

2017 ANALYSIS

FREEDOM OF EXPRESSION &
PRISON CONDITIONS



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Founded in the year 2000 by former political prisoners living in exile in Thailand, the Assistance Association for Political Prisoners (AAPP) is a non-profit, human rights, non-governmental organization (NGO) based in Mae Sot on the Thailand/Burma border. AAPP is dedicated to campaigning for the release of all political prisoners in Burma, providing support and aid to current political prisoners, former political prisoners, and their families, and working to secure civil and political rights nationwide. Staffed by former political prisoners, the organization has extensive experience and knowledge of the conditions faced by political prisoners inside prison and after their release, as well as the effects incarceration have on their families and livelihoods. To alleviate some of the physical, mental, and financial trauma caused by imprisonment, AAPP runs a range of assistance programs inside Burma, including mental health counseling and education as well as vocational opportunities for former political prisoners and their families.

As well as providing assistance, AAPP documents and reports on human rights abuses carried out by the Government against political prisoners and political activists. As such, AAPP is widely regarded as a reliable and credible source of information on political prisoner issues in Burma. In recent years, AAPP has expanded its expertise into human rights and transitional justice training, providing services to lawmakers, former political prisoners, civil society groups, and military personnel. Through advocacy and lobbying efforts, AAPP continually stresses the importance of releasing all political prisoners in Burma as part of the transition towards democracy and national reconciliation.

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About AAPP

Who is a political prisoner?

“Anyone who is arrested because of his or her perceived or real active involvement or supporting role in political movements with peaceful or resistant means. AAPP maintains that the motivation behind the arrest of every individual in AAPP’s database is a political motivation, regardless of the laws they have been sentenced under.”



Throughout 2017 repressive laws infringed upon the civil and political rights of individuals, ethnic minority groups, and the media. Vaguely worded laws have led to arbitrary arrests, pre-trial detention, and wrongfully imprisoned individuals, actions that conflict with rights protected in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). The very nature of these laws - restricting peaceful protests, arresting those ‘associating’ with ethnic armed groups (EAGs), and criminalizing Government criticism - target the right to freedom of expression and violate multiple standards of international human rights law.

The continued use of defamation laws has hurt open flows of information and has unduly targeted journalists for doing their jobs. Due to the application of these laws, freedom of expression in Burma is stifled. Finally, freedom of assembly has continued to be attacked in 2017 when protestors engage in the criticism of Government policies and attempt to hold the Government accountable.

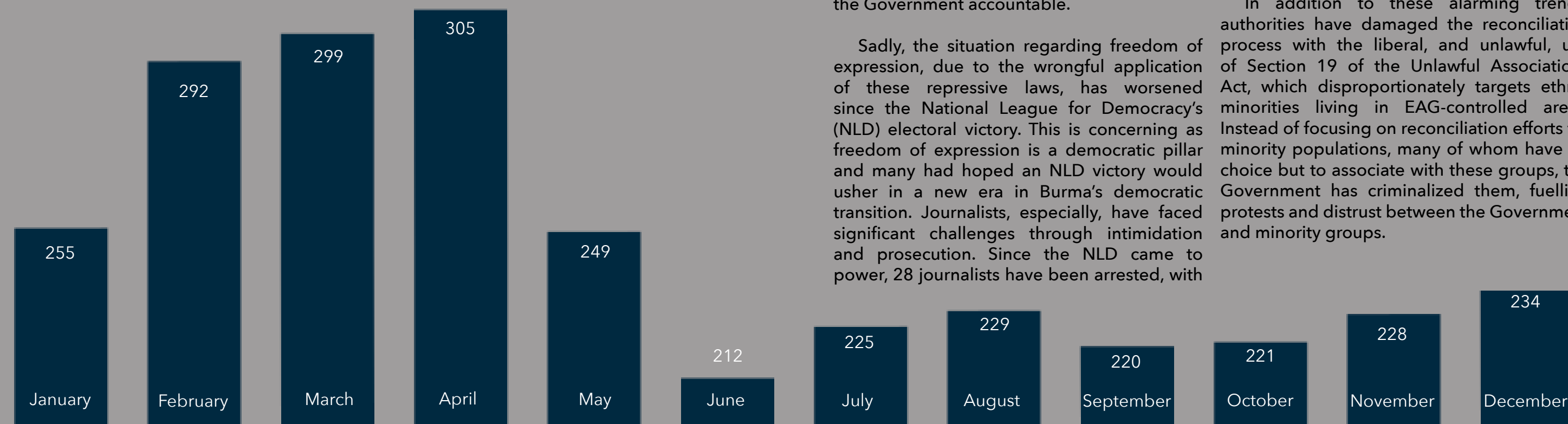
Sadly, the situation regarding freedom of expression, due to the wrongful application of these repressive laws, has worsened since the National League for Democracy’s (NLD) electoral victory. This is concerning as freedom of expression is a democratic pillar and many had hoped an NLD victory would usher in a new era in Burma’s democratic transition. Journalists, especially, have faced significant challenges through intimidation and prosecution. Since the NLD came to power, 28 journalists have been arrested, with

