

NOVEMBER CHRONOLOGY 2017

Summary of the Current Situation:

There are **228** individuals oppressed in Burma due to political activities.

46 are currently serving prison sentences,

49 are awaiting trial inside prison,

133 are awaiting trial outside prison.



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Accessed November 2017



Assistance Association for Political Prisoners (Burma)

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MONTH IN REVIEW

In November, three people were arrested, one individual under Section 17/1 of the Unlawful Association Act, one land activist under charges including Sections 279(a), 427, 447, and 494 of the Penal Code, and one individual under charges yet to be determined. This month, three individuals were charged, two individuals under the Aircraft Act, and one individuals under the Media Law. In November, two individuals were charged under the Aircraft Act, and two individuals were released. In November, AAPP observed tighter restrictions imposed on civil and political rights and recorded no progress regarding the number of political prisoners that remain incarcerated in Burma. Repressive legislation continues to be arbitrarily used to prosecute individuals for exercising rights that they are entitled to, impeding the rule of law.

On November 7, Rangoon Region Security and Border Affairs Minister, Colonel Aung Soe Moe, issued a directive banning peaceful assembly and protests in 11 townships in Rangoon, including Kyauktada, Pabedan, Latha, Lanmadaw, Botahtaung, Bahan, Sanchaung, Dagon, Ahlone, Mingalar Taung Nyunt, and Pazundaung. The directive, which instructed police to refuse permission to individuals applying to hold peaceful assemblies and protests, incidentally in townships where most Government offices are located, cited the possibility of “Public annoyance and anxiety” and “disturbance of traffic” as reasons for the indefinite ban. Individuals applying to hold protests in the 11 townships will be instructed by police to use the Hit Taing field in Tamwe Township.

This groundless blanket ban on protests, is a regression for civil and political rights to freedom of assembly, association, and expression in the largest city in the Burma. The indefinite ban contradicts the 2012 Peaceful

Assembly and Peaceful Procession Act, which was enacted so that citizens would be able to “Exercise their basic right to peaceful assembly and peaceful procession and to provide them with legal protection.” Though the Act is still viewed by many CSOs, including AAAP, as being flawed with protests only allowed after being granted permission, it does afford citizens the right to participate in peaceful assemblies and processions. The law contains no provisions for local authorities to ban protests completely. The blanket ban of protesting in these select townships therefore undermines the Act, introduced as a repressive tool, portraying a culture where domestic law, even repressive domestic law, can be ignored when it fits with the agenda of those in power. In the following order, the civilian-led NLD Government should immediately and unconditionally revoke this ban order to uphold the citizens’ rights, which

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they vowed to protect when they won the 2015 election, and then take the necessary steps to amend the Act to ensure it upholds human rights, not represses them.

On November 8, the Lower House approved a Bill to establish a body to monitor public misuse of the internet. The motion was originally brought forward in the Lower House in October by Member of Parliament (MP) from Gangaw Township, Magwe Region, Daw Min Hlaing. Though the apparent mandate of the monitoring body created by the Bill is to stem the trend of misinformation and hate speech, which are legitimate issues of concern in Burma, the mandate of this new body needs to be clearly established and the terms of the issues that the entity seeks to tackle must be clearly defined. Before increasing Government internet surveillance capabilities, repressive legislation that has and continues to be used to criminally prosecute civil infractions of law must be amended or repealed to safeguard citizens' rights. The Telecommunications Law is one of several laws in existence that has been regularly used to criminalize civil offenses committed online.

The Research Team for the Telecommunications Law has estimated that 93 individuals have been charged or arrested under the law since the NLD took power last year. What is vaguely referred to as defamation under Section 66(d) remains punishable for up to two years in prison. Though legitimate hate speech and misinformation causing incitement or hostility is unacceptable, and as Article 20 of the International Covenant on Civil and Political Rights states, "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law", increasing the Government's capabilities to monitor citizens online activity increases citizens' vulnerability to be criminally prosecuted for offenses that should be settled through civil proceedings. AAPP hopes that these issues will be raised when the Bill is discussed in the Upper House, and adequate movement will be made towards amendment of the Telecommunications law, unlike the changes made in August.

