



INTERNATIONAL HUMAN RIGHTS CLINIC
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL



December 08, 2014

President Thein Sein
President's Office
Nay Pyi Taw
Republic of the Union of Myanmar

Re: Prosecution of Shayam Brang Shawng

Dear President Thein Sein,

We write to you to express our concerns about the criminal prosecution of Shayam Brang Shawng (hereinafter Brang Shawng), an ethnic Kachin resident of Sut Ngai Yang village, Hpakant Township, Kachin State, who has been charged under Article 211 of the Myanmar Penal Code.

Brang Shawng is accused of making “false charges” against the Myanmar Army in a letter he sent to the Myanmar National Human Rights Commission (MNHRC) on October 1, 2012. In the letter, Brang Shawng alleged that Myanmar Army soldiers from Infantry Battalion (IB) 389 shot and killed his 14-year-old daughter, Ja Seng Ing, in Sut Ngai Yang village on September 13, 2012.

The criminal prosecution of Brang Shawng appears to be in retaliation for the complaint to the MNHRC and runs contrary to Myanmar's obligations under domestic and international law. The case also calls into question the ability of the MNHRC and other state institutions to protect persons filing complaints with the commission. We therefore request that you take action to ensure that the charges against Brang Shawng are immediately and unconditionally dropped and that similar cases do not occur in the future.

Death of Ja Seng Ing and prosecution of Brang Shawng

On December 6, 2014, the Truth Finding Committee of Ja Seng Ing's Death (the Committee)—an independent group of ten civil society organizations from Kachin State—published a 42-page report concerning the death of Ja Seng Ing. The Committee conducted interviews with 16 individuals who had knowledge relevant to Ja Seng Ing's death. The report includes numerous accounts indicating that Myanmar Army soldiers shot and killed Ja Seng Ing in Sut Ngai Yang village on September 13, 2012.

The report indicates that a remotely detonated mine planted by the Kachin Independence Army (KIA) exploded in Sut Ngai Yang village at about 4 pm on September 13, 2012. According to Brang Shawng and

several eyewitnesses, in the one-hour period that followed, soldiers from IB 389 fired their weapons indiscriminately in the village. At this time, Ja Seng Ing was fatally shot while hiding with four school classmates, an adult and the adult's three-year-old daughter behind a home in Sut Ngai Yang village. Eyewitnesses allege that Myanmar Army soldiers shot in the direction of Ja Seng Ing and the others at close range after they failed to obey orders to come out from their hiding place. At approximately 9:10 pm, Ja Seng Ing died during an emergency operation at a local hospital. On September 18, Brang Shawng was summoned to a nearby Army base, where an Army officer expressed regrets for the death of his daughter and gave him 100,000 kyat.

On September 25, Brang Shawng sent a letter to you asking that you take action to address Ja Seng Ing's death and ensure that such an incident does not occur again in the future. On October 1, 2012, Brang Shawng sent a similar letter to the chair of the MNHRC, alleging the military was responsible for the death of his daughter and requesting the MNHRC to carry out an investigation.

The military has denied Brang Shawng's allegations in documents submitted to the court, claiming that it conducted its own investigation that revealed a remotely detonated mine planted by the KIA killed Ja Seng Ing. In March 2013, Myanmar Army officer Major Zar Ni Min Paik then formally initiated the criminal case against Brang Shawng in Hpakant Township Court, claiming that Brang Shawng made false accusations against Myanmar Army personnel in his letter to the MNHRC.

Brang Shawng is charged under Article 211 of the Myanmar Penal Code, which provides for imprisonment of up to two years or more for a person who "falsely charges any person with having committed an offence, knowing that there is not just or lawful ground for such proceeding or charge against that person."

We believe Brang Shawng is being prosecuted in retaliation for filing a complaint with the MNHRC. The continuation of the case against him would have a chilling effect on attempts to submit complaints to the MNHRC, and the failure to investigate his complaint risks further entrenching impunity in the country.

Brang Shawng has appeared in Hpakant Township Court more than 40 times in the last 18 months. The facts relating to the case raise concerns about the independence and impartiality of the court. For example, the presiding judge was replaced immediately before an important ruling, and a government doctor who treated and operated on Ja Seng Ing at the time of her injuries was transferred from his post to a remote area and was struck from the court's witness list on August 12, 2013. Moreover, Brang Shawng's defense attorney Ywet Nu Aung reports that Myanmar Army soldiers have appeared at the court carrying weapons and that an Army officer sought to intimidate her.