at least 12 arrested in 2017, indicating that the promises the NLD made a year ago regarding press freedom are unlikely to be upheld. These tactics increase self-censorship, damage open flows of accurate information, and hinder the country’s democratic progress.

Journalists have been frequently arrested under Section 66(d) of the Telecommunications Law; however, they face especially harsh sentencing when reporting on sensitive issues pertaining to the democratic reform process and the crisis in Arakan State - as seen by the recent arbitrary arrest and detention of two Reuters journalists. As 2017 progressed, authorities began charging journalists under even harsher laws, a trend that may continue into 2018. These laws include the Official Secrets Act and the Privacy Law, both of which carry far longer sentences than repressive laws that have been used in the recent past.

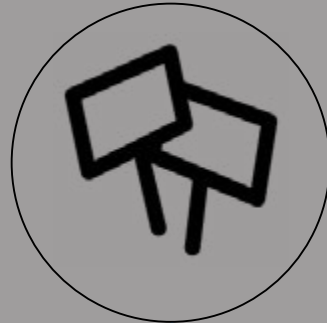
By the end of 2017, fewer charges were being filed under Section 66(d) in comparison to Section 17/1 of the Unlawful Associations Act. This indicates that the Government has progressed from cracking down on freedom of expression to effectively blocking individuals from exercising this right.

In addition to these alarming trends, authorities have damaged the reconciliation process with the liberal, and unlawful, use of Section 19 of the Unlawful Associations Act, which disproportionately targets ethnic minorities living in EAG-controlled areas. Instead of focusing on reconciliation efforts for minority populations, many of whom have no choice but to associate with these groups, the Government has criminalized them, fuelling protests and distrust between the Government and minority groups.



Number of Individuals Oppressed
Due to Political Activity in 2017

Below is a list of the most frequently used repressive laws. By the end of December 2017, more than 300 people had been oppressed for political activity throughout the year.



Section 19 Peaceful Assembly and Peaceful Procession Act

Section 19 of the Peaceful Assembly Act has been used against activists to criminalize peaceful protests and the right to assemble, which is enshrined in Article 19 of the ICCPR. The law is most frequently used in protests that explicitly criticize Government policies. The Act identifies very strict stipulations for allowing protests and demonstrations. The strict regulations include notifying authorities in advance, staying on the agreed upon protest route, only reciting approved chants, only displaying approved signs, among other things. Authorities are allowed to deny permission to specific chants or signs etc., but are required to negotiate an alternative. In 2017, authorities used the law primarily against activists.