On November 10, interpreter, Aung Naing Soe, and Driver, Hla Tin, along with a pair of foreign journalists from Turkish media outlet *TRT World*, were sentenced to two months imprisonment under Section 10 of the 1934 Aircraft Act at the Zabuthiri Township Court, Naypyidaw. Though the four individuals were originally charged by police under Section 8 of the Export and Import Law for possession of a drone near Parliament, they were informed at the court hearing that they were being charged under Section 10 the Aircraft Act. They and their legal counsel lacked knowledge about the new charge but expected to pay a fine upon pleading guilty at the hearing. They were informed they would still face charges under the Export and Import Law as well, which carries a maximum sentence of three years imprisonment. When the four appeared in court again on November 16 and November 27 regarding charges under Section 8 of the Export and Import Law, the defendants' lawyers pleaded double jeopardy to the Zabuthiri Township Court Judge and asked for the charges to be dropped, seeing as how the defendants had already been charged with this in connection with the drone.

According to reports, the foreign journalists and their Burmese aids were arrested before even having used the drone, upon which the entire case is premised on. The idea was to capture images of Parliament, but no photos

were discovered on their SD cards by authorities. Following their arrest on October 27, the defendants were deprived of contact with family members and legal counsel for 15 days. As a component of the entitled right to a fair trial, defendants must have prompt access to legal representation - Principle 7 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Adding on to the violations of fair trial rights committed last month, when they appeared in court to be tried for charges under the Export and Import Law on November 10, they were blindsided by new charges which they did not have sufficient time to prepare a defense for. Defendants must receive notice of criminal charges against them in order to adequately prepare a defence and be given adequate opportunity to prove their innocence. Unlike in democracies, it is common for totalitarian governments not to apprise defendants of charges against them until the trial has already begun. On November 27, the Judge unjustly threw out the defendants' lawyers' motion of double jeopardy. The systematic denial of their access to a fair trial is a violation of Article 10 of the Universal Declaration of Human Rights (UDHR), which enshrines the core fair trial rights that are regarded as having a legally binding status under customary international law. This case is a clear example of state of peril in which the media finds itself in Burma and how individuals' rights to a fair trial remain non-existent. This raises doubts about the legitimacy of Burma's democratic transition if occurrences that are commonly seen under totalitarian governments continue to occur.

While the number of new arrests and convictions for political activities declined this month, the number of individuals that remain on trial facing charges increased. Numerous individuals remain detained and are being held without bail while on trial for unfounded charges under repressive legislation.

On November 9, former child soldier, Aung Ko Htwe, facing sedition charges under Section 505(b) of the Penal Code, was denied bail by the Dagon Myothit Seikkan Township Court. Aung Ko Htway was arrested by police on August 18, after a lawsuit was filed against him by Lieutenant Colonel, Myo Myint Aung, regarding an interview he gave to *Radio Free Asia* (RFA) earlier in the month about his experiences as a forcibly conscripted soldier in the Military. Aung Ko Htway's case, in which he was abducted and forcibly recruited into the Military, his forced underage service, the physical labor he was forced to perform, the fair trial he was deprived of (for charges that he denies), that resulted in him being imprisoned for over nine years, and the persecution he is now being subjected to for breaking the silence on the abuses he has suffered, represents a multitude of layers of injustice as well as violations of both international and domestic law.

On November 1, the first court hearing in Michael Myint's trial for charges under 505(b) of the Penal Code at the Tamwe Township Court was adjourned and deferred until November 10 because the plaintiff, Moe Hein, asked for a leave of absence. On November 10, his court hearing at the Tamwe Township Court was again adjourned due to the absence of the plaintiff, prolonging his trial once more. At a hearing on November 20, plaintiff Moe Hein testified at the court. During the hearing, Michael Kyaw Myint submitted a request to be granted bail, stating that he was in poor health. The Judge refused his bail request on grounds that the offense under 505(b) of the Penal Code was not bailable.

