

Decision No. 62/1993 (Myanmar)

Communication: addressed to the Government of Myanmar on 8 April 1992.

Concerning: Aung Lwin, Nyan Paw, U Tin Oo and Thu Ra alias "Zargana", 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.
3. (Same text as para. 3 of decision No. 43/1993.)
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. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur on the situation of human rights in Myanmar, pursuant to Commission on Human Rights resolution 1992/58 (E/CN.4/1993/37).
6. It was alleged in the communication from the source, a summary of which was forwarded to the Government, that:
 - (a) Aung Lwin (alias San Shwe Maung), born in 1935, chairman of the Burma Film Union, leader of the Literary and Artists' Union and co-founder and information officer of the Central Executive Committee of the National League for Democracy (NLD), was arrested without a warrant on 28 June 1989 in Yangon by agents of the Directorate of Defence Services Intelligence (DDSI). He was not informed of the reasons for his arrest. It was alleged that his arrest stemmed from his active participation in the 1988 pro-democracy movement and from his activities in the NLD. He was said to be held at Insein prison. Aung Lwin was reported to have been held in detention initially under the preventive detention provisions of the 1975 State Protection Law. On 29 December 1989, a military tribunal sentenced him to five years' imprisonment for treason, reportedly for disseminating papers to foreign diplomats and organizations.
 - (b) Nyan Paw (alias Min Lu), age 36, writer and poet, was arrested without a warrant on 13 September 1990 in Yangon by DDSI agents, after he was identified as the author of several leaflets, pamphlets and poems considered disrespectful by the State Law and Order Restoration Council (SLORC). He was

charged with attempting to "create misunderstanding" between the People and the Defence Services in violation of the 1950 Emergency Provision Act (5J). He was said to remain in detention at Insein prison. On 15 November 1990, Nyan Paw was sentenced by a military tribunal to seven years' imprisonment.

(c) U Tin Oo, age 64, former general and Government minister, now Chairman of the NLD, was arrested on 20 July 1989 in Yangon. He was first held under house arrest and then transferred to Insein prison. On 22 December 1989, he was sentenced to three years hard labour by a military tribunal which found him guilty on several charges including "creating public disturbances". Allegedly, in May 1991 this sentence was increased by an additional seven years, or, according to other reports, by 14 years. It was alleged that the charges against U Tin Oo stemmed from his participation in June 1989 in demonstrations held in defiance of the martial law which bans public gatherings, at which he called for non-compliance with martial law restrictions on civil liberties and for non-violence. It was further reported that U Tin Oo's health was deteriorating as he was suffering from thrombophlebitis. It was alleged that he was not receiving any medical care in prison.

(d) Thu Ra, alias "Zargana", a dentist and actor, was arrested on 19 May 1990 in Yangon and sentenced to five years imprisonment, reportedly for having impersonated a leading member of SLORC while exercising his profession as an actor. Allegedly, his trial was held in camera, he was denied access to a lawyer, and he was unable to examine the witnesses against him. It was further alleged that there was no right of appeal against criminal convictions. Thu Ra was said to be imprisoned at Insein prison.

7. For the Government of the Union of Myanmar, which has announced in passing the release of Aung Lwin on 1 May 1992 and of Nyan Paw on 22 September 1992 (amnestied), none of the persons mentioned above was or is detained arbitrarily. It was as a result of perfectly legal procedures and a properly conducted trial that they were convicted of offences under the criminal law. Thus, for example, Nyan Paw is accused of writing anti-government pamphlets, Thu Ra, alias Zargana, of making seditious speeches during the electoral campaign of the independent candidate Thakinma Daw Hala Kyi and U Tin Oo of engaging in subversive activities. It is the same legislative provisions that are cited, as the Working Group has already had occasion to note in its decisions Nos. 52/1992 and 38/1993, following the example of the Special Rapporteur on Myanmar in his preliminary report (A/47/651). These legislative provisions are section 10 (a) of the State Protection Law of 1950 and section 5 (j) of the Emergency Provisions Act of 1950, which incidentally give competence to military courts. From the fact that such courts are being used to try civilians who are political leaders, human rights activists, journalists and students, and this under emergency legislation which has been in force since 1950, the Working Group draws the conclusion, as it has said in its decisions mentioned above, that what is really held against the persons mentioned in the communication is the fact that they have opposed the political regime in power in their country. It is not reported that in doing so they have used violence or called upon others to do so. In short it is evident that they were or are being detained solely for

having exercised freely and peacefully their right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

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

The detention of U Tin Oo and Thu Ra alias "Zargana", as well as that of Aung Lwin and Nyan Paw, despite their release, is considered to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of cases submitted to the Working Group.

9. 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 9 December 1993.