Sections 17/1 and 17/2 Unlawful Associations Act

This Act continues to be used as a tool for the arrest and detention of individuals accused of association with ethnic armed groups (EAGs), which impedes the reconciliation process. Due to the ongoing conflict, association with EAGs is inevitable resulting in the unfortunate consequence of the repressive application of this law. Free association with groups is a right protected by Article 22 of the ICCPR. By criminalizing these actions, the Government not only harms efforts for reconciliation, but its policies conflict with international law. Rather than punishing alleged association with EAGs, the law should be amended to explicitly state its aims ensuring the safety of citizens. At the end of December, individuals both incarcerated and facing trial under 17/1 made up the majority of those oppressed due to political activity.

Section 505 (b) and (c) Penal Code

This law has been used to prosecute hundreds of political dissidents in former military regimes, as well as under the current Government, through criminalizing the sharing of information that might cause public outcry or violence incitement. Due to its vague wording and criminally punitive nature, Section 505(b) is used to criminalize peaceful freedom of expression and imprison political dissidents and activists. Cases, however, are still frequently filed by civil servants and Military representatives to silence criticism of the Government and Military.



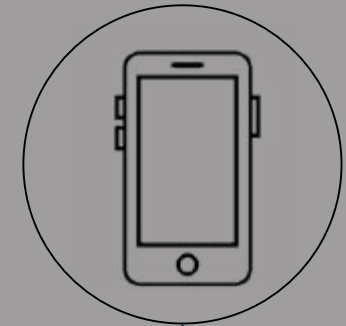
Section 25(b) News Media Law

Section 25(b) (which refers to Section 9(d) (f)(g)) of the Law is a way for the Government to apply a law protecting the media against journalists and publications. This is the third-place defamation charges are found in Burma's legislation, and has been used against journalists, which violates Article 19 rights in the ICCPR, citing freedom of expression. Interestingly, though journalists have faced charges under the News Media Law, this law also protects their rights from many of the challenges they have faced throughout 2017 through Section 4 and 7(a), which allows journalists to criticize the Government, and protects media workers from arrest when carrying out their job. The arbitrary arrest and detention of many journalists therefore violates their rights as enshrined in Burma's own domestic legislation as well as international law.

Section 500 Penal Code

This section of the Penal Code is the primary defamation clause in Burma's domestic legislation.

Although defamation disputes do arise from time-to-time, the intentional vagueness of this law allows its use at inappropriate times, and instead of being used for its stated purposes, is used to silence individuals expressing their right to freedom of expression. Individuals have faced charges under both Section 66(d) of the Telecommunications law, as well as Section 500 of the Penal Code, which is an unreasonably large sentence for the offense. Further, defamation should not be tried as a criminal offense, but should be tried in a civil court. It is common for Section 500 offenses to be tacked on to Section 66(d) offenses.



Section 66(d) Telecommunications Law

AAPP has recorded 83 uses of Section 66(d) in political cases since October 2015. The penalties many defendants have faced under Section 66(d) are completely disproportionate to the alleged 'crimes' being committed. Despite the August 2017 amendments, the law has continued to be used by powerful individuals to limit and silence the voices of citizens. While cases of legitimate defamation do arise from time to time, due to the vagueness in Section 66(d), these cases are few and far between. Section 66(d) is second place where defamation is mentioned, second to Section 500 of the Penal Code.





The Problem of Overcrowding

Overcrowding is the most pressing concern in Burmese prisons, affects both criminal and political prisoners, and needs immediate attention. There are currently 47 prisons in Burma, with an overall prison population of approximately 100,000 people, including both convicted and pre-trial detainees¹. Prison capacity across the 47 prisons is 66,000², meaning prisons are over capacity by about 66 percent. Without addressing this problem, overcrowding will continue to be a factor in human rights abuses in prisons in Burma. Below are two reasons for the perpetual overcrowding:

