

# OPINION No. 20/1997 (MYANMAR)

## Communication addressed to the Government on 11 July 1997.

Concerning: Khin Sint Aung

### Myanmar is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - III. When the complete or partial non\_observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. The Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur prepared pursuant to resolution 1997/64 of the Commission on Human Rights (E/CN.4/1997/64).
5. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
6. According to the communications received from the sources, a summary of which was forwarded to the Government, after having been released from detention under amnesty on 4 February 1995, Khin Sint Aung, aged 61, doctor and elected member of the National League for Democracy (NLD), was re-arrested on 23 July 1996 by the Myanmar authorities on charge of recent activities in support of the opposition. He had been previously arrested on 3 August 1993 and sentenced on 15 October 1993 to 20 years in prison on charges of destabilizing national unity, printing and publishing material without official registration and improper use of official secret documents. Dr. Khin Sint Aung's case had already been transmitted by the Working Group to the Government in April 1994. The Working Group, by its Decision No. 13/1994, declared his detention to be arbitrary. His re-arrest was believed

to be related with his membership of the NLD. He was believed to be currently held in Insein Prison, Rangoon.

7. In its reply the Government provides the Working Group with details concerning the charges under which Dr. Aung Khin Sint had been sentenced in 1993 to 20 years' imprisonment. He was convicted under section 5 (j) of the Emergency Provision Act, under section 17/20 of the Printers and Publishers Registration Law and under the Burma Official Secrets Act, section 5 (1) (4). The Government added that Dr. Aung Khin Sint had been granted an amnesty under section 401 (1) of the Criminal Procedure Code, after he had given a solemn pledge to the authorities that he would henceforth abide by the law. But, added the Government, Dr. Aung Khin Sint did not abide by his solemn pledge and as a consequence, the amnesty extended was revoked and he resumed serving the remainder of his original sentence.

8. The source, in its observations to the Government's reply, reiterated its view that Dr. Aung Khin Sint's detention was based solely on his right to exercise free expression. The charges against him were believed to be specifically related to letters he sent out to NLD members during the January 1993 NLD National Convention.

9. As indicated by the source, the Working Group, in its Decision No. 13/1994, had already declared the detention of Khin Sint Aung to be arbitrary. His re-arrest after being released on 23 July 1996 under the Amnesty Law of 4 February 1995 was motivated, according to the Government, by the fact that "he did not abide by his solemn pledge"; but the Government failed to specify in what way Dr. Aung Khin Sint did not abide by his pledge, what were the activities that led to the revocation of the amnesty extended to him and in what way they constituted a violation of the said pledge.

10. The Working Group deems that the renewed detention of Dr. Aung Khin Sint, just like the first one that was the subject of Decision No. 13/1994, is linked to the fact that he peacefully exercised his right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights.

11. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Khin Sint Aung is arbitrary, as being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and falls within category II of the applicable categories to the consideration of the cases submitted to the Working Group.

12. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take the adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 2 December 1997.