In August 2013, Ywet Nu Aung and one of her colleagues visited the MNHRC in Yangon to seek its assistance in Brang Shawng's case. Ywet Nu Aung said that the staff members with whom she spoke denied receiving Brang Shawng's letter, refused to assist Brang Shawng, and ordered her and her colleague to immediately leave the premises of the MNHRC.

Implications for Myanmar's obligations under domestic and international law

The criminal prosecution of Brang Shawng runs contrary to Myanmar's obligations under domestic and international law as well as your public commitment to reform. In particular, the prosecution raises concerns about the rights to equality before the law, a fair trial, and an effective remedy for human rights violations, which are well established in customary international law and numerous international treaties.

International law protects individuals who challenge human rights violations from retaliatory action. The UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998, states that everyone has the right to “complain about the policies and actions of individual officials and government authorities with regard to violations of human rights and fundamental freedoms” and that states shall take actions to “ensure the protection by the competent authorities of everyone . . . against any violence, threats, retaliation . . . pressure or any other arbitrary action as a consequence of his or her legitimate exercise of [these] rights.”

This case further calls into question the MNHRC’s willingness to properly receive and handle complaints and defend victims of human rights abuses and their families who seek the MNHRC’s assistance. The United Nations Paris Principles outline international standards for the operations of national human rights institutions and emphasize the importance of ensuring they are independent, autonomous, and able to operate free from government interference. Moreover, according to the MNHRC Law in Myanmar, third parties “should not victimize, intimidate, harass or otherwise interfere with” an individual because he or she provides information to the MNHRC. By reportedly refusing to assist Brang Shawng, the MNHRC may have failed to meet its obligations under the Paris Principles and domestic law, raising serious concerns about the efficacy of the current MNHRC and suggesting the need for fundamental reform of the body.

The case also raises serious concerns about the military’s influence over Myanmar’s institutions, including the judiciary. Article 19 of the Myanmar Constitution requires the judiciary to “administer justice independently according to the law,” and Article 381 guarantees citizens “redress by due process of the law for grievances entitled under the law.”

In your inaugural address to the Myanmar Parliament in 2011, you committed to safeguarding the rights of the citizens of Myanmar and strengthening the judiciary. However, the ongoing prosecution of Brang Shawng undermines your reform efforts and calls into question your government’s willingness to respect human rights and fundamental freedoms.

Request for action

We respectfully request that you raise the issue of Brang Shawng’s prosecution with the Myanmar Defence Services to ensure that the charges against Brang Shawng are immediately and unconditionally dropped by the complainant—an action that will end the case according to Myanmar criminal procedure. Furthermore, the Myanmar Defence Services must ensure that those who complain about military abuses are no longer subject to unjust prosecution or other forms of retaliation.

Your administration should also take concrete and effective action to support the independence of the judiciary and strengthen Myanmar’s courts.

Additionally, the MNHRC should have procedures in place—including appropriate confidentiality safeguards—to ensure protection for those bringing complaints, provide all reasonable assistance to Brang Shawng and his legal team in order to achieve a just resolution of his case, and support an independent and impartial investigation into the events of September 13, 2012. We request that you address this case directly with the MNHRC and lead efforts to ensure the MNHRC is a strong, independent body capable of carrying out its responsibilities under the Paris Principles and domestic and international law.

Lastly, we request that you ensure a prompt, independent, and effective investigation, with the assistance of international experts, into the death of Ja Seng Ing as well as allegations of human rights and conflict-related abuses in Kachin State and northern Shan State. We request that you ensure that those responsible for Ja Seng Ing's death and other human rights violations are held accountable, regardless of rank or position.

We look forward to hearing from you about this important matter. Your office may contact any of the below signatories. If the charges against Brang Shawng are not dropped and we do not receive a response from your office by December 18, 2014, we will publish this letter in its entirety and undertake additional efforts in support of Brang Shawng.

Sincerely,

Amnesty International
Fortify Rights
Harvard Law School International Human Rights Clinic
Human Rights Watch
International Commission of Jurists
Physicians for Human Rights

Copied to:

Senior General Min Aung Hlaing, Commander-in-Chief of the Defence Services
Tun Tun Oo, Chief Justice of the Union
Win Mra, Chairman of the Myanmar National Human Rights Commission
Lieutenant General Myint Soe, Bureau of Special Operations 1, Myanmar Army
Brigadier General Win Bo Shein, Northern Command, Myanmar, Army
Major General Min Naung, Northwestern Command, Myanmar Army