Reasons for Overcrowding

Drug
Use



A common trend in Burma is the disproportionate and harsh sentences of both alleged or real crimes, particularly true for drug offenders. In 2017, the Correctional Department estimated individuals convicted of drug crime make up 50% of the total prison population. The review and subsequent amendment of harsh and outdated drug legislation should be a priority. In 2017, the Narcotic Drug and Psychotropic Substances Law was amended, reducing penalties for drug related crimes. This is positive, however there is no mention of whether the law will act retroactively on those sentenced. It is unclear whether rehabilitation and the social services needed in prison and upon release to aid reintegration will be initiated to properly address the issues that come with drug abuse and addiction. AAPP recommends the retroactive application of new drug legislation in current cases as this would allow for the release of individuals serving disproportionate sentences, relieving the strain on the overcrowding problem, and thus, improving conditions for prisoners across the board.

Pre-Trial
Detention



The incarceration of individuals throughout a trial is generally reserved for individuals who pose a threat to themselves, or to others. In Burma, this is often disregarded, and individuals facing trials under trumped up charges who do not pose a threat to themselves or society will find themselves in pre-trial detention. This adds pressure to the prison system, adding to the already severe overcrowding problem. Due to the state of overcrowding, individuals in pre-trial detention are not separated from other prisoners, as outlined in the Standard Minimum Rules for the Treatment of Prisoners (SMRs), Rule 85.

“Due to the severe overcrowding in Burmese prisons, prisoners have lost their rights. They are not treated as human beings.”

- Ko Bo Kyi

Founder & Joint Secretary, AAPP

Total Prison
Capacity
66,000

Approximate Prison
Population
100,000

In 2017, Burma's prisons
were overcrowded by
66%

Average Number of
Political Prisoners Per
Month⁴
124.9

¹ <https://www.facebook.com/MizzimaDaily/vid-eos/1833186736716223/>

² Ibid. (6)

³ Interview with Min Htun Soe, Deputy Director and Spokesman of the Correctional Department, Mawkun, 2017 (Burmese Source)

⁴ Average number of people awaiting trial in prison and serving sentences for politically motivated charges in 2017.

Overcrowding Consequences

Torture



In 2017, the use of torture during interrogation and imprisonment to extract confessions and further degrade and humiliate detainees continued, directly violating international law.

Despite promises to ratify the United Nations Convention Against Torture (UNCAT), the Government made no progress towards its ratification. Torture is relevant to overcrowding because prison overcrowding is so severe, and conditions are so dire, that AAPP considers merely being incarcerated in Burma cruel, inhuman, or degrading treatment or punishment, and thus, torture. AAPP continues to urge the Government to immediately ratify the UNCAT as a demonstration of commitment to upholding human rights, justice, and accountability in Burma while aiding the relief of issues such as overcrowding and preventing the continued use of torture.

Healthcare
Access



According to the UN's Basic Principles for the Treatment of Prisoners, Principle 9, prisoners should be granted access to adequate health services regardless of their legal situation, a stipulation echoed in the universal health care provisions of Burma's Constitution. In 2017, overcrowding, the resulting poor sanitary conditions, and lack of healthcare have been prevalent, creating a doubly punishing environment. To provide inmates with more adequate healthcare, Insein Central Prison, Rangoon, Obo Central Prison, Mandalay Division, and Tharyarwaddy Central Prison, Bago Division all received 5,000,000 kyats (US\$3,700) each to address mental health needs and treatment for chronic health issues perpetuated by poor prison conditions. Regardless of this development, there is not adequate healthcare for those incarcerated.

Lack of
Prison Staff



The number of staff for the current prison population is severely inadequate in all areas. In violation of Rules 24-26 of the SMRs, there are only 30 prison doctors providing services to those incarcerated³, and only 80 of the approximate 199 nurses required. Without an adequate number of staff, especially medical professionals, dignity of prisoners will continue to be at risk, along with their rights, health and well-being.



There can be no national reconciliation in Burma
as long as there are political prisoners.”

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