which has actual capacity of 1000 inmates, was holding over 2800 inmates, nearly three times its capacity. AAPP commends the efforts of the MNHRC to reveal facts about human rights occurring in Burma’s prisons. Their most recent declaration confirms AAPP research and documentation of prison conditions in Burma and solidifies AAPP’s position that the urgent problem affecting prisoners that requires immediate attention is overcrowding

When drafting new legislation to carry out prison reform, lawmakers should look to the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs) as a guide for reform and should further pursue signing international conventions, such as the International Covenant on Civil and Political Rights (ICCPR), which would guide the formation of laws that would help secure the rights of all people in the criminal justice system.

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.