

DECISION No. 38/1993 (MYANMAR)

Communication addressed to the Government of Myanmar on 10 December 1992.

Concerning: Win Tin, Tin Htut, Naing Naing, Khin Maung Thein, Min Zeya, Ye Htoon, Myo Myint Nyein and Sein Hlaing, on the one hand, and the Union of Myanmar, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as paragraph 3 of Decision No. 43/1992).
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Myanmar. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. It was alleged in the communication from the source, a summary of which was transmitted to the Government, that:

(a) Win Tin, born in 1930, a writer and journalist, resident of Lanmdaw Township, Yangon, was reportedly arrested without a warrant on 4 July 1989 in Yangon by agents of the Directorate of Defence Services Intelligence (DDSI), the military intelligence agency. The source alleged that his arrest was based mainly on his work with Aung San Suu Kyi in connection with her party, the NLD's non-violent strategy. On 3 October 1989 he was reportedly sentenced to three years hard labour under section 216 of the Penal Code by the Military Tribunal at Insein Central Prison, where he was detained. Mr. Win Tin was reportedly in a very serious state of health and on 19 November 1992 the Chairman of the Working Group addressed an urgent appeal to the Government of Myanmar on his behalf.

(b) Tin Htut, about 60 years old, resident at Mingalartaungnyunt Township, Yangon, was reportedly arrested without a warrant between the end of November and the beginning of December 1990 at his home by agents of the DDSI. Mr. Tin Htut was an elected member of parliament for Eirne-1 constituency and a member of the NLD Central Committee. It was alleged that his arrest stemmed from his activities in the NLD. It was believed that he was accused of taking part in anti-government activities and of conspiring to form a provisional

government. He was reportedly sentenced to 20 years' imprisonment for high treason by the Military Tribunal in Yangon. He was said to be detained at Insein Prison.

(c) Naing Naing, resident of Pazundaung Township, Yangon, was reportedly arrested without a warrant between October and December 1990 at Yangon by agents of the DDSI. Mr. Naing Naing was an elected member of the parliament for Pazundaung constituency and member of the NLD. He was reportedly accused of having attended a "secret meeting with nine other NLD candidates" which was held in his house, after which "seven NLD candidates went to Mandalay" for discussion about "matters relating to the formation of a parallel government in Mandalay", and also of having "attended another secret meeting" at which he and a number of other NLD members of parliament "discussed the arrangement to form a government in the jungle on the border". He was reportedly sentenced to 10 years' imprisonment for misprision by the Military Tribunal in Yangon. He was said to be held at Insein Prison.

(d) Khin Maung Thein, an elected member of parliament from Khin Oo-1 constituency and a member of the NLD, was reportedly arrested without a warrant between October and December 1990 at Yangon by DDSI agents. He was reportedly accused of attending a government meeting in late September 1990 at which "formation of a provisional government" was discussed. It was reported that the Military Tribunal sentenced him to 20 years in prison for high treason. He was said to be detained at Insein prison.

(e) Min Zeya (alias Aung Min, alias Aung Par), born in 1958, a final year law student, resident of Kyaukkon Ward, Yankin, Yangon, was reportedly arrested at his home without a warrant on 14 August 1989 by DDSI agents. Mr. Min Zeya was the Chairman of the All Burma Federation of Students Union (ABFSU) - (Ma-Ka-Tha). After having delivered a speech in March 1988 the Government reportedly arrested him several times during that year. Each time he was allegedly interrogated and severely tortured by the military intelligence, without being ever formally charged or tried. After his arrest he was reportedly first held in a military intelligence detention centre, Yae Kyi Aie, in Yangon, where he was allegedly badly tortured by DDSI agents. Mr. Min Zeya was reportedly accused of having contacts with student groups on the border and soliciting money from foreign embassies. The Military Tribunal in Insein Prison reportedly sentenced him to eight years' imprisonment with hard labour. He was reportedly detained at Insein Prison where he was said to be held in a solitary confinement cell.

(f) Ye Htoon, born in 1937, lawyer, resident of Bo Teza Ward, Yangon, was reportedly arrested at his home without a warrant on 31 July 1989 by DDSI agents. Mr. Ye Htoon took part in the 1988 uprising. After the military coup in 1988, he worked closely with the student groups. After his arrest he was reportedly first taken to the military intelligence headquarters, Yae Kyi Aie, in Yangon, where he was allegedly tortured; later he was sent to Insein Prison in Yangon where he was said to be detained. According to the source Ye Htoon was accused of involvement in the student movement in 1988 and of serving as a liaison for a foreign embassy that channelled money to that movement; he was also accused of relaying "false information" about developments in Burma to

the Voice of America, the BBC and to the Bangkok-based journalist Bertil Lintner. He was reportedly sentenced to nine years' imprisonment with hard labour by the Military Tribunal in Insein Prison, Yangon.

(g) Myo Myint Nyein, aged 38, a student leader, and Sein Hlaing, aged 35, a leader of the Thon Yaung Chai's organization, residents of Pazundaung Township and Sangyoung Township, Yangon, respectively, were reportedly arrested without a warrant at Yangon on 12 September 1990 and 9 September 1990, respectively, by DDSI agents. According to the source, a Government newspaper reported that Myo Myint Nyein asked a certain Nyan Paw (reportedly a friend of his) to write satirical poems and then handed them over to Sein Hlaing "to publish and distribute them so as to organize the student youths to cause instability in Yangon". Both were reportedly sentenced on 15 November 1990 to 7 years imprisonment by the Military Tribunal in Yangon, under the 1950 Emergency Provisions Act (5 J) for attempting to "create misunderstanding" between the people and the Defence Services. It was reported that they were sent to Insein prison after their arrest, but that their present place of detention was not known.

(h) The Government of Myanmar, which gives different sentences from those indicated by the source in the case of some detainees, states that none of these persons was detained arbitrarily. After perfectly legal actions and after a proper trial, they were sentenced for having broken the law. They had in fact incited acts of violence with the aim of causing disturbances throughout the country. They also contacted insurgent organizations and obtained weapons and financial assistance from a foreign embassy, which constitutes an offence.

6. As the Working Group has already had occasion to note in its decision No. 52/1992 relating to the communication concerning Nay Min - following the preliminary report of the Special Rapporteur (A/47/651) - the legislative provisions most frequently cited in connection with the prosecution of Members of Parliament, political leaders, writers, Buddhist monks, etc., are section 10 (a) of the State Protection Law of 1950 and section 5 (J) of the Emergency Provisions Act of 1950, which also confer competence on the military courts. The persons cited in the communication, who are either elected Members of Parliament or writers, journalists or student leaders, are no exception since the same legislative provisions as those referred to above, and in particular section 5 (J) of the Emergency Provisions Act, were invoked against them. The Working Group is thus convinced that, as in the communication concerning Nay Min v. the Government of Myanmar, what is in fact held against these persons is that they have contested the political regime in power in their country. And there are no reports that in so doing they engaged in violence or incited violence. It is therefore apparent that they were detained solely for having freely and peacefully exercised their right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

(a) The detention of Win Tin, Tin Htut, Naing Naing, Khin Maung Thein, Min Zeya, Ye Htoon, Myo Myint Nyein and Sein Hlaing, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture and ill-treatment to the Special Rapporteur on the question of torture.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993