Though Section 505(b) of the Penal code (Sedition) is listed as a second schedule offense, and as such is not bailable, Michael Kyaw Myint should never have been prosecuted in the first place. He was arrested by police on October 23 while he was preparing to leave for a self-organized protest, for which he had obtained permission for from authorities on October 21. Charges against him should be dropped as he was arrested before he even began the protest, which is itself also his right to undertake.

Section 505(b) of the Penal Code continues to be one of the main laws that mars Burma's alleged democratic transition. Due its vague wording and criminally punitive nature, Section 505(b) was used by former Military regimes to criminalize peaceful freedom of expression and imprison political dissidents and activists. AAPP has observed that cases are still frequently filed by civil servants and Military representative to silence criticism of the Government and Military. Section 505(b) of the Penal Code should be immediately repealed or significantly amended to protect citizens' rights.

In November, AAPP learned of a new case involving Kachin human rights defender and Secretary of the Kachin National Development Foundation, Dashi Naw Lawn, who has been on trial in recent months facing criminal defamation charges under Section 500 of the Penal Code. The charges were filed at the court by Military Captain of the Infantry Division #101, who accused Dashi Naw Lawn of distributing defamatory leaflets to the public on June 9 that commemorated the breakdown of the ceasefire agreement between the Kachin Independence Army (KIA) and the Military. The leaflets also contained information about alleged human rights violations committed by the Military. He has been on trial since a summons was issued for the charges by the Phakant Township Judge, Soe Lin Aung, on June 26.

It is unacceptable that Dashi Naw Lawn is being persecuted for defending other people's human rights and sharing information with members of the public about alleged human rights abuses committed by the Military. The criminal charges against him under Section 500 of the Penal Code are a fabrication and an obvious attempt to silence him for speaking out. AAPP seconds the joint statement released on November 14 by the Kachin Women's Association of Thailand (KWAT) and Fortify Rights calling for the immediate release of Dashi Naw Lawn.

Burma's Government and Military, which disproportionately brings forward cases of defamation, must stop using Section 500 of the Penal Code as a way to silence peaceful expressions of opinion and expression and manage public criticism or allegations of wrongdoing. True defamation, also referred to as *libel* in cases of published defamation, should be clearly re-defined in Burma's legislation and should be considered a civil offence that can be settled through civil procedures seeing as how a legitimate act of defamation, is not sufficiently harmful to restrict one's liberty.

It was revealed that on November 2, Maing Cho Min Htwe (A.K.A Aik Yann) spoke to a lawyer for the first time since he was arrested on October 5. The 14-year-old ethnic Ta'ang student from Htan Ma Sai Village in Nant Hsam Township, Northern Shan State, was sentenced on October 30 to two years detention at the Mandalay Youth Training Center under Section 17/1 of the Unlawful Associations Act. He was arrested at a Military checkpoint

while returning to Nant Hsam City from his village where a group of Light Infantry Battalion (LIB) #105 soldiers, led by Captain, Thura Tun, 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. Following his arrest, he was detained at Light Infantry Division #324 operational camp in Nant Hsam Township for seven days where his lawyer claims he was interrogated overnight, beaten, and deprived of sleep, water, and food by Military Officers. On October 12, he was transferred to the Nant Hsam Police Station and a lawsuit was filed against him on October 25 under Section 17/1 of the Unlawful Associations Act at the Nant Hsam Township Police Station by Major Myint Maung Maung Soe.

In November, human rights organizations Burma Campaign UK and Fortify Rights continued to advocate for his immediate release and highlighted the human rights violations committed in his case. As AAPP stated in [October's Month in Review](#), Maing Cho Min Htwe's rights are being violated on numerous accounts, according to international human rights law and domestic law, when considering his arbitrary arrest on suspicion of being a child soldier with an ethnic armed group (EAG), his detention, during which he was kept incommunicado without access to legal counsel and tortured, and his trial that lasted one court hearing, during which he was criminally sentenced as a minor without legal counsel present.

