



Khaing Myo Htun: Imprisoned Human Rights Defender in Myanmar (Burma)

On July 25, 2016, Khaing Myo Htun, a spokesperson for an ethnic minority organization in Rakhine State in Myanmar (Burma), was arrested by police on charges of incitement, after an organization of which he is a member (the Arakan Liberation Party or “ALP”) exposed alleged human rights violations by the Myanmar army. Khaing Myo Htun remains in prison and under prosecution; the judge in the case denied bail on August 25. Although Khaing Myo Htun was arrested on a complaint by an army officer, Myanmar’s government, led by Aung San Suu Kyi’s National League for Democracy, could take steps to free him.

Khaing Myo Htun’s case illustrates that although Myanmar’s government is now led by pro-democracy leaders, Myanmar’s laws can still be used to criminalize freedom of expression, especially to silence human rights activists. In this case, the statement by the ALP was a lawful exercise of free expression protected by international human rights law, yet it is the basis for the arrest of Khaing Myo Htun. When alleged human rights abuses are revealed, Myanmar’s authorities should be investigating the abuses, not persecuting activists. Additionally, this prosecution could jeopardize the ceasefire and peace process among minority groups in Rakhine State and elsewhere. Rather than arresting Khaing Myo Htun, authorities should be using the mechanisms of the Nationwide Ceasefire Agreement to investigate the alleged abuses.

BACKGROUND ON KHAING MYO HTUN AND THE ALLEGED HUMAN RIGHTS ABUSES

Khaing Myo Htun is a human rights and environmental activist in Myanmar, and most recently has been serving as the deputy spokesperson for the Arakan Liberation Party (ALP), an ethnic minority organization in Myanmar’s Rakhine State. He has a long history of working for human rights, justice, and corporate accountability in Myanmar.

Khaing Myo Htun graduated from EarthRights International’s Myanmar School, which teaches key nonviolent human rights and environmental advocacy skills, in 2006. He worked for the advocacy group Arakan Oil Watch before co-founding Natural Resources for the People and becoming a board member of the Arakan Natural Resources and Environmental Network. He later joined the ALP.

In April 2016, the ALP released an official statement that implicated the Myanmar army (the Tatmadaw) in crimes against humanity and forced labor of civilians, known locally as “portering,” in Rakhine State. The statement was not attributed to Khaing Myo Htun personally and it appears that he is being personally targeted.

EarthRights International has reviewed the evidence for the statement, and believes that it is credible. The International Labour Organization has referred to Myanmar’s army as the main perpetrator of forced labor in the country, and other human rights groups have also documented similar abuses by the Myanmar army.¹

¹ Fortify Rights, “[Myanmar: Investigate Forced Labor of Rakhine Buddhists in Western Myanmar](#)” (press release, March 15, 2016).

KHAING MYO HTUN'S ARREST AND PROSECUTION

On April 27, 2016, Rakhine State Border Affairs and Security Minister Colonel Htein Lin summoned Khaing Myo Htun to the government offices in the Sittwe, the capital of Rakhine State. The Minister threatened him personally with prosecution if the ALP's allegations could not be substantiated. On May 1, Khaing Myo Htun submitted the evidence to the authorities in Sittwe Township that formed the basis of the ALP's allegations. EarthRights International has reviewed this evidence and believes that the allegations are credible.

Shortly thereafter, on May 5, Myanmar army officer Lt. Col. Tin Naing Tun filed a criminal complaint against Khaing Myo Htun. The complaint alleged that Khaing Myo Htun had committed the offences of endangering public tranquillity and incitement under the notorious Section 505 of Myanmar's penal code.

Khaing Myo Htun was traveling at the time and did not receive the court summons, and missed two scheduled court hearings. Although he had not received the summons, the court issued a warrant for his arrest.

On July 25, Khaing Myo Htun was arrested by Sittwe police. One month later, on August 25, the judge denied bail, so that he has been kept in prison. The court, Sittwe Township Court, has begun hearing evidence in the case, with the next hearing on September 26. This process could take 6 months, following which the court will decide whether to dismiss the case or charge him under one of two offences that are now before the court.

