



Human Rights Now

Human Rights Now

4F Suzuki Bldg., 335 Yamabukicho,
Shinjuku-ku, Tokyo 162-0801 JAPAN

Tel : +81-3-6228-1528

<http://hrn.or.jp/eng/>

info@hrn.or.jp

17 December 2018

Human Rights Now Calls on Myanmar Authorities to Overturn the Convictions of Three Activists Speaking Out for the Protection of Civilians in the Kachin Conflict

On 7 December 2018, three Kachin activists were found guilty of criminal defamation, Nang Pu (f), Zau Jet (m), and Lum Zawng (m), a former student of Peace Law Academy which Human Rights Now supported from 2007 to 2013. The three received a six month prison sentence and were fined 500,000 kyat each (about \$350 USD).¹ The charges related to statements they made in April 2018 calling for an end to the Kachin conflict and for the Myanmar military (Tatmadaw) to allow safe passage out for Kachin civilians trapped in the conflict zone.

Human Rights Now (HRN), a Tokyo-based human rights NGO, is deeply concerned that criminal sanctions are being used to punish and silence human rights defenders in Myanmar for their legitimate activities. HRN calls on the relevant Myanmar authorities to overturn the convictions, consistent with Myanmar's duty to respect freedom of expression, and to amend Myanmar's criminal law to end the criminalization of political speech which may punish, harass, and silence human rights defenders.

Speaking Out for the Protection of Kachin Civilians

Kachin state has seen conflict between Kachin independence forces (KIA) and the Tatmadaw since 2011, following a previous conflict from 1961 to 1994. At the center of the three convictions are statements made about the events of April 2018 in the conflict. It was reported that, beginning with Tatmadaw strikes from 11 April 2018, by May 2018 over 6000 civilian villagers in Kachin State near the fighting had become internally displaced persons (IDPs).² Around 2,000 of these IDPs who had fled from Tanai Township were then trapped in an isolated area by the fighting for several weeks, as the crossfire did not allow them to escape.³ These IDPs did not have access to safe passage or humanitarian aid by the Tatmadaw and were subject to hunger and other serious humanitarian concerns.

¹ Elizabeth Janmar, "Kachins Protest Jailing of Peace Activists Convicted of Defaming Myanmar Military", RFA, 11 Dec. 2018, <https://www.rfa.org/english/news/myanmar/kachins-protest-jailing-of-peace-activists-12112018145821.html>.

² Ye Mon, "More Kachin villagers flee as clashes intensify", DBV, 27 April 2018, <http://www.dvb.no/news/kachin-villagers-flee-clashes-intensify/80699>; The Irrawaddy, "Court Hears from Kachin Protesters Accused of Defaming Military", Sept 2018, <https://www.irrawaddy.com/news/burma/court-hears-from-kachin-protesters-accused-of-defaming-military.html/amp>.

³ Id.

These events sparked widespread demonstrations throughout Myanmar in April and May,⁴ including Myitkyina, Kachin State, on 30 April and 1 May where Lum Zawng, a young lawyer, and the others spoke. More than 3,000 local Kachin assembled to call for an end to the Kachin conflict and for humanitarian aid and safe passage out for the cut-off IDPs.⁵ It was reported that some of these demonstrations were broken up by police with over a dozen arrests.⁶

Lum Zawng and another Kachin activist were first charged by the Myanmar police for violating the peaceful assembly and procession act for their participation at these demonstrations; and in May 2018 they were found guilty and fined 30,000 kyats each (\$20 USD).⁷ Although the specific violation was not reported in English-language sources, a review of the act's terms shows that there are problems with punishing their statements and participation in the assembly under any of the rules, the terms of which are undefined and thus allow for overbroad application.⁸