Repressive legislation that jeopardizes individuals' rights and freedoms, such as Section 17/1 of the Unlawful Associations Act, which criminalizes the right to freedom of association and has been used as a tool to imprison journalists, activists, and members of ethnic minorities, must urgently be rectified. The NLD-majority Government, who hold more than half of all seats in the Lower and Upper House, which vowed to initiate democratic reforms and fulfill citizens' human rights, has the capacity to amend, repeal, and create legislation in Parliament and must act. Until all individual's human rights are protected by amending or repealing legislation that can lead to the violation of human rights, there may be no rule of law in Burma, which is what so many lawmakers in Parliament seek. As defined in 2004 by United Nations Secretary General, Kofi Annan, "The rule of law requires that legal processes, institutions, and substantive norms are consistent with human rights, including the core principles of equality under the law, accountability before the law and fairness in the protection and vindication of rights".

Regarding former political prisoners, in November, *The Irrawaddy* published an excerpt about former political prisoner and former AAPP Counselor, San Zaw Htway, from the recently published *Burma Storybook*, a poetry and photography book portraying the country's difficult transition from nearly six decades of fear and suffering. San Zaw Htway was interviewed about his longstanding passion for art, which he continued to make while imprisoned from 1999-2012, after being convicted for his political activism as a student. While in prison, he collected colorful garbage and turned them into collages as a form of political resistance. He was sentenced to 36 years in jail but was released under presidential amnesty in 2012.

On November 1, land rights activist and Member of the Federation of National Peasants Union (FNPU) and the Investigation Committee for Violations of Human Rights, Htay Aung, died at the Mandalay Hospital from injuries he sustained from an attack on October 28 by a mob of approximately 20 people in, Nawnghkio Township, Shan State. As Htay Aung was waiting for the village administrators to arrive in order to conduct an inspection of a disputed land area, he was approached by the mob who began shouting and swearing at him before beating him with bamboo sticks and sugarcane stems. As the independent national human rights commission mandated to verify allegations of human rights abuses, AAPP urges the Myanmar National Human Rights Commission (MNHRC) to investigate serious human rights violation committed in the murder of Htay Aung. Justice must be rendered in this case, which risks having a chilling effect on rights activism.

On November 15, land rights activist and Chairperson of the Dawei District Farmers Union, Ye Htwe, who was charged under Section Sections 279(a), 427, 447, and 494 of the Penal Code by the Dawei Development Public Company (DDPC) and two governmental departments, attended her first court hearing. At this court hearing, Ye Htwe was granted bail which she refused. As a result, she was detained. Ye Htwe faced her second court hearing on November 29. Due to the need to submit a paper for national level political discussion in Tanintharyi Division, she took bail at the court hearing on November 29. Ye Htwe was handcuffed at this bail hearing which defies domestic law in Burma's Police Manual (Volume-2). Section 1382(1) states "No person arrested by a police officer on a charge of having committed a billable offence will be handcuffed unless for some special reason it is believed that he is likely to escape, or to offer violence," and Section 1382(3) states "No person will be handcuffed who, by reason of age, sex, or infirmity can be securely kept in custody with-out handcuffs." The handcuffing of Ye Htwe is not appropriate and can be seen misuse of Law. Hence, AAPP urges authorities to follow the domestic law, rules, and regulations.

A fair investigation that brings justice to the case, which must not go unnoticed, is needed. Together, the case of the murder of Htay Aung, the prosecution of Dashi Naw Lawn, and the arrest of Ye Htwe, show that rights activists, who in Burma have historically faced threats and intimidation, remain at very high risk of persecution. The Government must step up its efforts to defend rights defenders as civil society in Burma grows and more people take part in the process of reforming the country and fulfil its responsibility to do so. According to the United Nations Declaration on Human Rights Defenders, States have a responsibility "To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political, and other rights and freedoms in practice".

On November 17, the Taungoo District Court revoked bail for ten farmers from Taungoo Township, Bago Division who are facing charges for removing stone pillars on land that was confiscated from them by the Taungoo Air Force Headquarters. In October 2016, they were charged for trespassing under Section 447 of the Penal Code by the Taungoo Air Force Headquarters. Although they were arrested, they were granted bail. During their trial, the plaintiff appealed to the court to additionally charge them under Section 427 of the Penal Code. The Judge refused the charge but accepted to charge them under Section 6/1 of the Public Property Protection Act. On October 20,

their court hearing at the Taungoo Township Court was adjourned and deferred until December 5 due to the absence of the plaintiffs and lawyer. In 1991, the Taungoo Air Force Headquarters confiscated 345.50 acres of land by an oral order to build an airport. The lands were owned by 59 local farmers from Li Sot village in Taungoo Township. Farmers not only had ownership titles for the lands but also crop tax receipts. Not all of the confiscated lands were used by the Air Force, but even the unused lands were not returned to local farmers. The Taungoo Air Force Headquarters rented the land to local farmers for cultivation. Later, the Air Force fenced off the land and banned farmers from cultivating on the lands.

