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MYANMAR: RELEASE HUMAN RIGHTS LAWYER JAILED ON POLITICALLY MOTIVATED CHARGES

The Myanmar authorities must immediately and unconditionally release human rights lawyer Khin Khin Kyaw, who has been convicted of “contempt of court” and sentenced to six months in prison in connection with her role as a defense lawyer, said Amnesty International today. The conviction and imprisonment mark yet another blow for rule of law in Myanmar and sends a worrying message to human rights defenders across the country.

On 28 September 2018, the Minhla Township Court in Myanmar’s Bago Region sentenced Khin Khin Kyaw, a female human rights lawyer, to six months in prison, having convicted her, under Section 228 of the Penal Code, of “intentionally insulting or interrupting a public servant sitting in a judicial proceeding”. The case – which has been ongoing since 2015 – relates to her role as a defense lawyer for 58 student protesters and activists who were detained during a violent police crackdown on largely peaceful protests in Letpadan, Bago Region in March that year.

On 25 August 2015, several months into court proceedings against the protesters at the Tharrawaddy Township Court, Khin Khin Kyaw submitted a motion to the judge requesting that members of the Myanmar Police Force face criminal investigation and charges for the excessive use of force used to break up the protests. On 1 September 2015, she submitted a minor amendment to the motion, seeking to rectify an error in the title of a police officer. The presiding judge rejected the amendment, a move which sparked an outburst from students present in the court room.

On 15 September, Khin Khin Kyaw was charged with “contempt of court”. Six days later, protester Than Htike was also charged with the same offence. Their trial began on 14 October 2015, and continued for three years before the conviction on 28 September 2018. Both Khin Khin Kyaw and Than Htike were sentenced to six months’ imprisonment – the maximum sentence under Section 228 – and are currently held in Tharrawaddy prison. Amnesty International understands Khin Khin Kyaw’s license to practice law has also been revoked.

Amnesty International calls on the Myanmar authorities to release Khin Khin Kyaw and Than Htike immediately and without conditions, to quash the convictions against them and resume Khin Khin Kyaw’s license to practice law.

International human rights standards are clear that lawyers should not be penalized for statements and actions made in good faith in the course of their work as lawyers, in particular during professional appearances before a court, tribunal or other legal or administrative body. Amnesty International considers the case brought against Khin Khin Kyaw to be politically motivated as it relates solely to her professional work as a lawyer and is a clear attempt to intimidate and obstruct her from doing her work while she was defending the rights of student protesters in what was a high-profile case.

In addition to the politically motivated basis for the punishment, Amnesty International is disturbed that the case against Khin Khin Kyaw took more than three years to reach its conclusion – during which time she was required to attend dozens of court hearings. These not only had an impact on her, they also undermined her ability to represent clients in other cases, as she was obliged to travel from her home in Yangon to Bago Region to attend the hearings. Her conviction – and the fact that authorities continued to pursue the case against her – fly in the face of the government’s claims that it is committed to the rule of law.

Lawyers and rights advocates play a crucial role not only ensuring trials are fair and defending the rights of individuals in the criminal justice system, but in protecting human rights and the rule of law more generally. As such, they should be respected and protected while carrying out their work. The UN Basic Principles on the Role of Lawyers call on all governments to ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and “shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics” (Principle 16).

BACKGROUND

In February 2015, student groups in Myanmar began protesting against the National Education Law, which was enacted in September 2014. Students, their leaders and supporters were calling for the law to be amended over concerns it

restricts academic freedoms. Protest leaders organized four concurrent marches throughout the country, which were to meet in Yangon, Myanmar's largest city and financial capital. However, they suspended the march as their representatives started negotiations with the government and Parliament on amendments to the law. As the talks broke down in early March 2015, student protesters in Letpadan, Bago Region, announced that they would resume marching towards Yangon. However, they were blocked by police, leading to an eight-day standoff between the students and the police. The stand-off ended when, on 10 March 2015, police violently dispersed the protesters, beating them with batons – including some who had fallen to the floor.

Over 100 student protesters, leaders and their supporters were arrested that day, and 81 of them were charged with a range of criminal offences. The case against them continued until April 2016 when, shortly after coming to power, the NLD-led government announced a Presidential amnesty. All detained student protesters and their supporters were released.