MYANMAR'S SECTION 505 AND POLITICAL PRISONERS

Section 505(b) of the Myanmar Penal Code (full text below) has frequently been used to persecute democracy activists and human rights defenders, and numerous human rights groups have called for its repeal. In this case, the state prosecutor (or "law officer") could recommend the withdrawal of the case to the judge, who could dismiss the case for lack of evidence. The Attorney General has powers to discharge cases at any time, and some cases under Section 505(b) have been dropped by the National League for Democracy government since it came to power earlier this year – but others are continuing.²

Section 505(b) makes it a crime to publish a statement that may cause "fear or alarm" to the public, which may cause the public to commit "an offence against the State or against the public tranquillity." It has been used to prosecute journalists, student protestors, and others. Human Rights Watch has called this section "**among the most abused provisions**" of Myanmar's Penal Code, which has been used "to harass and prosecute those expressing views the government or security forces oppose."³

Khaing Myo Htun is also facing charges under Section 505(c) of the Penal Code, which

² Human Rights Watch, "[They Can Arrest You At Any Time: The Criminalization of Peaceful Expression in Burma](#)" (June 29, 2016).

³ Human Rights Watch, "[They Can Arrest You At Any Time: The Criminalization of Peaceful Expression in Burma](#)" (June 29, 2016).

makes it a crime to publish a statement that is likely to incite “any class or community of persons to commit any offence against any other class or community.” Although this section could be legitimately used in some “hate speech” cases, the fact that it does not require an intent to incite violence makes it easy to abuse.

Human Rights Watch has called for the repeal of both sections, which violate international legal standards on free expression. Both sections carry a two-year sentence. Although both sections are subject to a defense that the defendant did not intend to incite other offenses and that he had reasonable grounds to believe that his statement was true, truth alone is not a defense. Both sections can be used if the statement was made with the intent to cause alarm or incite and “may” lead to other offenses being committed, even if it is reasonable to believe that the statement is true. Even where there is no intent, if there is not enough evidence to support a truth defence, both sections can be used if the statement “is likely” to cause alarm or incite and “may” lead other offenses being committed.

POTENTIAL IMPACTS ON THE CEASEFIRE AGREEMENT AND THE PEACE PROCESS

As Myanmar has moved from military rule to an increasingly democratic government, progress has also been made in resolving conflicts between ethnic minority groups and the army – the longest-running civil conflict in the world. The ALP was one of eight signatories in last year’s Nationwide Ceasefire Agreement (NCA), which was praised by the U.S. State Department. The human rights abuses alleged in the ALP’s statement would be flagrant breaches of the NCA, which prohibits abuses against civilians, including forced labor.⁴

The Myanmar army’s reaction to the allegations presents serious risks to the peace process. Rather than prosecution of human rights defenders, the NCA aims to resolve conflict through “inclusive political dialogue” with the parties to work “in an accountable, responsible and transparent manner.”⁵ The NCA requires the parties to “negotiate in good faith any issues that may arise among the dialogue partners in order to achieve lasting and sustainable peace.”⁶

While the army may consider that the ALP’s statement was a breach of the NCA’s requirement to avoid hostile propaganda and derogatory statements,⁷ that section cannot be applied to reporting human rights abuses that are themselves violations of the NCA. Regardless, any breaches of the NCA are supposed to be resolved peacefully and submitted to the Joint Ceasefire Monitoring Committee for investigation and resolution.⁸

⁴ Nationwide Ceasefire Agreement, Chapter 3(9), *available at* <http://www.networkmyanmar.org/images/stories/PDF20/NCA-Final-Text.pdf>.

⁵ Nationwide Ceasefire Agreement, Preamble.

⁶ Nationwide Ceasefire Agreement, Chapter 1(h).

⁷ Nationwide Ceasefire Agreement, Chapter 3(f).

⁸ Nationwide Ceasefire Agreement, Chapter 2(b).

APPENDIX: TEXT OF SECTIONS 505(b) AND 505(c) OF THE MYANMAR PENAL CODE OF 1861

Whoever makes, publishes or circulates any statement, rumour or report —

...

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment, which may extend to two years, or with fine, or with both.

Exception. — It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.