It is an injustice is that the farmers are being prosecuted for trespassing on land that was confiscated from them by the Military in 1991 and never returned or compensated. The confiscated lands belonging to 59 farmers were not all used by the Military for the project that was designated to be implemented and should have been returned to farmers. Instead, the land was rented to the farmers before they were eventually banned completely from the

land, which they depended on and reluctantly had to pay for. Under the former Military regimes, land confiscation occurred on a vast scale and many citizens have yet to be adequately compensated for their losses in a manner based on their choice. The Government is in the process of redistributing confiscated land back to original land owners across the country and this case should be noted as one of many that must urgently be resolved. Charges against these farmers and all other farmers and land rights activists facing criminal charges for opposing land confiscation should be immediately and unconditionally dropped and their lands should be returned to them immediately.

On November 10, a discussion was held between Members of the Sagaing Divisional Government, local farmers, and parliament representatives. Local farmers asked to be given land compensation for over 2000 acres of land that were confiscated for the implementation of the Sabetaung and Kyisintaung Copper Mine Project in Salingyi Township, Sagaing Division. These three demands were: 1) To have land issues be immediately resolved, 2) For the Sagaing Divisional Government to recommend that companies return confiscated lands to farmers cultivating on them already, and 3) For the Sabetaung and Kyisintaung Copper Mine Project to be stopped and the other issues related to it be resolved. In 1987, 6,000 acres of land from 11 villages were confiscated for the Sabetaung and Kyisintaung Copper Mine Project. It was reported that the company has yet to compensate over 2300 acres out of more than 6000 acres of land that were confiscated.

The Government must urgently see to this matter and ensure adequate compensation or secure the return of the land for the farmers in line with the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, which outlines standards to be followed by States to perform compensation, restitution, return, resettlement, and rehabilitation as remedies for forced evictions. In taking a positive step towards more rights based reforms, Burma ratified the International Covenant on Economic, Social and Cultural Rights on October 6, which states that a State is in violation of its obligation to respect, protect, and fulfill the right to adequate food if

it sells or leases land to businesses that deprive to resources that are essential to citizens' livelihoods. Previous Governments have clearly violated this right and the current Government should seek to pathways to restitution. Moreover, businesses that were involved with the confiscation of land in cooperation with the Government are also obligated under the UN Guiding Principles on Business and Human Rights to rectify adverse impacts on individuals' livelihoods that their work may have caused.

On November 7, Chairman of Upper House Farmers Affairs Committee, Ba Myo Thein, said that the Land Acquisition Act must be amended as it is outdated and does not match the current needs of the country. He added that the Land Acquisition Act must be amended to provide fair compensation for people who have had their lands taken away. Other concerns of the Farmers Affairs Committee include the redistribution of confiscated land, the restoration of houses and villages and reducing environmental damage. On October 30, the Farmers Affairs Committee submitted a proposal at the Upper House, calling for the amendment of the Land Acquisition Act.

1894 Land Acquisition Act, enacted during Burma's colonial period, is an outdated piece of legislation in need of amendments as its vague wording has empowered the former governments and private companies to carry out land acquisition with little discretion or accountability and inadequate review procedures to the detriment of ordinary citizens who depend on owning land to sustain their livelihoods.

The Land Acquisition, the Farmland Law and the Fallow and Virgin Lands Management Law have been under review in 2017 and AAPP hopes that the Government will follow through on its plan to amend these laws before the end of the year, incorporating recommendations civil society's policy recommendations, in order to place tighter restrictions on any future land acquisition and facilitate the return or compensation of confiscated land for the benefit of the public.

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.