On May 8, a member of the Tatmadaw, Lieutenant-Colonel Myo Min Oo, filed more serious criminal defamation charges under Penal Code section 500 against Lum Zawng, Nang Pu (director of the Htoi Gender and Development Foundation), and Zau Jet (chair of the Kachin National Social Development Association) for their statements about the conflict at a press conference in Myitkyina and at the aforementioned demonstrations.⁹ As mentioned above, on 7 December 2018 the three were found guilty and sentenced to six months imprisonment and a 500,000 kyat fine.¹⁰ This in turn sparked further protests against the convictions, with about 6,000 residents of Myitkyina demonstrating on 11 December 2018.¹¹

Violations of Myanmar's Legal Duties

Myanmar has a duty to respect freedom of expression under both its Constitution, Article 354(a), and under international human rights law (IHRL) as articulated by the Universal Declaration of Human Rights (UDHR) Article 19. The UN Human Rights Committee has pointed out in General Comment No. 34 that in respecting this right, states must not limit the right with overbroad restrictions, particularly in circumstances of public debate, and they should avoid using defamation of public officials to restrict speech on political discourse and public institutions, where the value of

⁴ Simon Lewis, Sam Aung Moon, "Myanmar's northern offensive against rebels sparks youthful revolt", 11 May 2018, <https://www.reuters.com/article/us-myanmar-kachin/myanmars-northern-offensive-against-rebels-sparks-youthful-revolt-idUSKBN1IC1LV>.

⁵ Irrawaddy, above, note 2.

⁶ Chan Thar, "Yangon police charge, release 17 peace protesters", Myanmar Times, 14 M1y 2018, <https://www.mmtimes.com/news/yangon-police-charge-release-17-peace-protesters.html>.

⁷ Irrawaddy, above, note 2.

⁸ The Right to Peaceful Assembly and Peaceful Procession Act (Pyidaungsu Hluttaw Law No. 15/2011), 2 Dec. 2011, <http://freexpressionmyanmar.org/wp-content/uploads/2018/02/Peaceful-Assembly-and-Peaceful-Procession-Law-EN.pdf>. E.g., Art 12(a) "causing a disturbance" and Art. 12(e) "affecting the country or Union".

⁹ Irrawaddy, above note 2.

¹⁰ Id.

¹¹ RFA, above, note 1.

free expression is particularly high.¹² The convictions of the three Kachin activists are inconsistent with these standards.

The Criminal Punishment of Human Rights Defenders in Myanmar Must End

Myanmar is at a critical moment in its challenged transition to democracy where the engagement of human rights defenders is essential. In the Kachin conflict alone, over 100,000 civilians have been displaced, often in need of humanitarian aid and restitution for lost property,¹³ and the Tatmadaw has been alleged to have committed serious violations not only in Kachin state, but Rakhine and northern Shan states as well.¹⁴ However, under Myanmar's Constitution, the Tatmadaw is not subject to control or prosecution by the civilian government.¹⁵ In such circumstances, human rights defenders in Myanmar play a critical role in bringing attention to continuing violations in the country. However, the criminalization of their speech and activities allows authorities to intimidate and silence them from speaking out and calling for needed reforms.

In light of this, HRN calls on relevant Myanmar authorities to overturn the convictions of Lum Zawng, Nang Pu, and Zau Jet consistent with Myanmar's duty to respect freedom of expression and to amend Myanmar's criminal law to end the criminalization of public speech used to harass and silence human rights defenders.

¹² Human Rights Committee, "General comment No. 34, Article 19: Freedoms of opinion and expression", CCPR /C/GC/34, 12 Sept. 2011, paras. 34, 38, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>. The HRC commented on freedom of expression under the ICCPR Art. 19, but it also applies to UDHR Art. 19.

¹³ BNI, "Kachin Leaders to Govt: IDPs Cannot Return Home Before Peace Is Restored", 29 Oct. 2018, <https://www.bnionline.net/en/news/kachin-leaders-govt-idps-cannot-return-home-peace-restored>.

¹⁴ OHCHR, "Myanmar: Tatmadaw leaders must be investigated for genocide, crimes against humanity, war crimes – UN report",

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23475&LangID=E>

¹⁵ Myanmar 2008 Constitution, articles 338, 343, 432, 445

http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf.